



**EXPLANATORY AND TRAINING  
MANUAL  
ON PREVENTING CONFLICTS OF INTEREST IN  
LOCAL GOVERNMENT**

**- 3 -**

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**Explanatory and Training Manual  
on Preventing Conflicts of Interest in Local Government**

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2. Conrete (active) role of the local government bodies (the council and the mayor) and directions for the prevention of conflicts of interest - Matrix no. 1
3. The increase of the representative role of the public interest in preventing conflicts of interest, functioning to the solution; organization and function of the local government bodies – Matrix no. 2
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# PREVENTING CONFLICTS OF INTEREST IN LOCAL GOVERNMENT

## 1 Introduction

Governing bodies manage public activities. Besides strengthening the bodies and structures of the central government, an important role is played by local government bodies that normally deal with public activities and fields of a local nature and that are closer to local communities. This way, the method of governing the country, in general, and every local community, in particular; the impact of the governing activities of all central and local structures; the efficiency in using and measuring public financial and natural resources and taking into consideration the efficiency they offer along with the benefits to the community, all provide a basis for the success of government and for the development of the country for the benefit of the entire population through public services.

Changes in the consolidation of local government are based on two essential pillars: that of the increase of local independence and that of the decentralization of authority, aim for a governance as effective as possible which is able to treat as honestly as possible the requirements of the local community and fulfil to the maximum the requirements of the citizens in general. This is by making possible that governing bodies and organisms have real opportunities to define and identify public interests in the real conditions of the local government and in this aspect, establishing a fair proportion among public and private interests of the people involved, being them elected or appointed in the local public institutions. This is to be taken in consideration because in the relations among public and private interests there exists the possibility of conflicts of interest which is part of the so called “abusing authority” by the public officials (elected or appointed). This happens when the personal interests of the official do not allow him/her to perform correctly the public task, which leads to misuse of public office for private interests.

According to one definition “....Conflict of interest in a wider meaning is the misuse of a public task for personal or private benefits, financial or otherwise”.

The challenge for every kind of governance and for society is to analyse and apply adequate mechanisms for minimizing this occurrence and avoiding the interference of private interests with public ones.

In specific conditions of local government, when dealing with issues of preventing conflicts of public and private interests of an official while exercising the competences in the local governing units, explaining the types and methods in which conflicts of interest might appear, the purpose of this manual is to contribute to unbiased and transparent decision-making and executive activity and also to contribute to the best possible public interest and society’s trust towards public institutions. This is also due to the very specific fact that the official’s activity has a public character in local government (elected or

appointed). Officials are very close to the citizens because of the kinds of tasks they perform and functions and competences that directly affect the community, in fields of local public services such as: water supply and sewerage, services in the street, parks, gardens, cemeteries, maintenance of public urban areas, lights, etc.

This manual aims to not only be an informative book useful for local government and elected and appointed officials who perform tasks and duties in local government, but also to serve in an effective way for all people, so that they are informed about conflicts of interest and are even able to resolve issues they might encounter as the result of conflicts of interest.

## 2 General principles and concepts

Local officials should not participate in actions which, in one way or another, lead to exploitation of the public task and serve their personal interests. They should not participate in decisions in which they find themselves to be in a real or potential conflict of interest.

Conflict of interest in local government is addressed in Law no. 9367, dated 07.04.2005, which sets out the rules, means, procedures, real responsibilities and competences for identifying, recording, handling, exposing and resolving cases of conflicts of interest.

### 2.1 General principles

Preventing conflicts of interest is governed by some principles which regulate public activity. These basic principles which serve to fulfil the very important mission for successful and qualitative governance include:

- The principle of law and order
  - The principle of equity and proportion
  - General principles of ethics
  - The principle of the most severe restriction

#### The principle of law and order

1. Structures of public administration should perform their activities in accordance with the Constitution of Albania, international agreements to which Albania adheres, and laws of the Republic of Albania within the limits of their application and in accordance with their purpose.
2. Administrative actions issued in an extraordinary situation that go against the dispositions of the Code of the Administrative Procedures, should be valid in the event that the result needed in the extraordinary situation cannot be achieved in another way.

Parties that have been harmed by the above mentioned actions have the right to be reimbursed for their losses based on the legal dispositions which regulate the responsibilities of public administration.

#### The principle of equity and proportion

1. In relation to private entities, the public administration is governed by the principle of equity. This means that no one should be privileged or differentiated because of gender, race, religion, ethnicity, language, political or philosophical beliefs; economical, educational, social circumstances or because of their parents.

2. The actions of the public administration which, for the sake of protecting public interest or for the sake of protecting the rights of the other people, limit the basic human rights acknowledged by the Constitution, international agreements, laws and by-laws, yet they should respect the principle of proportion and should not harm the essence of rights and freedoms. This means that actions of the public administration should be such as they should:
  - Require the accomplishment of legal public interests;
  - Always use appropriate means and use them in proportion with the aimed goals.

Public administration structures are always obliged to assess if it is possible to reach the required purpose using measures which are as less as possible repressive and do not harm their efficiency.

“The principle of proportionality” is the relation between the importance of the tasks, responsibilities and competences of a public official or institution and the measures for preventing a conflict of interest. According to this relationship, the more important the tasks, responsibilities or competences of an official and the more limited the restrictions of the interests of the official, the more severe the penalties, and the more detailed and defined the rules, manners, means and procedures for preventing conflicts of interest.

#### General principles of ethics

Public administration employees while performing their functions should respect the following principles:

- a) Perform their tasks in accordance with the legislation;
- b) Not allow personal interests to go against their public position; should avoid conflict of interest and never exploit their position for their private interests;
- c) Always behave in a way that the public belief for honesty, impartiality and efficiency of the public service is preserved and increased. They should also maintain the confidentiality of the information they are using, without harming the accomplishment of the responsibilities deriving from Law no. 8503, dated 30.06,1999, “On the right for information from official documents”.

#### The principle of the most severe restriction

The limitation of personal interests, as set out in this law, is applied alongside the restrictions of the same personal interest, as set out in another law, according to the principle that the most severe restriction should be applied.

If in this law, for a specific private interest of the official, is not defined any quantity limitation of this specific interest, while in another law the same interest is limited according to a quantity restriction on the purpose of preventing the conflict of interests,



this restriction is implemented in the same way as for the law on preventing the conflict of interests and vice versa.

## **2.2 Explanatory glossary of conflict of interest terms**

In this manual, these terms have the following meaning:

1. **"Conflict of Interest"** is the situation of conflict between the public duty and the private interest of an official, in which he/she has direct or indirect private interests that influence, might influence or seems to influence the performance, in an incorrect way, of his/her public tasks and responsibilities.
2. **"Performing correctly the tasks and responsibilities"** is the method of performing tasks and responsibilities which result from decision-making in which the official actions in accordance with the laws in a honest, impartial, responsible, and a devoted way, always supporting the public interest and legal rights of private individuals as well as maintaining and strengthening the dignity and credibility of the institution where he/she works, of the state in general and of the image of the official.
3. **"Performing incorrectly the tasks and responsibilities"** happens when at least one of the conditions mentioned in point no. 2 of this glossary is not met, because of the possible influence of private interests of the official, according to point 1 of this glossary.
4. Conflict of interest, defined in point 1 of this glossary includes several other definitions, as follows:
  - a) **"Actual conflict of interest"** is when personal interests of the official influence, have influenced, or might have influenced the performance of his/her official tasks and responsibilities in an incorrect manner;
  - b) **"Apparent conflict of interest"** is when the personal interests of the official give the impression that they influence, have influenced, or might influence the way in which the official performs his/her tasks and responsibilities but, in fact, this did not happen, does not happen or it has no chance of happening;
  - c) **"Potential conflict of interest"** is when personal interests of the official might cause an actual or apparent conflict of interest in the future, if the official is involved in specific tasks or responsibilities;
  - ç) **"Case-by-case conflict of interest"** is when there is conflict of interest of one of the three above mentioned kinds, and it occurs on a case-by-case basis, and is related to specific decision-making;
  - d) **"Continuing conflict of interest"** is when the conflict of interest may happen repeatedly and/or often in the future.

5. **"Active ownership of shares or parts of capital"** means making use of all rights which derive from the ownership of the shares or parts of capital.
6. **"Passive ownership of shares or parts of capital"** is when the owner has the right to benefit the civil products of ownership, but may not perform any civil action over this property. All other actions (administration, ownership, conveyance, etc.) are performed by another reliable person for the owner, based on an agreement between the two. In the agreement, the criteria of benefiting the products of the property, as well as other necessary rights and responsibilities are defined. The reliable person does not exchange any opinions or information with the owner and is not influenced by him/her in performing actions related to the property. He/she should act only for preserving and increasing the property value in the same way these actions would be made by the owner him/herself. Restrictions on choosing the reliable person are defined in the law. Any party to the agreement has the right to break the agreement at any time. The owner has the right to reclaim at any time the right to perform other civil acts with the property, when according to this law, the criteria which led to this action no longer exist. The other rights and responsibilities which are not mentioned above are regulated according to the Civil Code of the Republic of Albania.
7. **"Official"** is every person who performs public tasks and functions as defined in the law on preventing conflicts of interest.
8. **"Public Institution"** is every state institution, central or local, and every structure created under and/or subject to these institutions including state or local enterprises, commercial companies with a controlling participation of state or local capital, non-profit organizations and other legal persons controlled by state institutions.
9. **"Superior of an official"** is another official, an organizational unit within the public institution, the chief manager of the public institution or a structure of this institution which has competences to hire employees, to lead, to command, to assess or control directly this official, or somebody who has specific competences to implement this law.
10. **"Superior Institution"** is a public institution (or a structure within a public institution) which, according to the existing laws, has regulating, hiring, leading, commanding, assessing and controlling competences on another public institution (or in one of its structures) where an official performs his/her tasks and exercises competences. A superior role is exercised according to the laws which regulate the organization and function of the public institutions. Despite the fact that a superior institution might have one of the above mentioned competences, it cannot be considered as such if this would harm the constitutional principles of the distribution of the power and institutional independence.

11. **"Person connected with an official"** is every natural or legal person who is found to have had or has ties of interest, property ownership or a non-property personal interest with the official.
  - a) With **"public authority"** we assume every state administration and public entity structure;
  - b) With **"official document"** we assume every kind of document kept by the public authority according to the existing regulations, which is related to the public function;
  - c) With **"person"** is assumed every physical or legal person, being native or foreigner.
12. **"Share"** is a property bond, which represents one of the parts of a shared capital of an entity which gives the right its owner to participate in the benefits of this capital.
13. **"Bound people"** are all physical or legal people who by administrative research come out to have had or to have property ties with the person who bears the responsibility of declaring in one of the forms defined in the law.
14. **"Shares of the capital"** is the part of the capital of the entity owned by one of the shareholders.
15. **"Function"** is the activity for which a specific structure is responsible.
16. **"Deputed functions"** are functions of the central government or other central institutions which, by law or based in agreements, are delegated to be accomplished by local government units. How it will be accomplished and to what extent is defined by the central government and other central institutions.
17. **"Joint functions"** are functions for which the local government unit has responsibilities that are distinct from responsibilities that have been delegated to the central government and that are proportionally accompanied with competences, which are implemented independently by the local government.
18. **"Self functions"** are functions defined by law to the local government. The local government is responsible to implement them and also it is free and has the authority to make decisions and use methods in order to implement them, within norms, criteria and standards accepted by law. It also has full administrative, service, investing and regulatory authority.
19. **"Competence"** is the authority given by law to a structure to perform a specific function.
20. **"Its own competences"** are exclusive authorities given by law to local government units to accomplish its own functions.

21. **"Administrative competence"** is the competence to manage the structures and human resources (establishing, improving, and dissolving the structures, as well as hiring, dismissing, transferring, the staff or assigning the salaries and remuneration of the staff) in accordance with the effective legislation.
22. **"Delegated competence"** is the central government competence which by law, or based on agreements, is given to the local government unit.
23. **"Investing competence"** is the competence to plan, share and materialize the investments.
24. **"Regulator competence"** is the competence to compose and set up rules (issuing licences, setting up schedules, penalizing, etc.) or in general, to define rights.
25. **"Serving competence"** is the ability of the local government structures to plan, share and maintain the buildings and subsidiary services.
26. **"Subject to joint competences"** is a committee, organ, institution, enterprise or board established by two or more units of the local government or between local and central government units aiming to perform a service or to fulfil a joint responsibility.
27. **"Subsidiary"** is the principle of accomplishing functions and exercising competences in a governing level which is as close as possible to the citizens.
28. **"Public employees"** are those employees of the public administration institutions of central or local level, who exercise public authority in leading, organizational, supervision, and decision-making assignments as defined in the Civil Status Law.
29. **"Direct superior"** according to the Civil Status Law refers to: the director of a directorate for categories; chief of sector to specialist; the general secretary for the categories, director of department to director of directorates; and the official or administrator of the institution for the general secretary.
30. **"Non contractual responsibilities of state administration bodies"** is understood to mean the responsibility of the state administration bodies to remunerate any damage they have caused to private persons while exercising their public functions.
31. **"Administrative infringement"** is the violation of the legal or by-legal dispositions issued by the respective state bodies that is caused by acting or non-acting. For this violation an administrative penalty is anticipated.
32. **"Outside activity of the employee"** is every kind of activity, full time or part time, profit or non-profit that needs commitment by the public administration employee and is performed outside his official job.

### 3 The role of local government structures in preventing conflicts of interest

#### 3.1 *Autonomy and decentralization as a basic factor in protecting public interests*

Local autonomy and decentralization have increased the operative skills of local government bodies in performing public functions of a local nature.

Changes in the local government system to provide it with appropriate roles and responsibilities commenced in 1992 bringing a fundamental change to the previous structures of local government bodies. The goal was made official with the establishment of the Constitution of the Republic of Albania and with the ratification by Parliament of the “European Chart of Local Autonomy”. In 2000, Law no.8652, dated 31.06.2000 “For the organization and function of the local government” was passed. Specifically, Article 13 of the Constitution of the Republic of Albania, states:

*“Local Government in the Republic of Albania is established based on the principle of the power of decentralization and is practised according to the principle of local autonomy”..*

The implementation of this provision has made local autonomy and decentralization to extend and consolidate progressively as two main determinant pillars of local government.

The progress to this point has made activity of local government institutions and bodies very sensitive towards the way these bodies act in order to serve the public interests. Essential definitions for this have been made in Law no.8652, “On the function and organization of the local government” . These definitions can be found in this law and other laws which influence the work of local government bodies.

➤ ***Local autonomy*** has enabled local government bodies to act independently; it has made possible the necessary authority to implement that part of public activity that is guaranteed by law as defined in “Chapter III” of the organic law for local government, “Rights of local government units”. In essence, the autonomy of local government bodies is guaranteed by:

- **Political autonomy**, which is implied by the fact that local government bodies have the necessary authority to take decisions for issues under their competence. They can do this within the legal framework used throughout the country provided that there is no other administrative authority that can abrogate their decisions. When the decisions have been taken illegitimately their abrogation is made by court decision.

- **Financial autonomy**; local government bodies have their own financial means. They use them to implement their commitments.
  - **Administrative autonomy** is the necessary legal authority that local government bodies have to manage activities for implementing as effectively as possible their commitments according to the rules and ways defined by law.
- **Decentralization** (which is defined in a summarized way in Articles 10, 11, 12, 32, 44 and 45 of Law no. 8652, dated 31.07.2000”) where governance of the public life is exercised by the local government bodies that are enabled to take an active role in governing.

The following have been clearly defined in the legislation:

- Fields of activity that are the responsibility of the local government, in general, and of every structure, in particular;
- The ways and means that structures or their administration should use to implement their mission using their respective concrete competences.

Regarding the fact that local governance has an important role in managing public activities, the fight against personal advantages of officials (individuals) engaged in public activities, prevention of every kind of action for illegal and undeserved benefits which is stated even at the prevention of the conflict of interest, constitutes a very important indicator and also reflects the governance level. This is more obvious because public activity of local government bodies is performed in fields that are very close to the community and face public needs and interests every day.

### ***3.2 Decision making in local government as an important factor in increasing the representative role of public interest in preventing conflicts of interest***

Part six of the Constitution of the Republic of Albania, defines the basic principles of the organization and function of the local government. According to article 108, point 1: “Local government units are communes, municipalities and districts”. Article 109, point 1 indicates: “Representative bodies of the local government units are councils...” while point 2 states: “The executive body of the municipality or commune is the mayor...”

Rules for implementing the above mentioned mission are given in a more detailed way in Law no. 8652, dated 31.07.2000.

#### **a. Representative bodies**

- *In Municipalities and communes the council of the municipality or commune is established as the representative body of the community for the local government. The*

council is directly elected and it has the capacity to take decisions in fields and competences defined in Law no 8652, dated 31.07.2000 (article 8, point I/b). The council cannot delegate to executive bodies (the mayor) some of his functions such as: budget, public properties, local taxes and fares, etc. (article 44/a).

□ *In each district, the council of the district is established as a representative body which is composed of representatives of the communes and municipalities, in proportion to the respective number of people.*

The way local government representative bodies are established and how they are organized and function constitute essential provisions for the mission they undertake as representatives of the local communities and in exercising the tasks serving the people and in fulfilling their public interests. The oath that every elected person makes once he/she obtains the mandate in the local council makes his/her 'contract' with the community, as it clearly states: "...I will be led by the interests of the citizens of the commune or municipality..." (Article 28, Law no 8652, dated 31.07.2000).

□ *Measures to precede the prevention of a conflict of interest as soon as local councils are established are defined in the local government Law no. 8652, dated 31.07.2000. Article 25 of this law states:*

- The incompatibility of the function of the council with the function of the mayor, vice-mayor of the municipality/commune, of the secretary of the council, of the employee of the respective municipality or commune, and the function of the Member of the Parliament.

The function of the councillor is incompatible with the function of the mayor, vice-mayor of the municipality/commune, of the secretary of the council, of the employee of the respective municipality or commune, and the function of the Member of the Parliament.

- The council cannot have as members people with family relations to each other, such as: husband and wife, parents and children, brother and sister, mother/father-in-law with daughter/son-in-law.

Based on these dispositions, candidates for local councils (councils of the municipalities and communes) cannot get their mandate if they do not fulfil the above-mentioned criteria.

To fulfil these criteria, before becoming a member of the council, the candidate:

- i. Should resign from administrative functions, or vice versa; if he/she does not resign from the above mentioned job, he/she cannot get a mandate as a representative of the community;
- ii. In the event that there are two people with a family relationship as mentioned above who obtain the right to become members of the council, one of them must resign.

□ *As penalties of organizational character* of the local government is considered the fact that rules defined by law as well as those defined by every structure depending on the respective circumstances should be respected. Representative bodies, while exercising their functions use different forms of organization. They establish commissions, and found institutions and enterprises to exercise functions and competences defined by law. The experience during the years of democratic change has shown that establishing and using these internal structures in a well-organized way adjacent to local councils, has increased the degree of communication of the governing bodies with its citizens. These governing bodies become very efficient in preventing conflicts of interest during the phase of decision making and implementation.

□ *The function of local government bodies requires respecting the norms* according to the definition in “The code of the administrative procedures” for corporate bodies, and in “Chapter VI” of Law no. 8652, dated 31.07.2000.

Among the most important norms are:

- Preliminary preparation for meetings;
  - Making sure the necessary number of the members of the council (quorum) will be present at the meetings;
  - Examination and discussion of problems, taking decisions with the majority of votes (relative, absolute or the necessary majority), according to the definition made in Article 33 of Law no. 8652, dated 31.07.2000;
  - Documentation of the meetings, elaboration and publication of the actions, etc.

Local government bodies have the following powers according to Article 8, point I/b of Law no. 8652, dated 31.07.2000 states:

*“According to the Constitution, laws and bylaws issued based on these laws and for their implementation, in order to perform their functions and exercise competences, local government bodies issue rules, regulations and decisions which are obligatory for all the subjects included in the action under their jurisdiction”.*

Regarding the way in which the council functions, Law no. 8652, dated 31.07.2000, defines direct norms serving to prevent conflicts of interest.

Article 30, point 1, of the above mentioned law defines that:

*“The councillor does not participate in the examination and endorsement of the council’s action when he/she him/herself, husband or wife, parents, children, brothers, sisters, mother/father-in-law, son/daughter-in-law, etc. are interested either materially or in any other way about the issue which is being discussed in the council”.*

This makes a norm of permanent character which requires the councillor to avoid direct



influence in the decision-making process in every case of a conflict of interest. Because of the character of the function and competences the council has to take, decisions for issues such as: authorizing construction areas, deciding who will benefit from social housing programs, distribution of scholarships, financial assistance, etc., exercising this disposition, on one hand, stabilizes the relationship between the “public function” and “personal benefits” in preventing a conflict of interest, but on the other hand, it makes possible that the official or the person related to him/her is not excluded a priori from legal benefits like all the other citizens.

The establishment and composition of the elected bodies, and their organization and function in fulfilling their legal tasks is a very important factor in serving the community in accomplishing the public interest. Every failure made regarding these issues is considered as an element which leads to direct individual profit or which makes it possible for a specific group of people to benefit harming the community and public interests. Thus, such failures should be prevented.

Actions made by specific elected people in conflict of interest and against the law might happen more when there is an influence of inadequate organizational and functional measures and also when specific people, perhaps even because of the first, abuse their authority, having as their most important aim, personal benefits.

To illustrate the above mentioned:

- Where the council, when discussing the authorization of construction areas or scholarships, privileges certain individuals who have relations with councillors or employees of the administration who have an influence on the decision-making process.
  - In the event that the council distributes financial assistance showing preference or distributing funds to families or individuals who have relations with members of the council who participated in the discussion or decision-making process.
  - When the council discusses and approves funds which will be given for investments or services to a clearly defined target and it is evident that the institution or enterprise which is going to use the funds is led by people who have relations with councillors, managers or employees interested in action.

□ *Some of the important instances of the establishment, organization and functioning of local government from the point of view of preventing conflicts of interest.*

Cases of conflict of interest in the activity of members of the councils of municipalities, communes or districts, can be prevented from taking real measures by the council related to the organization and function of all structures which play a role in such a decision taking. Special attention should be paid to the function of the commissions and other “filters” mentioned above as structures which serve to a correct decision-making by the council and also in following the norms during the discussion and decision making process in the plenary meetings of the council.

Regarding this, in particular:

- *In the councils the best representatives of the community should be chosen*, those who deserve the trust of the citizens, people that have shown their interest for the community and for whom the personal interest and benefits are not their only goal, but only as a collective and public benefit.
  - *Organizational measures should be taken*, in order that the activity of the local councils as collegial bodies, in exercising their functions, competences, rights and tasks is always characterised by the point of view of fulfilling public interests.

This can be realized by:

- Rigorously respecting all the legal dispositions in the organization and function of the collegial and sector bodies according to the field of the activity the council has (e.g. according to the law a correct voting procedure, with the necessary quorum, and excluding from the examination and voting process the members of the council who have personal interests for the issue under discussion, prevents conflicts of interest of the councillors in the decision-making process).
- Approving the status of the local unit, composing and improving continuously the regulations of the council and then rigorously respecting them. These make some very important measures for the institutionalization of democracy within collegial bodies, which are essential in fulfilling the mission of representing correctly the community.
- As such, clearly defined relations of the council with the mayor of the municipality/commune and the council of the district, the administration and depending institutions, aiming the council to be independent in its reasoning and arguments before making decisions, makes the job of the council much more easy in solving specific issues regarding public interest, avoiding issues to be solved in favour of possible material benefits by officials (elected or nominated) and people related to them.
- Councils of municipalities/communes and districts should develop as well as possible the scope of their institutions and define as well as possible prior fields. They also should specify how key problems should be solved, define norms, criteria and rules of general character which should later on be respected in every case.

To illustrate: while exercising the competence for the distribution of social housing for families in need, the council should take preliminary measures in defining the criteria for the people who will benefit. A scoring system for the criteria should be decided upon which makes the decision-making process easier for every case and treats responsibly every person who benefits and does not allow favours through conflicts of interest.

- Organizing the activity of the council with developing programs and real projects approved in a democratic way through a wide consulting process.

For example, approving on-time programs and projects for the road infrastructure in the municipality, prevents accelerated procedures for using funds, not leaving an opportunity for illegal benefits of the subjects and getting over the difficulties in the process of preventing conflicts of interest.

- Structures and bodies set up by the council, such as: commissions, working groups or advisory committees, etc., should be used and function effectively. They should function in such a way that for the solution to every problem should support public interests and should aim their at their completion. These structures should serve as special filters in assessing to what extend the community benefits by the public activity administered by the council.

Functioning to this purpose is, for example, the preliminary discussion of the agreements or contracts with venture companies in the commissions of the council, (e.g., removing the garbage). This makes a real possibility to prevent cases of conflict of interest, not allowing the council to take decisions for contracts with people prohibited by law, or avoiding that there will be facilities for subjects participating in the contract and harming public interests.

- Control during the process of the actions in compliance with the decisions, makes a very important step and has great prevention possibilities. This control should be extended to the generation of revenues and use of public funds but also in: effective use and for public interests of public property, respect of the legislation in hiring the staff, in organizing and leading depending institutions, etc.

For example, the control on the structures of taxes in the municipality/commune by commissions of the council, (without excluding other methods) which assists in reducing the fiscal evasion, in eliminating inequality for specific subjects in paying their liabilities and the cases of tolerance as the result of related people by interest, etc.

- Transparency with the public and the participation of the community in governance, applied directly by the council using as simple and clear methods of communication as possible, is very important for preventing conflicts of interest. The public has a very wide point of view and recognizes moments that sometimes are difficult even for the councillors to see.

The presentation before the public of the project budget before it is approved by the council, makes it possible for citizens to clearly express their views on the use of the funds, and even for the way rules are respected for having revenues especially through equal application of liabilities to prevent cases of the presence of conflict of interest and also different forms and degrees of benefits by individuals thus harming public interests.

In an activity organized by taking such measures or other ones like these depending in

specific conditions, the **council** creates a suitable environment for preventing conflicts of interest.

## **b. Executing bodies**

The mayor of the municipality/commune forms the executive body in municipalities and communes, while in the council of the district the executive mission is performed by the leadership and the chair of the district's council. Their main mission is to implement the decisions of the representative body (council) as well as other tasks defined by law, which are exclusively under their competence.

Article 109, point 2 of the Constitution of the Republic of Albania states:

*“The executive body of the municipality or commune is the mayor... “*

The mayor of the municipality/commune or the leadership, and the chair of the district's council are the authorities which lead all implementing activity, perform its executive functions, work to fulfil the decisions of the council or responsibilities which derive from legislation and, as such, they reflect the level of governance.

On the other side, Article 8, point I/c of Law no. 8652 dated 31.07.2000 defines that units of the local government:

*“Establish administrative structures to perform functions and to exercise their competences according to the existing laws”.*

The administration of the municipality, commune or of the district's council is required to act professionally in implementing the functions and competences of the elected bodies and reports to the mayor and also to the respective council.

➤ **Executive** bodies of the municipalities, communes or councils of the districts have many opportunities to prevent conflicts of interest by taking measures of an organizational and functional character. This consists in the job of the mayors of the municipalities and communes and leadership of the chairs of the district's councils and then in the activity of the administration and institutions they manage related to their organization and respective structures and also in the way they function.

Some of the directions to be considered that influence the prevention of conflict of interests, are:

- Recognizing sectional legislation and that of a general character, and implementing it in a disciplined way. This makes an essential and a very important factor in order for executive bodies (including the administration) not to make mistakes and not to create an environment for personal benefits resulting in harming public interests.

For example, when the administration and the mayor of the municipality/commune recognize the legislation in the field of procurement, there is a real possibility to prevent conflicts of interest in the decision making process in the use of public funds.

- The compilation of the regulations for the administration, with a clear division of the tasks for the directorates, offices and specific employees and the definition of the methods for coordinating and organizing the work, make a very important factor for the quality and correctness in exercising executive tasks and also as an assistance and parallel control which is necessary and functional in preventing conflicts of interest.

This is materialised in the need that every director or employee should clearly recognize his/her tasks which are distinct for his/her role regarding the preparation of project-acts for the council or the ones which are under the competence of the mayor of the municipality, commune or the leadership of the district's council and later on, up to specific moments of their implementation as well as the role of other structures of the administration in order, on one hand, that they contribute to preventing conflicts of interest of the actors in decision taking process and, on the other hand, that there is clearly defined and recognised responsibility of every one in case legal rules are not respected.

- Timely and qualitative preparation of project-decisions for the council, starting with the annual budget and midterm project-budget, as well as acts for their implementation, such as actions in the field of land properties for the use and administration of specific assets without neglecting other fields make for difficult situations and should be considered fairly in preventing conflicts of interest. In every case in the project, actions prepared by the administration for the decision-taking bodies should be identified and the authors of the project actions and the persons who have given their contribution in the preparation process should be identified.

To clarify, in the case when the mayor of the municipality/commune or the district's council and the respective administration cannot be allowed to look for a solution in event there is a conflict of interest when proposing or implementing methods about how to use specific properties (such as: renting, establishing an enterprise or entrepreneur service, etc.)

- To make analyses and studies by consulting the community and especially interest groups is essential in identifying public interests of a general nature and on these bases to propose clear and stable development policies. In these cases, the solution to the problem goes farther from the chance of personal benefits and as such, there is less likelihood for having situations of conflict of interest.

For example, if there is:

- An analyses of the need for houses,
  - A study on how to deal with needs,

- An accurate ranking system to rank the people who will benefit from social housing, the abusive benefits and cases of conflict of interest will be reduced to the minimum.
- Normal functioning and organization of the established structures close to municipalities/ communes or district's councils and the follow up of their job, assists in exercising the competences and tasks defined in accordance with the legal provisions and actions of the council.

So, if commissions of the citizens function normally, especially before taking decisions, the presentation of the interests of the community is much more present and improves the environment for preventing conflicts of interest.

- An intensive control during the process of implementing public activities and reporting continuously to the respective elected bodies are very effective means for preventing conflicts of interest. This is especially important when public services are done by third parties.

For example, in the event that the administration and maintenance of parks is given to a specific entity, control on the relations this entity establishes with suppliers or those who perform actions, serves to prevent the appearance of conflicts of interest regarding the use of public funds.

Chart 1 summarizes some important examples of how local government bodies are elected and organized and how they function, and these are related to preventing conflicts of interest in carrying out their duties.

### Chart 1

Increase of the representing role of the public interest in preventing conflicts of interest, regarding the method of election, organization and function of the local government bodies.

No.	Field	Directions related to the prevention of the conflict of interest	Which are considered as essential problems	What can be done to prevent conflicts of interest
I.	The method of the establishment, organization, and function of the local government bodies (council	1. Method of election and establishment of the elected body. 2. Inner organization of	- A wide participation of citizens in elections increases the confidence on representing role.	- Incompatibility of the function of the councillor with that of the mayor, vice-mayor of the

<p>of the municipality, commune, as well as the mayor of the municipality, commune and district and also of the chair of the district's council). □□</p>	<p>the council. □□□□□          □□□3. Organization of the executive: □ - Mayor, □ - Vice mayor/s, □ - Administration          □□□4. Function of the local government bodies.</p>	<p>□- Election subjects should include the best candidates for serving to public interests. □□- Correct execution of the plenary sessions. □- Organization of the commissions of the council.          □- Establishment of other legal structures: □ - Consulting. □ - Implementation.          □□- Organization of the administrative structure. □- Clear division of the tasks for every structural unit.          □□Respecting the legal norms for the council as well as for the executive of the local government. E.g.          □- Preliminary preparation for the meeting. □- Guaranteeing the necessary number of the members of the council for the examination of the issue. □- Rigorous examination of the issues, the method of</p>	<p>□- Election subjects should include the best candidates for serving to public interests. □□- Correct execution of the plenary sessions. □- Organization of the commissions of the council.          □- Establishment of other legal structures: □ - Consulting. □ - Implementation.          □□- Organization of the administrative structure. □- Clear division of the tasks for every structural unit.          □□Respecting the legal norms for the council as well as for the executive of the local government. E.g.          □- Preliminary preparation for the meeting. □- Guaranteeing the necessary number of the members of the council for the examination of the issue. □- Rigorous examination of the issues, the method of</p>	<p>municipality or commune, of the secretary of the council, of the employee of the administration of the respective municipality/commune and with that of the member of the parliament. □- There cannot be members on the same council of people who are related to each other, like husband and wife, parents and children, brothers and sisters, and mother/father-in-law with their son/daughter-in-law. □- Excluding from the preparation process of officials in conflict of interest or those who are related to persons in conflict of interest. □- Rigorously respecting all the legal definitions for the organization and function of the collegial bodies as well as sector laws according to the field of</p>
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			<p>decision taking and voting. □- Document the meeting, elaborate and publish the actions after they are approved.</p>	<p>activity of the council. □- Approving the status of the local unit, preparation and continuous improvement of the regulations of the council and administration, and rigorously respecting them. □- Councils of the municipalities/ communes and executive bodies in the local government should define, as well as possible, their job and that of their institutions. They should also clearly define their prior fields. □- Organizing the activity of the local government bodies with developing programs and real projects approved in a democratic way through a wide consulting process. □- Structures and organs established and organized by the council and the executive, like commissions,</p>
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				<p>working groups, or advisory committees, etc., should have their roles clearly defined in their establishment act. □- The control during the process of the actions for the implementation of the decisions. □- Transparency with the public and participation of the public in governing, before, during and after the decision taking process using as simple as possible and clear communication methods.</p>
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### ***3.3 Local government bodies, their functions and competences***

Transferring public functions of a local character as well as competences for their implementation to the local government in respect of decentralization have increased the role of local government bodies in public life. But, the potential for conflict of interest is also increased and is made more real and possible.

#### **a. Decentralization of local public functions**

A wide variety of public services have been transferred in different ways to local government bodies. Initially they were defined in the Decision of the Council of Ministers no. 651, dated 29.12.1999, “The strategy of local autonomy and decentralisation” and later on have been defined in Law no. 8652, dated 31.07.2000 “For the organization and function of the local government”.

- **Exclusive functions of the local government** are all those fields of activity of public life which, because of their local character, have been transferred together with their governing authority to local government bodies. Included are water supply and sewerage, internal roads, pavements and public areas, urban transport, public lights, cemeteries and funeral service, parks, removal of garbage, urban planning, land management, housing, social services, (crèches, asylums, etc.) cultural institutions and activities of a local character, etc. Also included are some functions which serve local economic development such as; markets, business, woods and pastures, vet service, etc.

Because local government has full authority to implement all these fields, the responsibility in defining and fulfilling public interest is more direct and complete. In these directions, the need to prevent conflicts of interest should be at the focus of attention of local government bodies and the respective administration in all planning, implementing and controlling issues.

- **Joint functions** are those functions for which local government has part of the responsibility, different from the responsibility of the central government. Included are undergraduate education, primary health care, public order and civil protection, protection of the environment, etc. In these cases, the responsibility of local government is partial; only in the directions foreseen in the sector legislation. That is why the prevention of conflicts of interest is mainly related to the direct role of the local government bodies; not excluding the indirect influence that central government structures might apply on local ones while they exercise their role.

- **Delegated functions** are another group of functions that consist of those fields of activity which, although they are under the responsibility of the central government, by law or through agreements are decided to be implemented by local government bodies. Included are the service of the civil status, financial assistance for families in need, etc. In these fields, the governing role is limited but, there is still a possibility for conflicts of interest especially in those fields which are the object of the work of local structures such as hiring staff, etc.

- To have a wider idea for the real role of local government in governing public activities, it is necessary to see its functions closely related to its competences, considering the possibility or means it has been given to implement them. Regarding local autonomy and decentralisation, it has been made possible that for the above mentioned fields, as exclusive functions of the local government, competences should be wide and complete while for joint and delegated functions, the competences are limited to the level defined in the legislation.

## **b. Decentralization of competences**

To correctly assess the role that local government bodies have in public functions, competences are the means to fulfil the governing mission.

It is important to deal with the fact that expanding the transference of functions to local

government bodies and increasing the respective competences for their implementation, raises the possibility for conflicts of interest by local government officials. This is because, like all executive practice, the decision making process for local government bodies provides enough room to make undeserved privileges to individuals in a conflict of interest situation. Regarding this, it is important that all local governing activity does not exceed the limits of public benefits and the positive proportion of the individual benefits in the aspect of public benefit. Every deviation to individual benefits (which is possible) out of this balance, especially by officials who are actors in the decision taking process, makes a clear conflict of interest. In this case, it becomes an obligation to take the necessary measures to prevent them.

For each of the fields (functions), as well as for every competence of the local government mentioned above, examples of conflicts of interest can be given.

Conflicts of interests and the job for its prevention is related to the nature of competences. Based on this, in the context of preventing a conflict of interest in everyday activity, some cases are dealt with in order for local government bodies and their officials to know what they should take into consideration while exercising their competences, depending on the specific conditions of the respective local government unit.

□ **Administrative competence** is the ability of the local government bodies that independently decide on the method of managing the services in accordance with the legislation in power. These bodies establish and improve their administrative structures, decide on hiring, dismissal or qualification of the staff, define salaries, establish dependancy entities, and take decisions on exercising activities with third parties.

The job competence of this group for preventing conflicts of interest is wide.

To illustrate:

- The possibility exists for a conflict of interest in hiring and dismissing personnel and such a situation can be evidenced in undeserved favours. Methods to prevent conflicts of interest should be thought out beforehand.

As such, the following should be prevented: hiring an employee in the administration when he/she is related to the mayor, vice-mayor of the municipality/commune or other members of the council.

- The possibility for a conflict of interest exists in establishing enterprises and especially in the relations with third parties.

To illustrate such a phenomenon: when there is a contract for services between the municipality/commune or the district's council and an enterprise led by people who are related to the mayor or any of the members of the council, etc.

□ **The competence for investments** is the authority that local government bodies have to plan, distribute and make investments. This is a right given through a special law to

local government bodies for their exclusive functions and also for joint and delegated functions.

To illustrate: cases of investments when the implementing enterprise is led by people related to the leadership of the municipality/commune or the district's council or members of the respective councils should be prevented.

**The competence for services** implies the ability of local government bodies in planning, sharing and implementing the maintenance of service objects.

- In competences in the services field, there are many possibilities for misuse of public funds and for undeserved benefits for these services by people in conflict of interest.

This way, the institutionalization of the open and well organized procedures for people who benefit public services becomes an essential factor in avoiding cases of differentiated services for people related to officials of decision taking functions, in order that nobody is privileged.

Organizing public services with third parties requires respecting all the procedures in selecting the subject who is going to implement them. This is done in order that no subjects are privileged but also so as not to abuse public funds during the implementation process of the public funds.

**Regulatory competence** is the ability of the local government bodies to compose and decide regulations (issue licences, define work and service schedules, set fines, and define tasks and rights in general).

- To understand the need for measures to prevent conflicts of interest, regulatory competences examples include the differentiation that might be made in issuing licences, setting fines, etc.

Chart 2, sets out some possible guidelines for preventing conflicts of interest related to the accomplishment of functions and exercising competences by local government bodies and officials.

### Chart 2

Real role (active role) of the local government bodies (the council and the mayor) and guidelines for preventing the conflict of interest.

**“Chart 2”**

<input type="checkbox"/> No.	Local government functions	<input type="checkbox"/> Competences in exercising the functions	<input type="checkbox"/> Possible tracks of the work for preventing conflicts of interest <input type="checkbox"/>
<input type="checkbox"/> I.	<input type="checkbox"/> 1. Self functions: <input type="checkbox"/> a. Public	<input type="checkbox"/> 1. Administrative competences: The	- While preparing

	<p>services: □ Water supply and sewerage, local roads, pavements and public places, urban transport, public lights, cemeteries and funeral service, parks, cleaning the garbage, urban planning, land management, housing. <b>b.</b> Social services, (crèches, asylum, etc.), local cultural and sport institutions and activities, etc. □ <b>c.</b> Functions serving the development of the local economy, like: markets, business support, vet service, etc. □ □ □ □ <b>2. Joint functions (with the central government):</b> □ - undergraduate education, □ - preliminary health service, □ - public order, □ - civil protection, □ - protection of the environment, etc. □ □ <b>3. Delegated functions:</b> □ - civil state service, □ - financial assistance for families in need, □ - military service. □</p>	<p>ability of the local government bodies to decide independently how to manage the services, in accordance with the existing laws. □ <b>They:</b> □ - establish and improve their own administrative structures regarding the number of staff; □ - approve their own statutes and regulations for the administration and the acts for the establishment of entities, commercial companies, and legal persons founded or co-founded by local government bodies; □ - decide on the nomination or dismissal of staff; □ - establish dependent enterprises; □ - decide on functions with third parties. □ □ <b>2. Investing competence:</b> □ □ The authority that local government bodies have to: □ - plan, □ - share and □ - implement investments. □ This authority is given by law to the local government bodies in exercising exclusive, joint and delegated functions. □ □ <b>3. The competence for services</b> The ability</p>	<p>regulations, the measures and actions for preventing conflicts of interest (for the council, administration, enterprises and institutions established by local government bodies) should be clearly defined. -In defining the number of employees, organisational structures and methods for their improvement, they should not be deliberately inclined by interests to privilege specific people who are in a conflict of interest situation. -By all means, the staff will be hired by the responsible bodies of the local government. They should take in consideration the legal responsibilities to prevent conflicts of interest, such as; not hiring people in conflict of interest or related to people in conflict of interest, excluding from the commissions officials in conflict of interest, etc.</p>
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		<p>of the local government bodies to:</p> <ul style="list-style-type: none"> <li>□- plan, □-share, □-implement,</li> <li>□Maintain the objects and perform assisting services. □□4.</li> </ul> <p><b>Regulatory competence</b> □The ability of local government bodies to establish and set rules in:</p> <ul style="list-style-type: none"> <li>□-Issuing licences,</li> <li>□-setting work and service schedules, □-setting fines, □-and in general in giving rights and defining tasks.</li> </ul>	<ul style="list-style-type: none"> <li>- In defining salaries and remunerations, avoiding favours for officials connected with each other.</li> <li>- The decision for the implementation of public services with third parties should not be made with entities led by people in conflict of interest.</li> <li>-The planning of funds for investments should be made through a decision taking process respecting the laws and programs, and in a transparent way with the public.</li> <li>-Respecting the legal requirements for preventing conflicts of interest in cases of procurement of funds for public investments. Excluding from commissions officials in conflict, not including in the offers companies which are led by people in conflict of interest, etc.</li> <li>-Controls, supervision, ----- atkolaudimet ----- etc, on the implementation of investments and</li> </ul>
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		<p>public services should not be performed by people in conflict of interest with the managers of the companies that implement the investments.</p> <ul style="list-style-type: none"> <li>- Engaging entrepreneur companies in public services should be done through regular competition procedures, by procuring funds in respect of the dispositions for the prevention of conflict of interest.</li> <li>- General and specific dispositions should be respected in issuing licences, including the liabilities for preventing conflict of interest.</li> <li>- In every case, superior officials define tasks and rights they should respect the dispositions for preventing conflicts of interest and the official him/her self should respect the principle of self declaration and avoidance of conflict of interest.</li> </ul>
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### ***3.4 Transparency and public participation in governing and preventing conflicts of interest***

Recognition and management of public interests by local government units should always be held as a completely transparent process and with the participation of the public.

Transparency and public participation are a legal responsibility of local government bodies. This is defined in the Constitution, European chart of Local Autonomy and it has been materialized in Law no. 8652, dated 31.07.2000 “For the organization and function of the local government”.

The Article 35 of Law no. 8652, dated 31.07.2000 defines as a necessity the need to have advising sessions with local communities before the decision making process, for issues such as the competence of the council for: approving the budget, methods of using the properties or in cases of altering specific objects in the field of taxes, standards for the level of public services, etc. In the same article of this law, the responsibility to inform the public is defined in accordance with Law no. 8503, dated 30.06.1999 “On the right of information about official documents” for which the council itself has the responsibility and the possibility to apply methods and procedures depending on the specific conditions.

Transparency and participation of the community is required by citizens themselves. They are directly interested in the actions of the elected bodies to ensure a real reflection and presentation of their requests at the local level.

□ **Participation of the community should be reached in two forms:**

- Inactive participation of the public, by which participants get informed only about the development of the governing processes. As such: publication of the decisions, participation in meetings of the elected bodies or informative meetings where the public are just observers, informing the public through the media, surveys about the situation, etc.

- Active participation of the public is when the community contributes in dealing with and solving problems which serve for better management of the public activity. As such: discussing and expressing ideas about project decisions for different problems regarding governing functions, public confrontations about the products in managing the public activity; reporting analyses to the public, especially for presenting conclusions after monitoring or controls made by special organisms; establishing working groups to formulate the opinion of the community, etc.

□ Some of the **main courses** that require transparency and participation of the public for a governance that fulfils the interests of the community and prevents conflicts of interest might be:

- Preparation of development programs in general or specific sectional programs.



- Analyses of the implementation level of services.
  - Financial management and use of public funds.
  - Management of public properties.
- Transparency and participation of the community** in governing, serving to prevent conflicts of interest, **require:**
- Including interested citizens of all ranks in the process.
    - The activities with the participation of the community should be organized in order that it functions and directs the solution of the problem.
    - Manage diverse ideas carefully.
- Methods to guarantee transparency and participation of the *citizens*.**
- a. Direct communication with the public.
  - b. Taking opinions through surveys or questionnaires on how to deal with and solve specific problems.
  - c. **Referendums** are one of the most democratic and comprehensive methods for obtaining the thoughts of the community.
  - d. With **representative groups** of the community.
  - ç. **With permanent structures** which are established close to local government bodies or different institutions for the respective service.

As such: “planning or budget committees” adjacent to the council of the municipality, commune or district, “school boards”, “councils for territory regulation”, “procurement commissions”, etc. Such structures might serve to exercise direct competences or they will serve to finalize the public opinion before the decision taking process.

**Media and internet** constitute the most active means in communicating to the public.

Media should be used carefully because it serves:

- As an informative mean.
- For an active role in communicating to the citizens.

For all elected bodies and administration of the local government, transparency and public participation in governing are among the most important courses of their activity, especially considering them in the point of view of conflicts of interest. This should be programmed by the council of the municipality/commune or district but also as a responsibility of the mayor of the municipality/commune or head of the district and of the respective administration. However, in the municipality/commune or in the district’s council there should be specific offices for communicating to the public. These offices, beside having tasks for fulfilling the requirements of the citizens and of specific subjects, should be engaged in real tasks in order that local government bodies fulfil the responsibilities they face, which are set out above in a summarized way.

## **4 Conflict of Interest at the Local Level**

### ***4.1 General aspects of the law***

Law no. 9367, dated 07.04.2005 deals with issues of conflict of interest in exercising public functions. In this respect, local government units (LGUs) and every institution, entity or enterprise/company depending on these units, are required to function in accordance with this law. However, because of the way local government is organized and carried out in Albania, there are specific difficulties in implementing the law at the local level. In this sense, as difficulty will be considered the existence of the executive and decision making bodies in LGUs which at the same time are directly elected bodies and as a result are autonomous and independent in taking decisions. This organizational structure complicates the ability to supervise and identify cases of conflict of interest, because superior bodies which perform this task do not exist. These local government units (mayors and councils of the LGU) should avoid falling into a conflict of interest situation but if it happens, they should solve these situations, considering that local government units act independently from the elected and executive decision taking bodies, respectively:

- Municipality, commune and District's councils
  - Mayors/leadership of the district's councils, mayors of municipalities/communes.

Despite what is said above, it should be kept in mind that preventing conflicts of interest is a legal requirement and these bodies, preserving their independence, are required to prevent conflicts of interest and take the necessary measures to implement the law not only for themselves but also for the respective administrations and depending institutions. The object of this chapter is to explain Law no. 9367, dated 07.04.2005 "Prevention of the conflict of interests while exercising public functions" regarding its implementation at the local level, mainly regarding:

- What "official" means and his/her decision taking in local level;
  - Conflicts of interest, and kinds of conflicts of interest;
  - Specific aspects of conflicts of interest according to examples at the local level.

### ***4.2 The official and decision-making in a conflict of interest at the local level***

The general principle is that every official in every field, function and level has a responsibility to perform tasks and responsibilities without being influenced by conflicts of interest and should avoid being involved in situations of any kind of conflict of interest. This principle is set out in Article 6, point 1 of Law no 9367, dated 07.04.2005, which states:

*“As soon as the official is elected or nominated and, on an on-going basis, he/she must prevent and resolve as soon as possible and as effectively as possible every situation of a conflict of interest”.*

This principle is accompanied by the responsibility that every other official, superior official or superior institution and public institution should actively implement tasks defined by this law and every other law on the prevention of a conflict of interest. Article 6, point 2 of Law no. 9367 dated 07.04.2005 states:

*“Every superior official and superior institution should take the necessary measures to prevent and resolve cases of conflicts of interest.”*

“The official” is a basic concept which is used in the law of conflict of interest to define the field and the object of the implementation of this law. In this respect, the official term in the law refers to a wide category of people/officials from the lowest levels of the public administration to the top of the state pyramid, i.e. the President of the Republic.

Based on Article 4 of Law no. 9367, this law is applicable to:

- a. Every official, when he/she participates in decision-making for:
  - i) Administrative actions and contracts;
  - ii) Actions of judicial bodies, or notary actions for the execution of the executive titles by the bailiff bodies and actions of the prosecutor’s office.
  - iii) Normative acts as well as only those laws which make juridical consequences for subjects individually defined.
- b. Every official in central or local state institutions and every employee of the entities defined in the letter “d” or representatives of the entities defined in the letter “ç”. In the entities mentioned in letter “d” when they participate in decision taking for contracts which establish a juridical-civil relation with these entities when they are partners;
- c. Every *official or employee*, who is in a position, having responsibilities or performing tasks and exercising competences as described in this law in one of the entities mentioned in letter “ç” or “d” in point 1 of this article;
- ç. Every state institution, *central or local*;
- d. Every subject or entity established and/or depending to entities mentioned in letter “ç” including state or local enterprises, commercial companies of a state or local controlling shares, non profit organizations and other juridical persons controlled by entities mentioned in letter “ç” or by entities mentioned in this letter themselves.
- dh. Related persons, as defined in this law.

Regarding what is set out above, the responsibility to implement this law anticipates a wider variety of people who are not limited to being an official but also includes “people connected with each other” with the official, depending on the definitions and limitations made in this law or in the other laws. This way, the implementation of this law extends to officials of every kind, category and level.

More specifically, this law is implemented at the local level, in municipalities, communes and districts, respectively:

1. At the local level in the municipality:
  - The mayor of the municipality;
    - Vice-mayor of the municipality;
    - Members of the council of the municipality;
    - Officials of all levels of the administration of the municipality and, institutions, entities and enterprises/companies depending on them;
    - People related to the above mentioned categories according to specific dispositions (article 24 and 35) of the law; respectively, husband/wife, grown up children, parents and mother/father-in-law of the official.
  
2. At the local level in the commune:
  - Mayor of the commune;
    - Vice-mayor of the commune;
    - Members of the council of the commune;
    - Officials of all levels of the administration of the commune and, institutions, entities and enterprises/companies depending on them;
    - People related to the above mentioned categories according to specific dispositions (article 24 and 35) of the law; respectively, husband/wife, grown up children, parents and mother/father-in-law of the official.
  
3. At the local level in the district:
  - Mayor of the district;
    - Vice-mayor of the district;
    - Members of the council of the district;
    - Officials of all levels of the administration of the district and, institutions, entities and enterprises/companies depending on them;
    - People related to the above mentioned categories according to specific dispositions (article 24 and 35) of the law; respectively, husband/wife, grown up children, parents and mother/father-in-law of the official.

Also, the law specifies in a more detailed way the types of personal interests that might influence in a respective decision taking causing a conflict of interest. These personal interests that are specified in the article 5 of the law, are:

- a) Property rights and responsibilities of every kind;
- b) Every other juridical-civil relationship;
- c) Presents, promises, favours, privileged treatment;
- ç) Possible negotiations for employment in the future or for every relation of personal interest for the official;
- d) Engagement in personal activities aiming for benefits or any other activity that produces revenues and engagement in profit and non profit organizations, trade

- unions or professional, political and state organizations as well as any other organizations;
- dh) Family or cohabiting relations and community, ethnic, religious, recognized friendship and hostility relations;
- e) Previous engagements in situations producing interests as mentioned above.

In general, personal interests can be classified into two kinds: economic interests (including material and financial ones) and non-economic interests. This distinction is made in Law no. 9367, dated 07.04.2005, in point 1 of Article 5.

**Economic interest:** Usually this includes financial, factual or possible benefits. These benefits might be to a member of the family of the official, being the owner, shareholder, who might accept a present or obtain/provide revenues from a second job. The money might not go from one hand to the other, but the benefit might increase the value of the property/shares because of a privileged or preferential decision.

**Non-economic interest:** does not include the financial or material component, does not have financial effects but might result from a personal or family relation or because of being included in specific political activities, because of being engaged in non-profit organizations, because of privileged transactions, etc.

It is important to point out that article 5, point 2 defines that limiting pronounced personal interests as it is mentioned above, is connected with the implementation of personal interests defined in other laws, implementing the most severe restriction (the principle of the most severe restriction).

The principle of the most severe restriction will be implemented when for the same issue two or more legal dispositions might be implemented which deal with it, considered in the point of view of conflict of interest. This is done depending on the 'severity' in the anticipated restrictions.

### **Example**

*To the mayor of the municipality is offered the post of the member of the Leading board of the YZX Ltd. Company. This post is voluntary but anticipates getting presents or remunerations. This company is registered and its headquarters are at the same city where the mayor performs his task.*

Issues for discussion:

In this case, is there a conflict of interest situation and which might be the specific impediments?

Answer:

Yes, there is a conflict of interest situation and two specific restrictions are confronted.

On the one hand, according to Article 23 of Law 9367, dated 07.04.2005, taking presents and privileged treatments are not allowed. On the other hand, according to Article 29 of the same law there is an absolute restriction which states that it is absolutely prohibited that leaders of non-profit organizations act within the territory which is under the jurisdiction of the municipality (commune or district), and as such, this restriction is more severe than the one in Article 23, which, although it is a general restriction, it can be justified. It means that it can be allowed when getting presents and privileged treatments are part of the protocol and they are of a very symbolic value. This is anticipated as exclusion in point 2 of article 23.

The solution:

In this case, the principle of the most severe restriction (article 5, point 2) would be applied since article 29 is an absolute restriction and is related to the incompatibility of the function. This means that the mayor of the municipality should not accept the post of member of the leading board of the company which is offered to him/her.

### **4.3 Conflict of interest and its types**

“Conflict of interest” is defined in Article 3, point 1 and 4 of Law no. 9367, dated 07.04.2005. This law defines *the conflict between the public task and direct or indirect personal interests of an official*.

The above-mentioned definition is the general definition of conflict of interest which, in the law, sets out some types, respectively; *factual conflict*, *apparent conflict* and *possible conflict*, as well as *case-by-case conflict* and *continuous conflict*.

The first three types of conflict of interest, *factual conflict*, *apparent conflict* and *possible conflict* will be considered in the law depending on the effect that have had, have or might have personal interests in decision making. So, it's important to distinguish the result of the interest in decision making, which means that in case of the *factual conflict of interest*, the interest has influenced; hence it has materially influenced the decision making, harming it and as a result, making it, in principle, ineffective. While, in the case of an *apparent conflict*, although it seems that the conflict has happened, happens or might happen, materially it hasn't happened, does not happen and there are no chances of it happening. As a result, it did not harm the decision making which, in this case, results in an effective decision (article 3, point 4, letter b).

With regard to the *possible conflict* of interest, it assumes a hypothesis that in the future, the accomplishment of specific tasks or responsibilities *might* cause factual or apparent conflict, but this is to be analyzed according to the specific circumstances of the case and in proportion with two other types of conflict; case-by-case and continuous conflict.

Based on the definition made in the law, these two types of conflict are more related to the dynamics of the appearance of the conflict of interest. In case-by-case conflict the appearance of the conflict of interest is only about one specific decision making, while

the continuous conflict is related to the repeated or frequent recurrence of the conflict of interest in the future as a result of performing specific tasks.

The law makes a combination of the types of conflict of interest (according to the method the effects appear), which means that a case-by-case conflict might appear combined with one of the three types of conflict, respectively; factual, apparent, or possible conflict, while the continuous conflict might appear only in the shape of factual and possible conflict. It means that, legally the law deals with all types of conflict, all the ways it appears and all the “moments” it appears, and also with its “effects” regarding a decision making.

In the chart below is shown the combination of the types of conflict of interest:

<b>Its effect in the decision making</b> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <b>The appearance of the conflict of interest</b>	<b>Case-by-case conflict</b> <input type="checkbox"/> (Is the situation of a conflict of interest of one of the three below mentioned types, which appear case-by-case and is related to a specific decision making)	<b>Continuous conflict</b> <input type="checkbox"/> (Is the situation, on which the conflict of interest might appear repeatedly and/or frequently in the future)
<b>Factual conflict</b> <input type="checkbox"/> (private interests of the official influence, have influenced or might have influenced in performing incorrectly his official tasks and responsibilities)	<b>Factual and case-by-case conflict of interest</b> <input type="checkbox"/> ( <b>Article 3, point 4/a</b> )	
<b>Apparent conflict</b> <input type="checkbox"/> (personal interests of the official look like they have influenced, influence or might influence in performing incorrectly official tasks and responsibilities but, in fact, the influence has not happened, does not happen or there are no chances for it to happen).	<b>Apparent conflict and case-by-case conflict of interest.</b> <input type="checkbox"/> ( <b>Article 3, point 4/b</b> )	
<b>Possible conflict</b> <input type="checkbox"/> (Personal interests of the official might cause in the future the appearance of the factual or apparent conflict of interest,	<b>Possible conflict and case-by-case conflict of interest (factual or apparent), related to a case in the future (Article 3, 4/c).</b>	<b>Possible and continuous conflict of interest.</b> <input type="checkbox"/> <input type="checkbox"/> ( <b>Article 3, point 4/d</b> )

in the event the official will be involved in specific tasks and responsibilities).		
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*Illustrating examples of the factual, apparent and possible conflict of interest*

**a) "Factual conflict of interest"**

Example of factual conflict:

Example 1

The mayor's wife, Mrs. Z, being the owner (owner of the shares) of company "X" Ltd. has entered into a contract the municipality where her husband is the mayor.

Issues for discussion:

What type of conflict of interest is it? Is the contract valid?

In this case, there is a factual conflict of interest (case-by-case) because according to point 2 of Article 21 of Law No. 9637, dated 07.04.2005, it is absolutely prohibited to create a contract between officials as specified in this article: respectively, the mayor of the municipality, commune and district and high rank officials of the municipality, commune or district with people related to them as anticipated in article 24, such as: husband/wife, grown up children and parents of the official or his/her husband/wife's parents.

The solution:

This contract is absolutely invalid according to the definition made in Article 40 of Law no. 9367, dated 07.04.2005 and, as such, it does not generate any legal consequences. That is why the respective sanctions according to Article 44 pursuant to Law no. 9367, dated 07.04.2005 should be considered.

The above mentioned case is a case which can easily be identified because of the existence of the absolute prohibition foreseen in article 21, point 2, but, in practice, much more complicated cases which are very difficult to identify especially if there is factual conflict, are normal. That is why the analyses should be more complex, not only in respect of Law no 9367, dated 07.04.2005, but even in respect of other laws.

**b) "Apparent conflict of interest"**

An apparent conflict of interest is reflected in the following example:

Example 2



The uncle of the mayor of the municipality Y is the owner and administrator of the company ZET Ltd. which has applied for a construction licence in the municipality where his uncle is the mayor.

Questions for discussion:

Is there a conflict of interest in issuing the licence for the construction company ZET Ltd.?

Answer:

Construction licences are administrative actions issued by the respective CRTs of the municipality, commune or district. The mayor of the municipality, according to the law is also the chairman of the CRT and to the perception of the public, the above mentioned case would look like an apparent conflict of interest because of the family relation the owner of the company has with the mayor of the municipality, respectively; uncle and nephew.

Solution:

Seeing that the conflict of interest in the above mentioned case is an apparent conflict of interest and according to the definition of point 1 article 40 of the law on PCI that every administrative action or contract reached in conditions of factual or apparent conflict of interest is invalid, on first sight it would be judged that the construction licence would be invalid. But, the analyses should be deepened further and considering that the construction licence is issued from the CRT as the competent body, and the mayor of the municipality just signs it, then we would consider against this first conclusion according to point 6 of article 37 which states that: with regard to the endorsement of the construction licence, the mayor of the municipality is not in a conflict of interest because this element of the law foresees that:

*“The official is allowed to exercise his/her function provided that the only unavoidable conflict of interest is the apparent one, on the following conditions:*

- a) *When he/she is irreplaceable in exercising his/her functions;*
- b) *And also when:*
  - i) *It is not possible to alienate the personal interest ... because of its kind (such as: family, community relations, etc.):*
  - ii) *It doesn't make sense that for such a conflict, he/she should by all means resign from his/her function.*

*In such a case, the decisions of this official undergo a special control and assessment by the institutions charged by law to control these decisions. The decision and results of the control are always made public”.*

In conclusion, in this case the construction license will be valid despite being in a condition of an apparent conflict of interest.

**c) "Possible conflict of interest"**

An example to illustrate a "possible conflict of interest" is given below:

*Example 3*

The company for cleaning the city, "Beta" Ltd. has a 5 year contract with the municipality X. The owner of "Beta" Ltd. is the son of one of the employees of the municipality, who works as a specialist in the sector of public services.

Question for discussion:

Is there a conflict of interest between the employee and the company "Beta" Ltd.?

In the above noted example, the employee of the municipality has personal interests in "Beta" Ltd. since the owner is his/her son (person connected with another according to article 24 and 35 of the law). However, when we analyse the case, we notice that the employee of the municipality is not one of the high officials as defined in article 21/2 and, as a result, we do not have absolute restriction as it is foreseen in this article. In this case, since the official is of a lower level, there is a relative restriction according to article 21/3. This article foresees fulfilling two specific conditions, respectively; the official should have a fundamental and crucial competence in decision making as well as personal interest according to article 37 of the Code of Administrative Procedure and article 709 of the Civil Code. However, the official does not have a fundamental and crucial competence in the decision making for the contract won by the company owned by his/her son, which means that one of the conditions of the article 21/3 is not fulfilled. But in the event that the employee in the future would be charged with tasks and responsibilities, such as: to supervise the contract, or to prepare the standards for cleaning the city, or to decide on the price for unit for cleaning services, etc., then there might be conditions for a possible conflict of interest, based on the legal definition according to article 3, point 4, letter c):

*"Possible conflict of interest" is the situation when personal interests of the official might cause in the future the emergence of the factual or apparent conflict, in the event that the official is involved in specific tasks and responsibilities".*

Solution:

Since there is a possible conflict of interest, it is the responsibility of the official him/herself to declare this personal interest, in order to prevent the conflict. Preventing the conflict of interest in this case is made by implementing one of the solutions of the Articles 37 and 38 of Law no. 9367, dated 07.04.2005, or the official excludes him/herself from the real decision making, or by not appointing any of the tasks and

responsibilities we mentioned above to this official.

Illustrating examples of the case by case and continuous conflict of interest in specific issues and cases:

Despite the specifications of the law for the types of conflict of interests, differentiating them according to their “effect” as it is mentioned above, in Law no. 9367, dated 07.04.2005 two types of conflict of interest are defined but distinguishing the “dynamics” of their emergence, respectively; “case-by-case conflict of interest” and “continuous conflict of interest” in specific issues and cases.

Law no 9367, dated 07.04.2005 defines the “case-by-case conflict” as the situation of a conflict of interest in one of the three above mentioned types, which emerges case-by-case and has to do with a specific decision making.

Example 4

The company “ABC” Ltd. the owner of which is the father-in-law of the mayor of the municipality “Y”, participates constantly in public offers organized by public institutions. “ABC” Ltd. has won the offer for the construction of the road “Z” in the “Y” municipality.

Questions for discussion:

Does the participation of “ABC” Ltd. in public offers make a conflict of interest and what type of conflict presents the case when this company wins the offer for the road in the municipality “Y”?

The participation of “ABC” Ltd. in public offers organized by public institutions does not make a conflict of interest. In the case when the “ABC” company wins the offer for the construction of the road in the “Y” municipality, there is a factual conflict of interest, *case-by-case for specific issues*. The father-in-law is connected with the mayor of the “Y” municipality, according to article 24 of the law for Preventing Conflict of Interest (PCI). As such, there is an absolute restriction of the article 24 of the law for PCI which has to do with the absolute restriction to contract within the territorial jurisdiction, which means only for the case with the “Y” municipality. Despite this, the analyses in this case will be done only in relation to this offer and not for other offers in which this company has participated and won public contracts with other institutions.

Solution:

The contract for the offer of the road in “Y” municipality is absolutely invalid according to the definition of the Article 40 of Law no. 9367, dated 07.04.2005 and as such, it does not generate any juridical consequences and the respective sanctions should be undertaken according to Article 44 pursuant to Law no. 9367, dated 07.04.2005.

For a "continuous conflict of interest" the law defines the situation in which the conflict of interest might emerge continuously and/or frequently in the future.

The following example illustrates this type of conflict of interest.

Example 5

The official X is elected the Mayor of the Y district. The father-in-law of official X has been employed and still is the director of regional development in the administration of the Y district.

Question for discussion:

Is there a conflict of interest in this case?

In the above mentioned case, there is no *factual case-by-case conflict of interest* because the father-in-law of the official X has been an employee of the district before official X is elected as the mayor of the district, which means that the official did not influence his employment contract. But, in this case there is a *continuous conflict of interest*, because the mayor while performing his tasks might be influenced by the fact that his father-in-law has family relations with him (is connected with the other according to article 24 and 35 of the law for PCI) and there might be instances of privileged treatments or other interests which might emerge continually and/or frequently in the future considering the fact that the father-in-law is a high ranking official in the administration of the district and is his direct superior, with whom he has direct hierarchical relations, is the mayor of the district, his son-in-law. This makes a continuous conflict of interest.

Solution:

To avoid the continuous conflict of interest, the father-in-law of the mayor of the district would have to be transferred to another position of the same rank but where the hierarchical relation is not direct with the mayor of the district (e.g., in the same rank but in another institution) according to article 37, point 4/d of the law for the prevention of conflict of interest.

To summarize, in the case-by-case conflict of interest, the emerging dynamic of the conflict has to do with the conflict of interest only for "one" specific decision making. So from the quantitative point of view, only for one issue, according to the three types of conflict, the factual, apparent and possible one. While, for the continuous conflict, the emerging dynamic consists in the repetition and frequency in the future.

Despite what is said above, Law no. 9367, dated 07.04.2005 specifies some juridical situations in which the case-by-case and continuous conflict is forbidden. In chapter III of the law there are specific restrictions for different categories of officials, among the others even for officials at the local level. It is important to point out that in chapter III of the law a distinction is made between the two types of conflict of interest; the case-by-

case and continuous ones, according to the absolute restriction which is not only for officials but even for the people connected with them.

To elaborate, section 2 of chapter III of the law for PCI, which points out the fact that personal interests should be limited for specific cases of continuous conflicts of interest has to do with the concept of the functional “incompatibility”, which means that limiting the interests in accordance with the law is made to specific officials (article 27-33 of the law for PCI) not because they are involved in any real decision making, but because they perform a specific task.

Another specific feature which makes evident the limitation of interests of the officials mentioned in article 27-33 of section 2, chapter III of the law for PCI is that restrictions or limitations of the interests defined in this section are “individual” restrictions. These restrictions are related to the function these officials perform, and as such, do not involve people connected with each other.

Restrictions for people connected with the officials, according to articles 27-33, are specified in article 35 of the law. In principle, we might say that the anticipated restrictions for the officials mentioned in articles 27-33 are “individual” restrictions; they are related to the function and do not involve people connected with each other, unlike the absolute restriction of article 21, point 1, 2 and 6 which extends its effects to people connected with each other according to article 24 of the PCI law. This is dealt with later on this manual in a more detailed way for the officials of the local government specifically referring to article 29 and 35 of the PCI law.

To illustrate it better we use the following diagram:

Below, we provide elaboration in detail on both restrictions according to the respective categories for local officials, according to the definition of chapter III of Law 9367, dated 07.04.2005 because of the importance they represent. The prohibitions and restrictions of conflicts of interest according to the two above-mentioned types and their distinction made in the law, because the identification and legal pursuit of each of them is somewhat different, should be kept in mind.

First is the case-by-case conflict of interest situation as handled in Article 21 of Law 9367, dated 07.04.2005. Article 21 of the law *predicts absolute prohibition of contracts* between the individual and the public institution when the individual is one of the officials specified in section 2, chapter III of the law (e.g., the mayor of the district, municipality, commune, etc.) or with commercial, partnership or simple companies, where these officials own in an active or passive way, shares of the capital despite the

amount.

Article 21/1:

*“No individual can contract any public institution, when this individual has the function of an official as it is defined in chapter III, section 2 of this law. This person cannot contract even commercial, partnership or simple companies when he/she owns, in an active or passive way shares, despite the amount.*

Article 21/1 deals with “substance” jurisdiction; which means prohibiting contracts as a general absolute concept. There are some exceptions from this “substance” jurisdiction concept (article 21/1). These exceptions which, for example, belong to the prohibition of contracts only in the territorial/terrestrial jurisdiction. This is the case of the local government.

From the implementation of this disposition are excluded:

- a) *Officials of the middle or low leading ranks; specialists, judges and prosecutors of the law court and court of appeal;*
- b) *Officials of the local government units who are treated according to point 2 of this article for this prohibition”.*

The above mentioned case is presented in the chart, as follows:

Individual	Contracts	Public Institution
The official or the Company in which the official owns shares Absolute prohibition of contracts (article 21 point 1)		

The restriction for the above-mentioned prohibition of contracts for categories of local officials is a more specific prohibition and is handled by point 2 of the Article 21 of Law no. 9367, dated 07.04.2005, as follows:

Article 21/2:

*“When the official is the mayor or the vice mayor of the municipality, commune or the council of the district, member of the respective council or a high rank*

*official, leader of a local unit; according to the interpretation of this term in the respective laws, the prohibition according to point 1 of this article, because of personal interest of the official defined in this point, is implemented only for specific contracts; with the municipality, commune or the council of the district where the official performs this function. This prohibition is implemented even when a public institution, which depends on this unit, is a contracting party”.*

The range of officials who are prohibited to contract with the council of the district, municipality and commune as well as with their depending institutions (limitation of the territorial jurisdiction), according to this article is classified into 3 categories:

1. **Elected people** (the mayor of the municipality, commune, and the council of the districts as well as members of the municipality, commune and district councils).
2. **Appointed people** (vice-mayor of the municipality, vice-mayor of the commune, vice-mayor of the district’s council).
3. **Officials of the high leading levels** (officials of the administration according to the definitions of the respective laws, it means; the law on civil status, which is implemented for the administration of the municipality and the district, while the administration of the commune is managed according to the Code of Work). Officials of high leading levels in the municipality and district start with directors of directorates and functions similar to them, and higher administrative functions of the administrative hierarchy.

In the administration of communes, high leading officials will be considered officials who have the highest positions in the leading hierarchy of the commune, despite the nomination they have, like; director, chief of the sector or chief supervisor.

A second thing to be kept in mind is that local officials are those who will not allow contracts only when they are with the municipality, commune, or district where these officials perform their function.

To illustrate, for example, the mayor of the commune “X” cannot have any contracts with the commune or institutions depending on the commune where he/she is the mayor, but he/she can do this, with the neighbouring communes or municipalities but not with the council of the district, because the mayor of the commune, according to Law no. 8652, dated 31.07.2000 is at the same time a member of the district’s council, according to which, the mayor of the commune is among the officials considered in Article 21/2 of Law no. 9367, dated 07.04.2005.

#### **4.4 A person connected with an official according to article 24**



Law no. 9367, dated 07.04.2005 is effective not only for the categories of officials, but also for people connected with them, in the aspect that these people are considered in the law in the same way as the officials and prohibitions and restrictions will be effective even for people connected.

Depending on the kind of conflict of interest, the range of the people connected with the official changes.

According to article 21/2, people connected with the official (even local officials) will be considered people defined in Article 24 of Law no. 9367, dated 07.04.2005, as follows:

Article 24/1

*“According to prohibitions defined in article 21, point 1, 2 and article 22 of this law, the range of people connected with the official includes; wife/husband, grown up children, and parents of the official and his/her mother/father-in-law.*

#### **4.5 Prohibition of officials to contracts (Article 21/3)**

Article 21/2 setting out a prohibition of contracts with public institutions would appear not to apply to middle and low level officials.

In fact, the lawmaker has not specified any absolute prohibition for this category, but it also has not left them out of the focus of the law, because article 21/3, states:

*Despite the definitions made in points 1 and 2 of this article (article 21) it is forbidden to have contracts between a public institution or any other depending public institution, on one hand and an individual, or legal or juridical person or any other form of partnership, on the other, when the following conditions are present at the same time:*

- a) The official who performs functions in this institution has fundamental and crucial competence in the decision making process for the assessment of the offers or in preparing the terms of the contracts;*
- b) According to definitions of the article 37 of the Code of the Administrative Procedure or article 709 of the Civil Code, this official has a personal interest or has the kind of interest defined in point 1 and 2 of this article.*

In this case, the prohibition applies when the official, despite his function (from the lowest to the highest rank) in the event, has a fundamental and crucial competence in the respective decision-making which aims for the finalization of contracts or administrative actions which make possible contracts. In this case, these officials are subject to this law and prohibition, like all other officials who are mentioned more specifically.

In this situation, it is important to specify what is meant by fundamental and crucial competence. Law no. 9367, dated 07.04.2005 in letter “c”, point 2, article 4 defines the

fundamental and crucial competence as follows:

*“an official” has a fundamental and crucial competence for an action, if his/her participation, influence and approach, according to letters “a” or “b” of this point, are decisive for the content of the action”.*

Even HIDA in its commentaries considers fundamental and crucial competence exists when the official with his/her participation and his/her approach, which might result from his/her role as an official who proposes, rules and advises regarding the administrative project-actions or project-contracts which become decisive for the decision making of the action, despite the fact that the official participates or not in the final action of the decision making.

For example, despite the fact that a specialist of the municipality procurement unit does not participate in the decision making for the winning offer in the public procurement (which is a task of the members of the Commission of the Offers’ Assessment) he/she might have a fundamental and crucial role at the preparation of the technical specifications of the offer or for the preparation of the documentation which is a responsibility of the procurement unit. As a result, it will be considered according to the prohibition in the article 21, point 3, letter a) of the law.

According to article 21, point 3 (letter a and b), in addition to the fundamental and crucial competence (letter a), the requirement of the letter b must also be met. This means that the official has a personal interest according to article 37 of the Code of the Administrative Procedure or article 709 of the Civil Code, or has an interest as it is defined in points 1 and 2 of article 21. It can be noticed that despite the prohibition of the contracts according to article 21 point 2, which includes only a category of local officials, point 3 of this article extends to nearly all levels of the category of officials but in accordance with the defined requirements (fundamental and crucial competence and personal interest).

Article 37 of the Code of the Administrative Procedure represents a peculiarity. It regulates a little bit differently the concept of the personal interest and people connected with the official. Respectively, article 37 of the Code of the Administrative Procedure regulates it as follows:

*“None of the employees of the administration can participate in a decision making administrative process or in a contract when the administration he/she represents is one of the contracting parties in cases when the employee is and/or is doubted to be in the following circumstances:*

- a) He/she has a direct or indirect personal interest in this issue;*
- b) His/her wife/husband, cohabitee or his second cousins have a direct or indirect interest on this issue”.*

The law in this situation refers to personal interest which might be direct or indirect. In fact there is not an exact explanation in this Code with direct and indirect interest, but

according to Law no. 9367, dated 07.04.2005, we might make an analogy with the types of conflicts of interest; respectively, factual and apparent conflicts of interest.

Similarly, in article 37 of the Code there is a different explanation of the range of people connected with the official. In this case, the range is enlarged with the concept of the *cohabitee*, a category which in its legal meaning can be found in the new Code of the Family. Also the range of the relatives is extended to the second cousins.

For example, is there a conflict of interest situation when the brother of official AB in commune X is an engineer in the procurement unit and he will participate in the offer proclaimed by commune X for the construction of the road?

In this case, the official has fundamental and crucial competence, which means that he fulfils one of the conditions. While regarding the assessment for a conflict of interest with his brother, if Article 24 of Law no. 9367, dated 07.04.2005 is considered, there would be no situation of conflict of interest because his brother is not included in the range of people connected with the official, but according to article 37 of the Code of the Administrative Procedure a conflict of interest (direct personal interest) is faced because the brother is in the range of a close relatives.

Meanwhile, Article 709 of the Civil Code, despite the fact that it is foreseen as a requirement that should be fulfilled simultaneously with Article 37 of the Code of the Administrative Procedure, is not implemented for local officials because it refers to the prohibition for officials who are in charge of administering properties which are on sale. Article 709 clearly defines:

*“Cannot buy directly or through somebody else or in an auction:*

- a) People who administer or preserve things according to the law, or because they are appointed by the state; they cannot buy these things;*
- b) Officials who have been charged to sell by obligatory execution, cannot buy things they sell;*
- c) Judges, prosecutors, bailiffs, solicitors and lawyers, cannot buy things for which is not agreed on; in the court they are exercising their function, except when they are part-owners”.*

*The exclusion from the prohibition of contracting (article 21, point 4)*

The prohibition to a contract according to point 1, 2 of the article 21, although it is an absolute prohibition regarding its consequences (absolute invalidity of the contracts) as well as for its wide extension, for the range of the officials and for the object/contract that will be implemented, would be very punitive and might have the opposite influence of what is aimed by the law in case there are no exceptions. In this case, the law itself in point 4 of the article 21 makes exceptions from the prohibition of contracts excluding some kinds of contracts that are allowed and are not considered as bound in conflict of interest.

For example, contracts that have to do with hiring the employee him/herself are contracts that are excluded from the prohibition according to the article 21 of the law. In a more detailed way, point 4 of the article 24, states:

*“From the prohibition of points 1 and 2 of this article are excluded those cases when the contract:*

- a) Is about hiring the employee him/herself in a public institution or with its legal status;*
- b) Has to do with the fact that the employee gets a service offered by the public institution or bodies and subjects established under the control of the public institution, when these services are foreseen in the object of the activity of the public institution, and also on the condition that the service is not given to the official in a privileging way in relation to the others;*
- c) Is based in specific laws for public purposes or for specific treatments of different categories of officials;*
- ç) Is essential for performing the public function and there is no other alternative;*
- d) Has to do with a present, favour or preferential treatment, in every case without any counter remuneration, that subjects which are defined in point 1 letters “a” and “b” and in point 2 of this article, make in favour of a public institution”.*

This article should always be kept in mind when analyzing possible issues of conflicts of interest regarding contracts. This is because the prohibition of a contract is an absolute prohibition and if it is proven that contracts are made in a conflict of interest situation, then they do not produce any juridical consequence. This means that they are absolutely invalid and as such, all the consequences which might have resulted by the implementation of these contracts will be considered as non-existent. That is why article 21, point 4 should always be checked if in the event of an exceptional case.

#### **4.6 The prohibition to get income because of the specific function (Article 22 of Law no. 9367, dated 07.04.2005)**

Except for the prohibitions mentioned above, Law no. 9367, dated 07.04.2005/2005, on a case-by-case conflict of interest, sets out prohibitions according to article 22:

- *The prohibition to get income or any other profit, because of the ownership of the shares or parts in the capital of commercial companies, when these companies have privileges or revenue or duty favours, operate in free areas, where the official has fundamental and crucial competence in the decision making for tolerating these preferential treatments for companies (article 22, point 1).*
- *The official (article 22, point 2) who is a representative of a public institution in the ownership of the shares or parts of the capital of commercial companies, while exercising this function, he/she is prohibited:*

- a) *To take directly or indirectly, by the mediation of third parties, every financial profit, including the establishment of a big financial source which is related or comes because of his job as a representative;*
- b) *Accepting presents and parts of the capital from the company, its members or its structures;*
- c) *Buying parts of the capital, shares or other assets of these companies;*
- ç) *Direct or indirect benefits by suppliers or clients of these companies;*

The prohibition, according to the article 22, point 2, has a special importance for local governments considering that local government units (LGU) while intensifying the decentralisation process have taken under their administration or have established commercial enterprises/companies where they have appointed their representatives. This is more evident in the case of representatives of the local government units in Supervising Councils of Water Supply Enterprises and in the Assembly of the Shareholders. The foreseen prohibition, in this case for the income related to the specific function of the representative of the LGU, is absolute because of the representation deformation which results from benefits and the serious harm of the interests of the LGUs in these undertakings.

That is why the councils of municipalities, communes and districts should be very careful regarding this. And in this case they play the role of the superior body and that of the responsible authority in managing conflicts of interest because, according to the organic law of the local government (Law no.8652, dated 21.07.2000), they perform the unalterable right of the owner and they are the ones who appoint their representatives in these undertakings.

#### ***4.7 Disallowance to obtain presents, favours, and promises or preferential treatments (Article 23)***

Law no. 9367, dated 07.04.2005 deals with presents, favours, promises or preferential treatments. It considers them as specific cases of a case-by-case conflict of interest that should be effectively prevented and avoided.

The main principle of the article 23 is to prohibit obtaining presents, favours, promises or preferential treatments although, according to the law, some specific cases are allowed as exceptions to this rule.

Point 1 of the article 23 states that:

*“An official is forbidden to ask for and obtain directly or indirectly, presents, favours, promises or preferential treatments, which are provided to him/her because of his position, by a juridical or physical person, when this might cause the emergence of any kind of conflict of interest”.*

Point 2 of the article 23 states that:

*“Only cases defined by actions of the competent bodies are excluded where presents or preferential treatments are allowed because of protocol reasons”.*

The general prohibition applies all local government officials; no one is excluded.

This article sets out the range of people connected with the official, which compared to other situations defined by this law, is much wider. Point 2 of article 24 states:

*“According to article 23 of this law, the range of the people connected with the official, , despite those defined in point 1 of this article, is enlarged with every physical or juridical person, who regarding the presents, favours, promises or preferential treatments, plays the role of a mediator or converter of the interests which results from this action”.*

Accordingly, a person connected with the official is not only the husband/wife, grown up children and parents of the official and parents of his/her spouse, but also every physical or juridical person who plays the role of a mediator.

#### Declaring and identifying personal interests

One of the instruments that distinguishes the case-by-case conflict of interest from the continuous one is that there are different procedures for declaring personal interests. For the case-by-case conflict of interest, personal interests of every official should necessarily be self-declared preliminarily; in the event that there is doubt that these interests might influence the decision making. Thus, self declaration is made case-by-case only when there is doubt that personal interests might influence a specific decision making.

Whereas, the other procedure foreseen in the law for the declaration of continuous conflicts of interest is self declaration of personal interests according to their specific types as set out in the law. More specifically; all officials defined in point 1 of the Article 3 of Law no. 9049, dated 10.04.2003, “On the Declaration and Audit of Assets, Financial Obligations of the Elected and certain Public Officials”, the category of the officials defined in articles 27 to 33 of this law and managing levels of the General Directorate of the Prevention of Money Laundering; which means, not all officials are included. In this case, self declaration is periodical and is not related to any specific decision making.

Thus, we notice that the law focuses and distinguishes two main types of conflict of interest (case-by-case and continuous) as well as two forms of declaration of the interests, and each of them has its own specifics.

Below is a chart to illustrate differences between the two declaration forms.

**DECLARATION OF PERSONAL INTERESTS**

	<b>Case-by-case conflict</b>	<b>Continuous conflict</b>
<b>The time of the declaration of the interest.</b>	<b>Self declaration:</b> related only to a specific decision making.	<b>Periodical:</b> obligatory according to the defined legal deadlines and it not related to any specific decision making.
<b>Officials who declare.</b>	<b>Every official.</b>	Only <b>officials defined</b> according to the law (Article 3 point 1 of Law no. 9049/2003 and Article 27-33 of Law no. 9367, dated 07.04.2005/2005).
<b>Types of interests which are declared.</b>	<b>Every kind of personal interest</b> according to the definition made in Article 5 of Law 9367, dated 07.04.2005 (except for interests which derive from ethnic, religious, friendship, enmity and political relationships; which depend on the official's will).	<b>Interests defined</b> in Article 15 of Law no 9367, dated 07.04.2005. <input type="checkbox"/> <input type="checkbox"/>
<b>People connected.</b>	Only the officials declare the interests.	The declaration of the interests is made by the official and his/her spouse and grown up children (a small group of people connected); <input type="checkbox"/> -Other people who are related to the official declare only when this is requested by the HIDAA General Inspector.
<b>The institution responsible for the administration, registration and audit of the declarations.</b>	Direct superior and the responsible authority within the institution.	HIDAA

Finally, the distinction between the two methods of declaration, according to the type of conflict; case-by-case or continuous, is mainly in the range of officials who are obliged to declare. The declaration of personal interests is obligatory for every official in the case-by-case conflict, while in the periodic system, in the case of local officials, the obligation is for the mayor of the municipality, commune or district (Article 29 of Law no. 9367, dated 07.04.2005) and high and middle level officials according to the definition made in the law of the Civil Status, as well as mayors of municipality units (article 3 point 1

letters b and c).

#### **4.8 Continuous conflict of interest for specific cases**

In order to have the utmost effect in preventing and avoiding conflicts of interest, Law no. 9367, dated 07.04.2005 functions in two ways regarding the declaration of interests.

As it is stressed above, the law in particular concentrates and deals with two types of conflict of interest: case-by-case and continuous conflict, and with the specific ways of declaring interests according to these types of conflict.

In this part, we will deal with continuous conflicts of interest according to the definition made in Chapter III, section 2 from articles 27 to 33. In this section, the law defines specific prohibitions of the personal interests which might be a possible source of the continuous conflict of interests. The specific prohibitions refer to some specific categories of officials.

In this aspect, the law sets out some specific categories of officials to whom the specific prohibitions refer.

Article 29 of Law no. 9367, dated 07.04.2005, states:

*“The mayor of the municipality, commune, and district’s council:*

- a) cannot be the leader or member of the leading structures of non profit organizations which perform activities within the territory of his/her jurisdiction;*
- b) cannot perform private activities, which generate income, like a physical person or businessmen; partnership of commercial physical persons of every kind, freelance, lawyer, notary public, licensed expert, counsellor, agent or representative of the organizations defined in letter “a” of this article and cannot be employed in another full time job.*

First, based on the above-mentioned provision, those subject to this specific prohibition are only mayors of municipalities, communes and district councils; thus, only a limited range of local officials compared to point 2 of the article 21, in which the prohibitions defined in it are obligatory for every local official (members of the councils, vice-mayors, high level officials and every other official who has a fundamental and crucial competence).

Secondly, the prohibitions are absolute and are not related to conflicts of interest for any respective decision making (case-by-case conflict) but are limitations of interests which might lead to the beginning of a continuous conflict.

Third, limitations are set out in letter “a” of the article 29 referring to those situations when the mayor of the municipality, commune or district is not allowed to be manager or



member of the leading bodies of non profit organizations within the territory of his/her jurisdiction.

In this sense we should analyse one by one:

1. Being the leader or member of the leading bodies; this implies, for example, that mayors cannot be managers or members of the leading boards of the commercial companies, but they can be shareholders or partners in commercial companies, because these attributions according to the law for commercial companies are not the attributions of the leader or member of the leading body. Thus mayors may own shares or parts of the capital of commercial companies, despite the jurisdiction where these companies perform their activities.
2. Secondly, based in the juridical analyses, mayors of municipalities, communes and districts might be respectively, leaders or members of the leading bodies of the commercial companies but only if the companies perform their activity out of the area of the territorial jurisdiction of the local unit where the mayor performs his/her functions. But, these tasks should be analysed whether the leader or member of the leading body of the non profit organization are full time or part time because, according to letter “b” of the article 29, mayors are not allowed to be employed full time somewhere else except their full time function, therefore they can only be employed part time.

Similarly, the third restriction which is set out for mayors of municipalities, communes, and districts’ councils, in letter “b” of the article 29 is more specific and does not allow these people to get income as the result of being a commercial physical person, partnership, freelance, etc., and to be employed in other full time jobs.

#### The person related to the official

According to the principle that prohibitions and restrictions of the official are the same even for people related to him/her, for the category of the local officials defined as above in Article 29 of Law 9367, dated 07.04.2005/2005, the people connected with the officials, are specified in article 35 point 2, which in this case considers connected with the official:

*“Spouse, grown up children, parents, mother and father-in-law of the official”.*

Even in this case the range of people connected is the same as the range of people according to article 24 (people connected in a case-by-case conflict).

However, article 35 point 4, for people connected with officials of the specified categories in articles 27 – 33, sets out some specific restrictions:

*“The person connected with an official cannot perform activities as a commercial physical person or partnership of commercial physical persons of every kind, in case*

*the activity coincidences or intersects with the area of the officials jurisdiction and his/her competence to act, with individual or normative acts issued by him/her, or when the official has a fundamental and crucial role in issuing these actions, which generate juridical consequences, benefits or costs on this physical person, on the commercial company and other physical persons who cooperate or compete with the person connected. This point is not fully implemented when is fulfilled at least one of the following conditions:*

- a) The only mean by which this official might create the above mentioned effects, is a law or a decision of the council of the municipality, commune or district, or a court decision;*
- b) The activity and/or some commercial activities together, of a person connected produce a general gross annual income which does not go beyond the limit of 10 million lek”.*

The specifics of the people connected (article 35) in the case of local officials according to Article 29 of the Law on PCI, is that letter a) of Article 29, deals with “individual” prohibitions which relate to the functional incompatibility, thus which relate to the function the individual performs and do not extend to people connected with each other. In this case, people connected are not under the restrictions of the local officials according to Article 29 which means that the spouse, grown up children, parents and mother/father-in-law of the official might be *leaders or members of the leading bodies of non profit organizations.*

Regarding the prohibition of letter b) of the article 29, this prohibition includes people connected with each other, according to point 4 of article 35; thus the spouse, grown up children, parents and mother/father-in-law cannot be commercial physical persons or freelance according to letter b) of the article 29. There is only one exception to the rule, when the gross incomes of the business or freelance profession do not exceed 10 million lek per annum.

#### **4.9 Cases of conflicts of interest according to the specific functions of the local government**

##### **Case 1**

A member of the council (of the municipality/commune/district) is the owner of “ABC” company. The company deals with the removal of urban garbage. This company has removal contracts with the neighbouring municipalities and communes of the LGU where he/she is a councillor. The next year he/she applies for the offer for removal of urban garbage for the municipality where he/she is a councillor.

Question

Is there a conflict of interest in the case when the company of the councillor has the contract to clean the neighbour LGUs?

Does the contract for cleaning the LGU where he/she is a councillor make conflict of interest?

Solution:

In the first case, the councillor is not in a conflict of interest because the prohibition for contacting, according to article 21/1 of the law on PCI is only for those cases when the contract is with the LGU where he performs his/her functions or charged tasks.

In the second case there is a conflict of interest and according to Article 26, point 1 of Law no. 9643, dated 20.11.2006, the Commission of the Offers' Assessment should disqualify the offer of this company, because of the conflict of interest and whatever happens, in the event it is contracted, the contract is absolutely invalid.

## **Case 2**

The father of the mayor of the “Y” district’s council is the administrator of a company which exercises its activity in construction. This company applies for an offer in the district where the mayor is his son.

Question:

Is it possible to enter into a contract between the district’s council and this company? Is the mayor of the district’s council in a conflict of interest?

Answer:

In this case, the mayor of the district’s council is included in the general prohibition, foreseen at point 2, Article 21 of Law no. 9367, dated 07.04.2005. The father is a person connected and for him the same prohibition as for the official is applicable.

*In article 24 is defined that “The range of the people connected according to prohibitions defined in article 21, point 2, includes the spouse, grown up children, parents and mother/father-in-law of the official”.*

As a result, this contract cannot be issued, and even it is contracted, it should be considered invalid based on the respective sanctions on responsible people. Also the consequences this contract might have caused should be adjusted.

## **Case 3**

The mayor of the “Z” commune is at the same time the chief of the Regulatory Council of the Territory (RCT), and the only person who can sign construction licences. The Regulatory Council of the Territory studies the request of the mayor’s father for a construction licence to build a house in a piece of land inherited by the mayor and the other members of his family.

Question:

Is the mayor in a conflict of interest in the event he signs the construction licence for his father?

Answer:

The construction licence will be studied (to be issued or not) by the RCT, which is a collegial organ. In this collegial organ, the mayor has the right of just one vote. However, to avoid the case-by-case conflict of interest, the mayor should refrain from the decision making for the construction licence.

Regarding the endorsement of the construction licence, the mayor of the municipality is not in a conflict of interest, because in point 6 of the article 37 of the law it is foreseen:

*“The official is allowed to exercise his/her function and perform his/her task provided that the only inevitable conflict of interest is the apparent conflict, in the following circumstances:*

- a) When he/she is irreplaceable in his/her functions;*
- b) Also when:*
  - i) It is not possible to shift his personal interest, because of its specific characteristics (like: family, community relations, etc.);*
  - ii) It doesn’t make sense that for such a case of conflict he resigns from his function.*

*In such a case, the decisions of this official undergo a special assessment and audit from the responsible institutions, as defined by law, in order to control these decisions. The decision and the results of the control are always made public”.*

#### **Case 4**

The father-in-law of N. Z., member of the council of “X” municipality, has applied in the municipality for a low cost house. In the meeting of the council of the municipality where a decision will be made about the distribution of these apartments, N. Z. councillor declares his own personal interest and does not participate in the voting process. The father-in-law of N. Z. is on the list of people who will benefit and signs the contract to buy the low cost house.

Question:

- a) Did the councillor N. Z. avoid a conflict of interest?
- b) Is the contract between the father-in-law of the councillor N. Z. and the municipality valid?

Answer:

The answer to question “a” is: the conflict has been avoided because the councillor has preliminarily resigned from the decision making.

As above; the contract for the low cost house has been signed between the father-in-law of the council’s member and the municipality and it is valid, although the father-in-law is a person connected with the councillor but in this case, an exception to the rule of point 4, article 21 is implemented. In this case, housing the father-in-law of the councillor will be considered as a service that the municipality does to all its citizens. For sure it is implied that the councillor’s father-in-law should fulfil all legal criteria and procedures which classify him as appropriate for the social house like all the other homeless people and he should not benefit from preferential treatment compared to the others.

### **Case 5**

The mayor of the municipality is at the same time the administrator of “ABC” Ltd., which performs its activity beyond the territory of the municipality’s jurisdiction.

Question:

Is the mayor in a continuous conflict of interest, because of his position in “ABC” Ltd.?

Answer:

Cases of continuous conflict of interest for the mayors of communes, municipalities and districts are handled in article 29 of the law “On prevention of the conflict of interest”, which foresees:

*“a) The mayor of the municipality, commune and district’s council cannot be leaders or members or the leading bodies of non profit organizations which perform their activity within the territory of his jurisdiction;*

*b) Cannot carry out private activities which generate income; as a commercial physical person, partnership of commercial physical persons of every kind, freelance lawyers, notary public, licensed experts, counsellors, agents or representatives of the organizations defined in letter “a” of this article, and they cannot have another full time job”.*

Since “ABC” Ltd. exercises its activity out of the territory of the municipality’s jurisdiction, the mayor is in accordance with letter “a” of the article 29. Certainly, the territory where “ABC” Ltd exercises its activity should be presented in the documentation of this company as it is defined in the laws for commercial companies.

Afterwards it should be checked if the mayor is working full time or part time for this company. If he is working part time he is not in a conflict of interest. It is important that this is presented in his job contract and other documents of the company.

### **Case 6**

In the council of the municipality, because some of the members of the council have left and some others are elected according to the proportional list. Included in the new membership of the municipality council, are the father-in-law and his son-in-law.

Question:

Can the father-in-law and his son-in-law be members of the same municipality council?

Answer:

Law no. 9367, dated 07.04.2005 does not foresee any written prohibition for this case. However, point 2 of article 5 sets out that:

*“Restrictions of personal interests, clearly defined in this law are implemented together with the restrictions of the same personal interest clearly defined in another law, according to the principle of the most severe restriction”.*

Article 25 of Law no. 8652, dated 31.07.2000 “On the organization and function of the local government”, states that:

*“There cannot be members of the same council persons who are related to each other in one of the following ways: husband and wife, parents and children, brothers and sisters, mother/father-in-law with daughter/son-in-law”.*

Accordingly, the father-in-law cannot be a member of the same municipal council as his son-in-law.

### **Case 7**

The father of specialist Y of the tax office in the municipality X has a licence for a small business. Specialist Y deals with the registration of taxpayers and not with assessment and control of the taxes.

Question:

Is the above mentioned example a case of conflict of interest? If yes, how can it be solved?

In this case we do not have conflict of interest, because the specialist of the tax office is not one of the officials (mayor of the municipality, commune or district) according to the prohibition of article 29 of the law for PCI. Also, while performing tasks foreseen for his position, he does not perform any kind of decision making to the taxpayer subjects, and as a result even to his father's business (he just keeps the evidence of the businesses in the taxpayer's register) where his personal interest might influence.

However this case might be considered as a possible case of an apparent conflict of interest and Y specialist should take every measure to prevent every kind of conflict, by self declaring in advance the conflict of interest in the event he/she is appointed to perform specific tasks and responsibilities and by excluding him/herself from decision making.

Solution:

The official him/herself should avoid every kind of decision making which might lead to a conflict of interest, and his direct superior should not give him/her tasks which might put the specialist in a conflict of interest situation.

### **Case 8**

Th. M is part owner in the company X Ltd. which trades seeds of agricultural plants in some communes, including commune P. After the local elections, Th. M is elected the mayor of the commune P.

Question:

Is Th. M, as the mayor of commune P, in a conflict of interest? Should he resign from the part ownership or the company should move its headquarters?

Th. M, as the mayor of commune P and the part owner in the company X Ltd. is not in a conflict of interest, according to the prohibition set out in Article 29 of the Law 9367, dated 07.04.2005. This article states the following prohibitions:

*The mayor of the municipality, commune or district's council:*

- a) *Cannot be administrator or member of the leading bodies of non profit organizations which exercise their activity within the territory of his jurisdiction;*
- b) *Cannot exercise private activities which generate incomes as: a commercial physical person, partnership of commercial physical persons of every kind, freelance lawyer, notary public, licensed expert, counsellor, agent*

*or representative of the organizations defined in letter “a” of this article and cannot have any other full time job.*

Thus, the mayor is not prohibited in the commune from being part owner in the capital of profit companies which perform their activity within the territory of the commune. As well, since Th. M is not prohibited to be part owner, as a result the company may exercise its activity within the territory of the commune.

Solution:

The mayor of the commune will continue to own shares or parts of the capital of the company X Ltd., and X Ltd will continue its activity in the commune.

### **Case 9**

B.L is the administrator of the company “XETA” Ltd. and at the local election, he is elected the mayor of the municipality X.

Question:

Does the fact that B.L is the administrator of a commercial company and member of the municipal council create a conflict of interest?

The fact that B.L. is the administrator of a commercial company does not make a continuous conflict of interest because the prohibition for local officials according to Article 29 of Law 9367, dated 07.04.2005 does not include the members of the municipality, commune or district councils (look at the article like in the example above)

Solution:

B.L. will continue his job as the administrator of the company XETA Ltd.

### **Case 10**

The director of the Cultural Centre, which is a depending institution to municipality X, is elected as a member of the Council of the Municipality.

Question:

Is there a conflict of interest by the fact that he is at the same time the Director of the Cultural Centre and member of the Council of the Municipality?

Answer:

The law on PCI does not give a specific treatment for the above mentioned case but the analyses is made based on Article 25 of Law 8652, dated 03.07.2000 “On the



organization and function of the local government”, according to which the member of the council of the commune is not allowed as follows:

Article 25

*The incompatibility of the function of the counsellor*

1. *The function of the counsellor is incompatible with:*
  - a) *The function of the mayor, vice mayor of the commune or municipality;*
  - b) *The function of the secretary of the commune or municipality council;*
  - c) *The function of the employee of the administration of the respective commune or municipality;*
  - d) *The function of the Member of Parliament.*

Thus, we may conclude that keeping both duties does not make conflict of interest or incompatibility, because the Cultural Centre is a depending institution and cannot be equalized with the administration according to the prohibition of letter c), article 25 as above. In this case, it would be necessary that this member of the council does not participate in the voting process for issues that have to do with the cultural centre.

## **5 Ways to Deal With and Solve Conflicts of Interest**

### ***5.1 Responsible institutions for preventing conflicts of interest***

Law no. 9367, dated 07.04.2005 “On the prevention of conflict of interests” defines the responsible institutions for detection, prevention and solution of conflicts of interest. Thus, article 41 of the law clearly defines that, depending on the subject that has been touched and on the area of the activity, the responsible authorities to prevent, control and solve the situations of conflict of interests, are:

1. High Inspectorate for the Declaration and Audit of Assets which, according to the law, is considered as the central responsible authority.
2. The authority of other responsible structures for implementing this law in public institutions, are:
  - a) Superiors of the officials on hierarchical bases within a public institution.
  - b) Directorates, human resources units or units established for this purpose, based on the need and possibilities of every public institution.
  - c) Superior institutions..

These structures act on a hierarchical bases because the first announcement to the official is made by his direct superior. This does not exclude the direct intervention of other superior structures.

#### **5.1.1 High Inspectorate for the Declaration and Audit of Assets**

High Inspectorate (HIDAA), as the central responsible authority for the implementation of this law, performs tasks and has responsibilities to direct and improve policies and mechanisms for the prevention and avoidance of conflicts of interest.

As the central responsible authority for the detection and prevention of conflicts of interest, HIDAA deals also with monitoring, controlling and assessing the compliance of by-legal actions and internal regulations approved by public institutions regarding conflicts of interest, with the principles and obligations of the law for the prevention of conflicts of interest.

The High Inspectorate is the highest responsible institution for the implementation of the rules and law to avoid conflicts of interest and to guarantee the implementation of this law by public institutions. By controlling the implementation of this law we should understand not only the inspection of the declarations of the assets but also the emergence of case-by-case conflicts which are handled in the previous chapter.

Every local official should disclose his personal interests which might cause the beginning of a conflict. The periodic registration of the private interests of officials, according to Law no. 9367, dated 07.04.2005 is done by the responsible authority according to the model in matrix no. 3, attached to this manual, which is defined by

HIDAA. This institution (HIDAA) defines also the model of the case-by-case declaration of interests, and the registration of data which are related to such conflicts; thus, for every specific decision making which might lead to the beginning of a conflict of interest.

The Inspectorate, as a central responsible institution for avoiding conflicts of interest, deals also with consultation of specific local officials, their superiors and superior institutions at their request, for specific cases of the emergence of a conflict of interest and for ethics issues related to it, as well as for the periodic registration of the interests by public institutions.

This means that every local official might consult with this institution for every possible case of conflict, for the way to prevent it, to detect it and for its final solution.

Other competences of the Inspectorate consist of:

- Administrative investigation and verification of the periodic declaration of interests;
  - Administrative investigation and verification of case-by-case conflicts of interest, as well as the restrictions and prohibitions of the interests defined in the law, at the request of a public or superior institution or when HIDAA considers it necessary, even on its own initiative;
  - Issuing administrative punitive measures on its competence, according to the definitions made in the Albanian legislation.
  - High Inspectorate, based on its responsibilities and competences, issues by-legal actions in the form of directions and guidelines.

### 5.1.2 Responsible authorities or structures

The responsible authorities for the implementation of this law, on a hierarchical bases, are:

- a) The council of the municipality/commune/district;
- b) The mayor of the municipality/commune/district;
- c) Vice-mayor of the municipality/commune/district;
- d) The director of human resources in the municipality/commune/district;
- e) Managers of the depending institutions;
- f) Directors of directorates;
- g) The chiefs of sectors.

The designation of the responsible authorities or structures fulfils the scope of the activity of the municipalities and communes. This is the main responsible structure in municipalities and communes for the prevention and avoidance of a conflict of interest by officials. This responsible authority is composed of one superior official or group of officials who form a controlling structure.

The role of this structure consists not only of the formal meaning of the responsibility, but it should be clear about the moments of the beginning of the conflict of interest, to understand the decision making and its essential moments and the moments before the

decision making. These problems should be recognized by every official, the way it is necessary to present them in the internal regulation prepared to prevent the conflict of interests. These problems might be existent or might appear in the activity of the municipalities while the respective officials perform their functions.

The prevention and solution of conflicts of interest should be based on the entire legislation, based on which functions the institution and the conflict is restricted according to the most severe restriction. The responsible authority should solve the cases of conflict based on legal requests, not in the way he/she understands them.

The responsible authority is appointed according to the requests of Article 41, letter b, and Article 42 point 3 of Law no. 9367, dated 07.04.2005 “On the prevention of the conflict of interests in the exercise of public functions”. In the institutions depending on the municipalities, communes and councils of districts, where a directorate of human resources is established, this is the responsible authority for the administration of the employees of the depending institution.

Normally, the mayor of the municipality/commune/district’s council appoints the director of human resources as the responsible authority for the prevention of a conflict of interest in the institution. This fact should be taken into consideration, because according to the requests of the article 41 point b, it does not always happen this way (e.g., when the official appoints somebody else).

***The announcement format to HIDAA***

**REPUBLIC OF ALBANIA**  
**MUNICIPALITY/COMMUNE/DISTRICT COUNCIL \_\_\_\_\_**  
**No.... Protocol (City/village.....), on.....**

***Subject: Defining the responsible authority for the municipality/commune/district council   X***

**TO THE HIGH INSPECTORIATE OF THE DECLARATION AND AUDIT OF ASSETS**

According to Article 41, point 2, letter “b” and Article 42, point 3 of Law no. 9367, dated 07.04.2005 “On the prevention of the conflict of interests in the exercise of public functions” we inform as follows:

Starting on..... Mr/Mrs .....in the position of the human sources director or the chief of staff, jurist (when there is no human resources directory). In the absence of these structures (e.g. in communes) a person defined by the mayor will be the confirmed the responsible authority in the municipality/commune/district council   X  .

## MAYOR OF THE MUNICIPALITY/COMMUNE/DISTRICT'S COUNCIL

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### 5.1.3 Human Resources Directorates

Among the main tasks of the responsible authority is to give to all new officials, just appointed or those who get a new function or position, a declaration document (published in commentary no.1 of HIDA) for the prevention of conflicts of interest.

*Based in article 10 of the law, regarding the prevention of conflicts of interest, directorates, human resources units or units established and charged according to the needs and possibilities of every public local institution, directed by the Mayor of the Municipality, Commune or District's Council, exercise their tasks as follows:*

- a) Gather from the legal sources of information, the data for personal interests of an official;*
- b) Accept the lawfully provided information;*
- c) Verify the reliability of this information;*
- ç) To inform the official for the information provided about him/her;*
- d) To give the possibility to the official to prove the opposite, in case he/she requires it;*
- dh) to register personal interests of the official.*
  - Perform tasks charged according to the law as responsible structures,*
  - Gather and send to the High Inspectorate, before April 15 of every year, the declarations of interest filled in by the officials, as well as inform HIDA for the cases of non declaration.*

While exercising their respective role, human resources directorates play a concrete role at the moment of hiring local officials according to the legislation for the civil service but also according to the code of work.

- This way, human resources directorates which are in charge of keeping and organizing the files of personnel with the respective data for every employee as defined in legal and by-legal actions, fill them out with the declarations and other documentation related to a conflict of interest. They are responsible for the confidentiality and preservation of the information, not allowing its misuse.
- When hiring officials, these directorates deal with the organization of competitions for hiring candidates in the municipality and for the implementation of all procedures for hiring, suspension and dismissing civil servants of the municipality picking out according to the interest and definitions of the respective legal and by-legal actions the cases of the conflict of interest.

In general, as a responsible authority is appointed, the director of human resources in the respective local government unit, but as it is defined even in the law, might also be appointed units charged or established on purpose according to the needs of every public institution. Such a case might be when there is not a human resource directory in the respective local government unit. Another case might be when there is a great volume of work in the respective institution. In this case, a working group composed by the director of human resources and other officials is set up.

The specific tasks of the director of human resources as the responsible authority of the municipality/commune/district's council are defined in a detailed way in articles 9 and 10 of the model regulations, attached to this manual.

#### **5.1.4 The Superior and Superior Institutions.**

Local government bodies establish their administration and that of their depending institutions in order that they exercise their functions and competences directly.

Depending institutions and entities to the local government are:

- The administration of the local government bodies;
  - The municipal police, Construction Inspectorate, etc. (when they are not part of the administration of the local unit and act like juridical persons).
  - Crèches, cultural and sport institutions, and other ones of this kind.
  - Bodies established beside local government bodies which have a decision making authority, such as CTR (the Council for the Regulation of the Territory), custody council, etc.
  - Different enterprises (or institutions) established for the administration of schools, of the cleaning service, parks, gardens, roads, etc.

The superior role is exercised in accordance with the laws which regulate the organization and function of public institutions, and in our case we will keep in consideration the law for the local government as well as the laws based on which local institutions act, according to their function, role and the way they are established.

Despite the competences of a superior institution, it cannot be considered as such, if this would lead to the infringement of the constitutional principles of the division of power and local autonomy.

As a superior institution in the local government we will consider:

- a. *The council of municipality, commune, district;*
- b. *The mayor of the municipality, commune and district's council.*

##### **a. The council of the municipality, commune and district.**

Referring respectively to the Articles 32 or 54 of Law no. 8652 dated 31.07.2000, "On the organization and function of the local government", for the competences of the above

mentioned councils is clearly defined their role in establishing public entities, commercial companies or other persons which are established by these councils or they are co-founders.

The council is a superior institution related to:

- Members of the respective council.
  - Depending entities and institutions.
  - Officials of the local administration unit, in proportion with exercising the exclusive legal competences of the council, without excluding their relations with the mayor of the municipality, commune, or district's council.

Thus, the council is a superior institution regarding the area of its activity according to the definitions of the Constitution (article 113) and of Law no. 8652, dated 3.07.2000, "On the organization and function of the local government". It is also the superior institution for its depending institutions, despite the fact that in Law no. 9376, dated 07.04.2005 the council is not specifically mentioned as a superior institution.

### **5.1.5 The role of the municipality, commune and district as a superior institution.**

- The institutions established by the council and its depending ones should report to the council on the completion of their activity, regarding the prevention of conflicts of interest. For this, they should also present in a documented way the situation case by case.
  - As a superior institution, the council exercises controls on the administration of the municipality, depending institutions and entities. This is achieved:
    - Through reports required by the council periodically and depending on the needs;
    - Through controls organized by the council on their activity. The council might start these controls on its own initiative or through commissions for a specific issue of conflict.

An important and effective means that the council should use in its activity, while exercising the function of the superior, are contacts with the High Inspectorate of the Declaration and Audit of Assets which is the higher superior body for all central and local public institutions.

#### **b. The mayor of the municipality, commune, or regional council.**

The mayor of the municipality, commune, or regional council in exercising the executive tasks and responsibilities is a superior institution but even direct superior because it leads the activity of the respective administration. As such, the mayor:

- Is a superior institution for the depending entities and institutions of the local government

- Is superior for the officials of the respective administration; of the municipality, commune, or regional council.

The mayor, while exercising his function for the prevention of conflicts of interest, organizes the work and guarantees:

- Gathering from the legal sources of information data about personal interests of officials of the administration;
  - Accepts the lawfully provided information and addresses it to the directory of human resources;
  - Puts the responsible structures in charge of verifying the liability of the information;
  - Directly or through structures in charge informs the official for the information provided about him/her;
  - Gives the official the possibility to prove to the contrary, if he/she requires to do so;
  - Requires the responsible structure of the municipality to register the personal interests of the official. For this, the responsible authority should hand in to HIDAA the register completed with the evidence of the conflict of interest in the municipality, commune or regional council according to matrix no. 3 attached to this manual.

Republic of Albania

Date / \_ / \_ 2009

Institution \_\_\_\_\_

**Annual register of detection and solution of the cases of conflict of interests**

No.	Name	Father's name	Surname	Function	The date of detection of the CoI	Description of the conflict of interest	Solution	Date of solution	Notes
□1.									
□2.									
□3.									
□4.									
□5.									

**Note:** This register is part of the annual report on the activity performed according to Law no. 9367, dated 07.04.2005 “On the prevention of the conflict of interest in exercising public functions”. In this register should be documented the cases of conflict of interests detected, the ways followed for the prevention and



solution of these cases, the achieved results as well as the cases related to the periodical reporting. Explanations related to the cases of conflict of interest should be detailed in the annual report of the Responsible Authority for your institution.

**The annual report of the detection and solution of the conflict of interests should be sent completed to the High Inspectorate before 31 January of every year.**

**Responsible Authority**

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The direct superior institution of the mayor of the municipality and commune is the High Inspectorate of the Declaration and Audit of Assets. For the chairman of the regional council the superior institution is the regional council. This is defined by the way the chairman is elected; by the council itself.

For the employees of the administration of the local government unit, the superior is the direct superior defined according to the law for civil servants, which means the closest superior.

For the employees of the entities and institutions of the local unit, the superior is the administrator of the institution and direct superiors according to the regulations of their function.

## ***5.2 Basic ways to treat and solve conflicts of interest***

### **5.2.1 The role of the official and superior in preventing conflicts of interest.**

The primary alternative for the solution of a conflict of interest is the will of the official him/herself. This is an essential principle required by the law and is part of ethics. Perfect precedents are to be appreciated; all cases when officials engage themselves in solving their conflicts, avoiding their personal interests to give legal priority to the function they exercise. In exercising his/her functions, the local official should respect the ethical principles (foreseen in the ethics law) to avoid every form of conflict of interest.

Respecting ethics principles makes a very important direction in increasing the credibility the public has for elected officials and the local administration. This implies not accepting presents, favours, or preferential treatments in the sense that he/she should not ask for or accept directly or indirectly for him/herself, the family, relatives, physical or juridical persons related to him presents, favours or any other benefit, as well as promises which are offered to him/her because of his/her official position, which have every kind of benefit for the donor or third parties that influence or look like it may influence his/her job impartially, or they are or look like they are a remuneration for the way he/she performs his/her official duty. A present is considered to be taken indirectly when it is

given to the family of the employee, to his/her second relatives, persons or organizations with which the employee has had or has business or political relations, on the request, recommendation or directive of the employee.

The employee should not, directly or indirectly give presents or mediate to give presents to an employee of a higher level or to people related to him/her and also should not ask for or accept presents from an employee of a lower level or people related to him/her, because of his/her official qualities and relations.

In the context of conflicts of interest, presents are not considered presents when they are offered to the employee because of the kinship relation or personal friendship he has with the donor, as well as when it is clear that the present is not related at all with the position and the quality as an employee of the public administration of the person who receives the present.

The employee can keep permissible presents, without being obliged to declare them, if their value is not over 10 000 lek per present, while in the event that presents are more expensive he/she should declare them with his/her direct superior within 30 days from the day he received them and should hand them over to the human resources unit of the institution.

Based on these important directions, beyond the legal dispositions, the local official at first should solve any conflict him/herself. But, this kind of solution should not be thought of as an opportunity to abuse because of trusting on the official's will, because above all, this is a solution regulated by law, thus its implementation is mandatory.

This way, while exercising his/her functions the official preliminarily, depending on the circumstances, in proportion with the importance of the situation, avoids and solves him/herself every situation of every type of a conflict of interest. To achieve this, he/she, depending on the case and compatibility, uses one or some of the following methods:

- a)** By transferring or alienating the personal interests, e.g. by transferring the specific part of the shares that the official might have in a commercial company. In a specific situation, the official might have fundamental competence in the decision making for contracts and to avoid the intervention of this personal interest, interests are transferred.
- b)** By preliminarily excluding him/herself from the concrete process of the decision making, except for the cases when it is possible to delegate the competences of the official to another official, because of the law or because of the situation;
- c)** By resigning from the private tasks, functions or commitments which are in conflict with his/her public function. In this situation, the official might be the manager of a commercial company, which he/she might manage while exercising his/her public activity. The right way to avoid the conflict of interests is exacted by resigning from this position and concentrating only on the public one where he/she acts.

- ç) By resigning from the public function, especially in case there is continuous conflict of interest.

### Example

The official L.C is the director in the Directory of Services in the municipality Y while his wife V.C is appointed as a specialist in the same office of the same municipality. The mayor after being elected noticed this fact.

Question:

Is there a conflict of interest in this situation? How should this situation be solved?

Analysis of the case:

There is a direct dependence relationship between spouses and the possibility for a continuous conflict of interest is obvious (from keeping at work to the preferential treatment of his wife). This case should be solved according to article 37 of the law for PCI but even in regard to the law for the status of the civil servant.

Solution:

Based in article 37 of the law for PCI and the law for the status of the civil servant, the mayor communicates with both of them and decides to transfer one of them to another position within the administration or to another depended institution according to the rules defined in the law for the status of the civil servant, or when this is practically impossible, as an extreme solution, one of them is dismissed.

The local official during his/her activity might often fall into a continuous conflict of interest. (e.g., *by appointing a close relative in such a position that the official might use the collaboration with this close relative to abuse and benefit from his public duty. Such a case is: when the mayor of the municipality/commune or district's council hires as the director of one of the directories in the municipality/commune/district's council*).

The other phase of the solution is to inform the superior or superior institution, depending on the case, for the recommended solution.

Thus, Article 10, point 2 of Law no. 9367, dated 07.04.2005 “On the prevention of the conflict of interests in the exercise of the public functions” states that:

*“No later than 30 days from the entry of this law into force or from the date when work relations begin at a public institution, every official is obligated to issue an authorization in favour of the public institution where he/she exercises his functions, through which he authorizes this institution to check and obtain personal data about the official, wherever they are recorded. This authorization also has the same value for every superior institution”.*

In reliance to letter “ç” of point 1 of the Article 46 of Law no. 9367, dated 07.04.2005, public institutions should provide their officials the authorised model approved by the High Inspectorate, which is given below.

In the case of managers of the institutions, the authorization is provided, jointly signed and is documented by the closest superior institution according to the administrative hierarchy. This authorization is filled in by every official upon appointment; only once and not every year, and is kept on file of the responsible authorities.

**REPUBLIC OF ALBANIA**

*(The name of the institution)*

No. \_\_\_\_\_ Prot. \_\_\_\_\_ (City, country) on,  
 \_\_\_/\_\_\_/\_\_\_

**A U T H O R I Z A T I O N**

I, the undersigned, \_\_\_\_\_  
*(name, father’s name, surname)*

In the function of \_\_\_\_\_  
*(name of the function and public institution)*

On \_\_\_/\_\_\_/\_\_\_\_\_, on respect of my legal responsibility according to Article 10, point 2 and Article 41 point 2 of Law no. 9367, dated 07.04.2005, “On the prevention of the conflict of interests in the exercise of the public functions”, authorize the institution

\_\_\_\_\_  
*(name of the public institution or the superior institution according to point 10 of Article 3 of Law no. 9367)*

to exercise control and to provide personal data about my person, wherever they are recorded and which relate to the types of personal interest defined in article 5, except the personal data defined in point 4 of the article 7 of this law. This authorization is of the same value for every superior institution.

The authorization is valid for all the time I am exercising the public duty, which is subject to control and verification according to Law no. 9367, dated 07.04.2005, “On the prevention of the conflict of interests in the exercise of the public functions”.

Also, this authorization is valid for every time, despite the discontinuance of my public duty, but only for those data of my personal interests, which might relate to the exercise of my public duty at the time it is exercised.

I consider all actions performed by the institutions or authorised people to control and provide personal data, the same as they have been made by me.

Every physical or juridical person, public or private should not hinder real persons who possess the original or the certified copy certified to the original of this authorization and who are officially in charge according to the law to perform control and provide data of my personal interests.

WARRANTOR

*(Name, surname, signature)*

THE HEAD OF THE  
INSTITUTION (OR OF THE  
SUPERIOR INSTITUTION)

*(Name, surname, signature)*

*(seal of the institution)*

### 5.2.2 What should the superior do in this case?

After presenting the case or on his personal initiative, the superior of the official or superior institution, starting from the closest one, preliminarily, depending on the circumstances, need, and in proportion to the importance of the situation, avoids and solves every situation of every type of conflict of interest of a depending official, using according to the case and compatibility, one or some of the following methods:

- a) Limit to the official specific information which is related to the exercise of his/her function;
- b) Does not charge the official with tasks which might lead to the beginning of a conflict of interest;
- c) Does not allow the official to participate in the decision making process;
- ç) Revises and changes the tasks and competences of the official.
- d) Transfers the official to another job which avoids the conflict of interest;
- dh) Takes the necessary measures to avoid the nomination or the election of an official in functions where it might begin, or there is a conflict of interest;
- e) In case an action has been decided in the presence of a factual conflict of interest, in every way it is noticed. If it has the competence should abolish or abrogate the actions decided by the official as soon as possible and possibly before they have consequences;
- ë) The abolition or abrogation of the action can be done even when it is assessed that the action is taken in the situation of the apparent conflict, which might emerge case by case or in a continuous way;
- f) The abolition or abrogation of the action is not made by the superior when he/she assesses that the consequences that might result from the abolition or abrogation

obviously exceed the profit of this abolition or abrogation, thus it is not in proportion to the importance of the situation.

Beyond all restrictions which come from benefits of personal interests, in this case an important issue is employment for which the above mentioned points are applicable. In every case of appointment, nomination, selection, assessment, build up career, firing or other actions which are regulated by work relations will also be considered as personal interests which might lead to a conflict of interest because of specific relations that the local official might have with the person.

In specific cases when the conflict of interest is related with the highest official of a public institution, its treatment and solution is made by the superior institution, if there is one, and this does not harm the principle of independence of institutions. Thus, if a conflict of interest emerges for the mayor of the commune/municipality then as a superior institution the High Inspectorate of the Declaration and Audit of Assets exercises its competences according to the legislation.

The mayor of the municipality/commune or district's council is allowed to perform his/her function and duty provided that the only unavoidable conflict of interest, according to the dispositions of the law for the prevention of the conflict of interest, is the apparent conflict, in the following circumstances:

When the mayor of the municipality/commune or district's council:

- Is irreplaceable in exercising his/her functions. Included is the case when he/she, according to the law, is a member or the manager of a decision making forum or organization.

*Example: The mayors of the communes and municipalities which are part of the district are always members of the district's council. This means that they are irreplaceable in their function because of the specific positions they have as mayors, and as such, cannot be substituted by anybody else regarding their membership in the district's council. however, when the district's council takes decisions in conflict of interest with a mayor of a municipality or commune, then the mayor might be excluded from the discussion and decision making process for that issue.*

- His/her self exclusion is impossible. (e.g., *in delegating the competences to another official, when this is impossible because of the situation or when it is not allowed by the law to delegate these competences*).

- None of the solutions foreseen in the law are possible, in the event that all the solutions given in the law for the prevention of the conflict of interest are inapplicable for different reasons.

- It is not possible to alternate the private interest because of its nature (*such as; family, community relations, etc.*);

- It doesn't make sense that for such a conflict, he/she should resign from his/her function.

The apparent conflict is not a reason for invalidity, in cases of administrative actions and contracts when these actions and contracts are irreplaceable and the official who issues them is also irreplaceable in exercising of his/her functions or his/her self exclusion is impossible. Also, according to the Code of the Administrative Procedures, this kind of conflict is not a reason for invalidity when the decisions taken by the official are not revoked or abrogated by the superior institution. In these cases, the decisions taken by the official undergo a special control and assessment by the institutions charged by law to implement these decisions. These decisions in every case are made public.

- When the mayor of the municipality or commune is the only person who can sign after a decision is taken to issue a license, and if he/she avoids the decision making because of conflict of interest, his function does not allow him/her to avoid the endorsement process. Thus, the concept 'irreplaceable' means that he cannot delegate this right to somebody else.

An example when the official is irreplaceable in exercising his/her functions is as follows:

*A person connected with the mayor applied for a construction licence. According to the procedure (i.e., if this request for the construction license has passed to the directory of urbanisation and technical secretariat of the CTR) and everything conforms to the law, it cannot be considered as a conflict of interest. In this case, to avoid the conflict, the mayor should avoid his presence during the discussion of this licence in the CTR. He should also exclude him/herself from the decision making, which means from the right to vote in this case, but he/she cannot avoid the endorsement process.*

Although the mayor signs, the apparent conflict is avoided considering a correct implementation of the criteria of the law, which can be verified by making transparent and public the procedures followed in this case. While, the institution which might exercise control (e.g., if this case is presented in the media as a conflict of interest or as a written complaint), it is HIDAA which initiates an administrative investigation procedure to verify if this licence and this decision making, is done under conditions of a conflict of interest or not.

The superior informs the official in conflict of interest and his/her superior in a written and reasonable way for the solution made. The responsible officials (including the superior) for the concrete case of the conflict of interest are not free of responsibility when the measures taken do not result productively in preventing and avoiding the conflict.

### **5.3 The solution for specific cases of continuous conflicts of interest.**

While exercising their duty in accordance with their function, local officials might be affected by conflicts of interest. They may continuously make decisions in contradiction with the law of the prevention of conflicts of interest. To be more specific, it means, constant unlawful interventions which lead to the beginning of a conflict of interest.

For all cases of the high local officials, foreseen by the *internal model rule attached to this manual*, the solution of the cases of conflict of interest is made according to the law on the prevention of the conflict of interest, but also according to the other legal dispositions which deal with this topic.

In the event that the mayor continues to be in a conflict of interest situation, there are a number of scenarios:

- a) Resign from the leading functions or the membership in the managing bodies of the non profit organizations, in every case when this is not allowed according to the law and according to the cases stated in this manual, as soon as possible but not later than 15 days from the moment this obligation becomes evident and should report and document in a written form this fact immediately and not later than 10 days after he/she does it. In the moment the case of conflict is presented, the official within 15 days should resign from his/her private duty which is in conflict with his/her public function. Thus, at the moment he/she resigns from these managing bodies, within 10 days the case should be reported and documented. For this case, since there is no other superior institution, the documented case is presented to HIDAA.
- b) Within 30 days, stop exercising his/her private function and as soon as possible within this time, ask the competent bodies to unregister these activities in accordance with the law. The official reports and documents the implementation of these liabilities immediately, but not later than 10 days from the above mentioned time limit, and also reports and documents the unregistering done by the competent bodies at every time, and as soon as they are done.

Thus, as soon as possible, within the 30 day time limit, stop the activity and within 10 days after the 30 day time limit, inform and unregister according to the respective commercial laws.

- c) Transfer the right of active ownership of the shares or parts of the capital he/she owns to somebody else; to a trusted person but who:
  - Cannot be the spouse, parents, grown up children and their spouses, parents, brothers and sisters and their spouses, people whose friendship with the official is known, another official or person of a dependence relationship, being it direct or indirect because of the public function with the respective official;
  - The trusted person cannot be a commercial physical person, whether one of the above mentioned persons, a company where the official owns directly or indirectly shares or parts of the capital, a non profit organization where the official has had or has interest related ties of every kind;



In the event the official resigns from all the ownership rights or from the parts of the capital and alienates them to somebody else, this person cannot be any of the people mentioned in point c above.

Officials foreseen in the law should report and document this action immediately, but not later than 15 days from the day they do it.

In the event of transferring the ownership rights of the shares or parts of the capital, the official loses the right of the ownership of the shares but not the right to profit from them, while in the event he/she alienates them, loses every ownership right.

With an indirect relation between the institutions we will need to understand the institutional dependence of a subject or enterprise on the municipality; for example, at the moment a depending institution of the municipality/commune or district's council, where the official of the municipality/commune or district's council has a fundamental and crucial competence in assessing the offers or bidders and terms of the contract, contracts a commercial company.

Transferring or alienation is done as soon as possible but not later than 2 months from the moment this liability becomes necessary (which means from the moment the conflict of interest emerges). The official reports and documents immediately for the accomplishment of this liability, but not later than 15 days after this action is done. Also, the trusted person informs the respective institution for the accomplishment of this liability, in the same way as the official.

Time limits as defined above can be postponed by the superior or superior institution, when the official presents reasonable motives for the delay. In every case, the reasons for delay and the new time limits are registered and documented, but these limits can never be longer than the double time of the limits defined above, except in the event when the delay is defined by mandatory procedural time limits, defined by the Constitution, procedural laws (penal and civil ones), commercial law and/or rules of the local institutions on issuing official documents.

At the moment the reasons that cause the conflict of interest are nonexistent or the conflict is definitely solved, the local official can go back to the previous position regarding his/her rights to the property.

For the person connected with the official, according to the above mentioned definitions, restrictions are the same as for the official him/herself. If the local official or the person connected are reluctant in implementing the requests of the law, then the official is obliged to resign from his/her function, within the defined time limits. In the event he/she does not resign within the time limits as defined above, the closest superior or superior institution, implement one or some of the ways defined in letters "ç" and/or "d" of the point 4 Article 37 of Law 936, dated 07.04.2005 "On the prevention of conflict of interests" which enables the best solution possible not later than 10 days after the final

time limit, except the cases when this action is not possible or this time limit cannot be respected because of other procedural time limits according to the definitions made in other complementary laws on the prevention of a conflict of interest.

### ***5.4 Concrete procedures for local officials, superiors and collegial bodies to solve conflicts of interest***

Concrete procedures include a series of actions which aim to find out, prevent and solve conflicts of interest in local government.

Detection of cases of conflicts of interest might have different sources.

The presentation of cases of conflict of interest might be done by:

- Every interested party which is affected by the unlawful decision making;
  - Every official, superior or not;
  - Every citizen who has a lawful and direct interest.

It should be pointed out that the source of information should be lawful in every case. Information taken for the officials should be in accordance with the law.

In the cases foreseen for the prevention of conflicts of interest, their detection might be done even on the request of the interested party to avoid the participation of the local government employee who is affected by the conflict of interest in the decision making. The interested party informs the competent body which decides on his/her exclusion from the decision making. The facts in which the request is based are to be clearly defined and are to be sent to the respective superior or official or to the responsible institution, thus to HIDAA. Depending on the case, an interested party might be every official, especially a superior who is aware of the interests that interfere. . But an interested party is considered every party, thus every citizen, who is affected from the wrong decision making of the local official. The ascertainment of a conflict of interest might be made by any individual who is aware of it and has a general interest which is in accordance with the purpose of the law on preventing conflicts of interest. In these cases, when the request is made by the interested parties in proceedings, actions or administrative contracts, the official affected by this request has the right to defend him/herself. With interested parties in administrative proceedings in the case of conflicts of interest in the local government we will imply everybody who has a legal interest for the issue under discussion.

According to the law, a participant in such a proceeding is the person or subject who is the bearer of the legal interests, based on whose interests' starts the process or against whom is held the process.

Other sources of information might be public and private registers kept in accordance with the existing laws, data taken from the media or from complaints of the public and any other legal source.

#### **5.4.1 Collegial bodies**

How are conflicts of interest prevented in collegial bodies?

Collegial bodies in the local government are all councils of the municipalities, communes or districts, the Council of the Regulation of the Territory (CTR), boards, forums, committees established for specific issues (e.g. the committee for Children's Custody, etc.) and every other collegial body established in the local government which has decision-making capabilities.

In cases of decision making in collegial bodies such as the municipal council, the request for exclusion from a concrete decision-making is made by the member of the council him/herself as soon as a conflict is detected by the above mentioned sources. The request is made in a written form when this is required by the body it is addressed to. It is addressed to the chairman of the municipal council who, it should be stressed, does not function as a superior body. The superior body in this case is the council itself. The chairman refers the case at a meeting of the council. When a member of the body has objections regarding his/her exclusion (this might happen in cases when the member of the council does not require self exclusion) considering that he/she is not in a conflict of interest, the council examines his/her claim and at any time might decide to exclude or not exclude the councillor from the issue review and the respective decision making.

In cases when the exclusion of the chairman from a decision making or administrative proceeding is considered, the decision is also taken by the collegial body but without the participation of the chairman.

### **Example**

The president of company X is the wife of a member of the council of municipality Y. Company X competes in the tendering procedure for a project for the funeral service in the same municipality.

Question:

Is there a conflict of interest and should company X be excluded from the participation in this tender?

Analyses:

Based on Article 21 point 2 of Law no. 9367, dated 07.04.2005, the councillor is part of the group of the officials who is forbidden to contract within the jurisdiction of the respective local unit. Article 24/1 defines the group of people connected with the official. The wife is included in this group and it is forbidden to contract the respective unit. As such, there is a conflict of interest.

Solution:

After analysing these data the Commission of the Offers Assessment of the Municipality Y, based on point 1, Article 26 of Law no. 9643, dated 20.11.2006, decided to disqualify company X because of the family relations the president of the company has with one of the councillors of the council of municipality Y.

### **5.4.2 Exclusion effects**

For the presented cases of conflicts of interest, a member of the council should interrupt every action as long as the superior does not give orders for the contrary.

Despite the exclusion of officials or members of the collegial bodies, they are obliged to exercise their competences in emergent cases provided that these actions are ratified by the substitute subject or the collegial body.

### **5.4.3 Effects of declaring the exclusion**

A collegial body will function as such but without the participation of any excluded member, e.g. from the voting process for a specific decision. According to the dispositions of the Code of Administrative Procedure any decision related to exclusion is to be given within 5 days. In the event the official is an employee of the administration he/she is substituted by his/her legal substitute, except when the superior gets this issue on his/her authority.

### **Example**

#### **Variant 1**

The specialist Z.K. working in the administration of the municipality A, who at the same time is a member of the CTR of this municipality, is the designer of the reconstruction project for the road H.T. This is a functional task of his position. The project is presented to the CTR of this municipality to be realized with municipal funds. The specialist Z.K. has a crucial role in the approval of the construction licence (reconstruction of the road H.T.) in the decision making of the CTR, since he is a CTR member who has a right to vote.

Issues for discussion:

Is there a conflict of interest, if the specialist prepares the project as a commitment of the municipality, and if so, how should it be prevented?

Answer:

The participation of the specialist Z.K in the preparation of the project is a functional task of his job position. In these conditions we are not in a conflict of interest since the specialist Z.K has performed his public task appointed to him without any personal interest, and as such he participates normally in the assessment and voting process of the

construction licence in the CRT.

## **Variant 2**

Specialist Z.K, member of the CTR has been authorised by company X to participate in the preparation of the project for the reconstruction of the road H.T which will be financed by municipal funds. Three requests from different companies, one of which is company X, with the respective projects are presented to the CTR for construction licences for the same road.

Issues for discussion:

Is there a conflict of interest and if so, how should this situation be prevented?

Analyses:

In this case, the official has personal interests based on Article no. 5 of Law no. 9367 dated 07.04.2005. Because of the fact that the specialist is a CTR member and has a crucial role in decision making, this is a case-by-case conflict of interest. It should be prevented based on one of the solution methods of conflict defined in article 37 of the above mentioned law.

Solution:

In these circumstances, specialist Z.K. should declare and exclude himself from analysing and voting on this construction licence based in dispositions of the Article 37 of Law no. 9367, dated 07.04.2005 for PCI.

### **5.4.4 Disciplinary measures**

Actions and contracts in which employees of the local government participate and which are affected by the dispositions on exclusion, are invalid. Every case of employees failing to inform about the existence of the conditions of a conflict of interest, according to Law no. 9367 dated 07.04.2005, is a serious disciplinary infraction and, depending on the case, it may lead to sanctions foreseen by this law.

Every infringement of the requirements defined in the law on the prevention of conflicts of interest by officials constitutes a disciplinary infraction despite the penal or administrative responsibility. Disciplinary measures are applied according to the laws which regulate the labour relations and/or the status of officials.

For officials who are equal to or members of constitutional bodies, such as; mayors of the municipalities/communes or members of municipality councils, measures and procedures are applied as defined by the Constitution and the respective legal dispositions.

The General Inspector of the High Inspectorate of the Declaration and Audit of Assets,

for an infraction performed by members of the responsible structures of local government in directories, human resource units or units established on purpose, depending on the needs and possibilities, proposes to the head of this institution to dismiss this member.

When officials do not give the warranty for exercising controls and providing personal data about them, which according to the law is attached to the declaration of the assets, this leads to the interruption of their work relations according to the procedures defined in the legislation which regulates the work relations.

### ***5.5 Invalidity of actions undertaken in conditions of conflicts of interest***

Invalidity is an illegitimate juridical situation which is formed by public administration bodies by means of a wrong implementation of the law or of the juridical will which emerges in the concrete administrative act or action. This is how issued actions in the conditions of a conflict of interest will be dealt with. The actions will be considered invalid dealing also with different kinds of invalidity and consequences. Everything that will be with dealt about invalidity in this part should be considered in proportion with the conflict of interest and that this invalidity comes because these actions are issued in conditions of the conflict of interest.

Administrative actions and contracts of every local government unit issued in conditions of conflict of interest and the objection against them are invalid according to the meaning of this term and principles and procedures defined in the Code of Administrative Procedure.

Invalidity of administrative actions according to this Code is presented in the following forms:

- a) Absolutely invalid administrative actions are actions issued in flagrant contradiction with the law;
- b) Relatively invalid administrative actions are actions issued in contradiction with the law.

It cannot categorically be defined if an action issued in the conditions of a conflict of interest is absolutely or relatively invalid. Everything needs to be considered according to the specific situation, on a case-by-case basis, to understand the situation. To understand the kind of invalidity of an administrative action or contract which is issued in conditions of a conflict of interest, the following categorization should be considered because it has to do directly with the consequences after the action is issued.

#### **5.5.1 Absolutely invalid administrative actions.**

Absolute invalidity of the action is a situation when there is total absence of juridical action by the action. The action, from the moment it is issued, does not create and cannot create the juridical consequences it was issued for. An invalid action is not an action. It is

a total nullity, a failed action which is considered as if it has never come to power. The invalidity which is noticed by means of revocation from the body which issued it or by means of abrogation from a superior body or the court has only the role of noticing the invalidity. Thus, for absolutely invalid actions there is no expression of an opinion.

Administrative actions will be considered absolutely invalid in the following cases:

- a) When the action is issued by an unidentified administrative body, thus by a body that does not have the exact power rights given by the law;
- b) When the action is issued by an administrative body bypassing the legal competences, even if this body is a lawful one, it should not exceed its legal competences in exercising its activity;
- c) When the action is issued in contradiction with the form and procedure required by the law (e.g., in the case of a collegial body, an action takes place even though the necessary majority to hold the meeting is not obtained).

Effects of the absolutely invalid administrative actions:

Absolutely invalid administrative actions do not produce legal consequences, despite the fact that they are declared as such or not. In fact, it is not even necessary to declare them because an absolutely invalid action does not produce legal consequences at all, because it is considered as if it has never existed. Any interested party can require declaring the administrative action absolutely invalid. This request can be made at any time. Every time, the competent administrative body with its own initiative, can find an administrative action absolutely invalid.

In the event that only one part of the action is absolutely invalid, the entire action will be considered as absolutely invalid, when the invalid part is as important as the action and does not realize its purpose without it.

### **5.5.2 Relatively invalid administrative actions**

A relatively invalid administrative action is a situation of invalidity of the action for as long as the object of the administrative or judicial claim has not been done within the time limits defined in the Code of the Administrative Procedure and the Code of the Civil Procedure. It presents the juridical power of a valid action until the competent administrative body or the court while performing the administrative or judicial review declares the invalidity. From this moment, the relatively invalid action no longer exists.

The administrative action will be considered as relatively invalid in the following cases:

1. When the content of the action is not in accordance with the content of the law (e.g., when a specific subject has some rights which according to the law he/she does not have).
2. When the content of the action is not in accordance with the purpose of the law.
3. When the will of the administrative body is not honest. Dishonesties dictated by others or unwilling ones will need to consider: the mistake or error,

fraud, physical violence, moral violence, incapability of the administrative body, etc.

Every civil contract signed in contradiction with point 1, 2 and 3 of article 21 of the law on the prevention of a conflict of interest (related to a physical person in the civil or commercial meaning which overlaps an official in functions defined by Law no. 9367, dated 07.04.2005 or to a civil or commercial physical person and a public institution, enterprise, etc., dependant to the public institution where the local official works) or in any other case when it is related to the presence of a factual or apparent conflict, does not produce any juridical consequence. Thus, every contract signed in this form is absolutely invalid. Normative acts which produce consequences for individually defined subjects, issued in the presence of the factual conflict of interest are relatively invalid, according to the same meaning used above for invalid actions.

When an action of a public institution, (thus in the case of an official, superior (mayor of municipality/commune/district's council) and in the case of members of a collegial body of the council or every collegial body as they are presented above in this manual) becomes invalid according to definitions of the above mentioned point and this public institution considers that the official has acted in misfaith according to Law no. 9367, dated 07.04.2005, he/she:

- Undertakes the procedures for a disciplinary punishment of the official who caused the invalidity of the action;
  - Uses all legal means to make this official pay damages;
  - Requires the respective court to propose a recompense in favour of the institution for the moral damage made;
  - Makes a penal charge against the official in case he/she considers that the infringement made by him/her is a criminal act.

According to the above mentioned points, in cases when the public institution does not initiate this itself, the superior institution (if there is one), starting from the closest one according to their legal competences, applies the above defined tasks. In the event they fail to act, the tasks defined in this disposition are applied by the High Inspectorate in collaboration with the State's Advocate.

The above mentioned definitions can be applied to every other responsible official who by acting or non acting did not prevent the conflict of interest which caused the invalidity of the action, or because he/she did not carry out the above mentioned liabilities. The actions defined in this paragraph are performed by the public institution, depending on the case, even to the person connected, trusted person or every other responsible person.

#### **Example: Invalid actions**

Municipality A holds a competition for the position of the director in the directory of local taxes and fares. At the end of the competing process, the mayor's brother is second of the three candidates. The official did not declare family relations with the mayor. The



mayor, who is the direct superior of the official, signs the nomination act for the appointment of his brother which is presented to the human resource directory.

One of the other candidates goes to HIDAA and presents his/her case accusing that the selected candidate is in a conflict of interest because of the family relation between him/her and the mayor. HIDAA examines the case and detects the incontestable family relation of the mayor and the nominated official who hadn't declared the relation violating the Article 37 of Law no 9367, dated 07.04.2005 "On the prevention of the conflict of interest in the exercise of public functions" but also the dispositions of the Code of the Administrative Procedure and the law on the Status of the Civil Employee.

Issues for discussion:

- Are there conditions of a conflict of interest? Which are the criteria to be fulfilled?
  - Is there a situation of an invalidity of the action and selection of the candidate?

Solution:

Despite the fact that the brother of the mayor is not included in the group of people connected according to Law no. 9367, dated 07.04.2005, according to the Code of Administrative Procedure, article 37 he is among the people of family relations to second relatives. This moment might lead to an apparent conflict of interest because there is a direct dependence and in the future the conflict might become continuous.

The first criterion which marks a conflict of interest is the violation of the article 37 of the Code of the Administrative Procedure. In this case, the appointment procedures are obviously violated because, although the mayor of the municipality was aware of his family relation he did not present this case, and selected the official even though the official came second in the competition. Thus, there not only exists a family relationship, but even the possibility for a future conflict of interest (through preferential favours that can be made to the official by the mayor; there exists the possibility of mediating and assisting the private businesses of the mayor and the official), but also the decision making procedure has been violated, in contradiction with the law for the status of the civil employees, violating the law in a flagrant way.

Based in article 116 of the Code of Administrative Procedure, point b and c states an action is absolutely invalid:

- b) When the action is issued by an administrative body outside its legal competences;
- c) When the action is issued in contradiction to the form and procedure defined by the law.

This case in issuing the action is considered as an absolute invalidity and consequently this nomination action does not have any legal effect and will be considered as if it never

existed. As it can be seen, the mayor of the municipality has overstepped his competences in appointing his brother violating the law on PCI, appointing an official who came the second in the competition procedure, while he was aware of his family relation but he did not declare it according to the requirements of the article 37 of the law on PCI.

### **5.5.3 Abrogation and revocation of administrative actions**

#### **Abrogation**

*Abrogation is the right of the highest administrative body to stop the juridical power of a lower body action by stopping the juridical consequences caused, creating new legal effects for interested subjects or changing the existing consequences.*

#### **Revocation**

*Revocation is the right of administrative bodies to review its action and change or abrogate it because of its incompatibility with the law, circumstances or conditions created after it is issued.*

#### **Revocation and abrogation of invalid actions.**

Relatively invalid administrative actions can be revoked or abrogated only because of their invalidity and within the defined time limit for a judiciary claim.

Absolutely invalid administrative actions cannot be revoked or abrogated because they are considered as they have never had legal power and as such they have never come to power.

#### **The right to revoke or abrogate**

Except for cases when the law foresees differently, the right to revoke an action is of the body which issued it, while the abrogation of the action is the prerogative of the superior body. Thus, only superior bodies have the right to abrogate an action. The body which issued it has only the right to revoke it, which means to withdraw the action.

Administrative actions issued by delegation can be revoked by the delegating body and also by the delegated body, only for as long as the delegation is valid.

Except in cases when the law foresees differently, the revocation or abrogation of the action has the same legal form and follows the same procedures as the action which is being revoked or abrogated.

Every interested party has the right to complain about an administrative action issued in a condition of a conflict of interest or, against the refusal to issue an administrative action in order to favour somebody else by not issuing it. The administrative body, the

complaint addressed to, examines the legitimacy and regularity of the contested action. Basically, the interested parties can address the court only after they have finished the administrative suit. Thus, only after they haven't received the required answer for the administrative complaint, can they address the court. Administrative sections that the reviews are sent to, can only assess the legitimacy of the action, thus they cannot specify if the action is issued or not in conditions of conflict of interest.

The administrative complaint blocks the implementation of the administrative action, thus it cannot have legal consequences as long as it is blocked. In some cases, foreseen in the code of administrative procedures (article 138 point 2), the implementation of the administrative action is not blocked.

The administrative complaint can be made to the body that issued the administrative action or that refused to issue the administrative action and, if this does not result in effective redress, it reverts to the superior body of the respective body for the final solution of the complaint. After the complaint to the superior body, the superior body sends the respective file to the body which issued or refused to issue the action, together with the directions for the solution of the issue.

All time limits and procedures for the abrogation, revocation or complaint of the administrative actions and contracts are foreseen in the Code of the Administrative Procedure. The articles of this Code do not specifically deal with conflicts of interest, but its dispositions should be adapted and interpreted case-by-case when in conditions of conflicts of interest for specific decision making.

### **Example**

The vice-mayor of municipality X is a shareholder in company Z. This company contracts the municipality for cleaning the city. Article 21 of the law on PCI in this case has been violated and there is a condition of conflict of interest. The mayor of the municipality is informed about this fact and orders the dismissal of the vice-mayor for this reason. After some time, when the conflict issue is solved in accordance with the law, the mayor decides to revoke the action of dismissal and re-instate his position as vice-mayor.

Issues for discussion

Who has the right to revoke the action of dismissal of the vice-mayor and is it possible to revoke this action?

Analyses

The situation of conflict of interest of the vice-mayor is evident and since article 21 point 2 of the law on PCI is obviously violated, it makes an absolute restriction. According to article 121 of the Code of Administrative Procedure, the revocation of administrative actions is made on the initiative of the competent body or as a result of the request for

review or appeal of the respective parties. Article 124 of this code defines that *except in the case when the law is foreseen differently; the right to revoke the action is of the body which issued it*. Based on article 122 of the Code of Administrative Procedure valid actions can be revoked, except in the following cases:

- a) *when in the law it is foreseen that they cannot be revoked or abrogated;*
- b) *when the action establishes legal rights;*
- c) *when the action gives to the administration rights and tasks which cannot be reassigned.*

#### Solution

As it can be seen, the right to take the initiative to revoke the action is of the mayor of the municipality; thus according to the law he/she can revoke his action. Since the conflict of interest is now solved, there is no legal restriction for not revoking the action. Despite being a valid action, nothing is unlawful because the requirements of article 122 of the Code of Administrative procedure are not fulfilled; thus the action can easily be revoked by the mayor of the municipality X.

### 5.5.4 Issuing by-legal actions

1. In local government, according to Law no 8652, dated 31.07.2000 and Article 46 of Law no. 07.04.2005, the council of municipalities/communes and districts like in other fields of their administration including that of conflict of interest, in reliance to the principle of proportion and the specific nature of the functions of public institutions and/or of every official, they issue internal rules on preventing conflicts of interest in the local government according to the model type attached to this manual.

2. The lack of the actions defined in Article 46 of Law no. 9367, dated 07.04.2005 does not constitute any barrier for the implementation of this law. In the absence of the actions, this law is directly implemented, except that the periodical declaration of interests is made according to the explanatory rules and guides issued by the General Inspector” .