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Research Article

REGULATION OF CONFLICTS OF INTEREST IN FOREIGN COUNTRIES

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ABSTRACT

In the course of performing his official duties, an employee may find himself in a situation where he has a real opportunity to use his powers for personal gain or to act in the interests of third persons. Such situation, according to the adopted legislation of most countries, including the Republic of Uzbekistan, is called a conflict of interest. The regulation of the conflict of interest is aimed at identifying such situations in a timely manner, so as not to allow the employee to act in it completely independently and not to give an objectively existing opportunity to develop into an offense, thereby preventing corruption.

The regulation of the conflict of interest allows solving additional tasks:

- Identify the circle of related persons who may be involved in corruption schemes;
- Apply sanctions when an employee acts in personal interests, but harm is difficult to prove for one reason or another;
- Increase the transparency of the activities of the state body (organization).

However, the main task is still to prevent corruption.

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KEYWORDS
Conflict of interest, corruption, employee, legal acts, international acts.

INTRODUCTION

At the legislative level, the regulation of conflicts of interest has been most actively implemented since the 60s of the 20th century, especially in the Anglo-Saxon countries. Although long before that, the term "conflict of interest" was already used, and many countries used measures designed to minimize the influence of the personal interests of employees on their decisions and actions.

Now the regulation of conflict of interest is widely recognized as one of the key tools for preventing corruption, and relevant regulations have been introduced in one form or another in most countries.

Rules on the regulation of conflicts of interest can be regulated in various legal acts:

- Laws on public service or other laws regulating service or labor relations, for example, in Armenia the norms are included in the Law on Public Service [1], in Indonesia - in the Law on Public Administration [2];
- Framework laws on preventing corruption or on public ethics, for example, in Argentina the relevant norms are established by the Law on Ethics in Public Administration [3], in Moldova - in the Law on Declaration of Property and Personal Interests [4] and in the Law on the Code of Conduct [5], in Ukraine - the Law on the Prevention of Corruption [6];
- Specialized laws on regulation of conflict of interest, for example, in Canada, general rules are contained in a separate Law on Conflict of Interest [7];
- Public authorities also adopt their own documents (codes of conduct) specifying the rules on conflict of interest. This seems to be the preferred option. Effective regulation of a conflict of interest requires detailed regulatory consolidation of various aspects related to the definition of this concept, the procedure for declaring interests and other mechanisms for its identification, the procedure for taking measures to resolve it, and ideally, anti-corruption restrictions and prohibitions closely related to the regulation of a conflict of interest;
- By-laws and jurisdictional acts: for example, in New Zealand at the federal level there are no rules obliging you to declare your interests annually, however, individual bodies prescribe such an obligation in departmental acts (for example, for ministers and members of Parliament the rules are established by the Cabinet Handbook and the Rules of Procedure of the House of Representatives [8]); in Malaysia, the norms are written in by-laws and departmental acts: the Code of Ethics for Administrative Members and Members of Parliament, Regulation No. 10 - Civil Servants (Conduct and Discipline) Regulations 1993, and Service Circular No. 3/2002 - Ownership and Declaration of Assets by Government Officials.

Additional provisions on the regulation of conflicts of interest may also be in laws dedicated to certain types

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or areas of activity (for example, laws on public procurement [9], laws in the field of health care, education, etc.).

International organizations also pay significant attention to the regulation of conflicts of interest. The international discussion is fueled by the realization that, in many democracies, the credibility of governments can be undermined primarily through the abuse of power. In this regard, according to the prevailing international opinion, through greater impartiality, transparency, openness and accountability, through appropriate oversight mechanisms, the governing institutions could regain the trust of the population. International anti-corruption instruments of a legally binding nature, as well as what is known as "soft rules" (norms that are not binding) contain provisions on preventive measures, i.e., Standards (codes of conduct), guidelines and tools for holding the public sector accountable to address conflicts of interest:

- Inter-American Convention against Corruption (Article 3: preventive measures); [10]
- Economic Community of West African States Protocol against Corruption (Article 5: preventive measures);
- African Union Convention on Preventing and Combating Corruption (Article 7: Corruption and Related Offenses in the Public Service);
- United Nations Convention against Corruption, adopted in 2003 - UNCAC (chapter II: preventive measures); [11]
- UN International Code of Conduct for Public Officials (Article II: Conflict of Interest and Disqualification); [12]
- Organization for Economic Co-operation and Development: Guidelines for Managing Conflict of Interest in the Public Service - Public Sector Transparency and Accountability; [13]
- Council of Europe: model code of conduct for public officials (art. 13: conflict of interest).

But it is necessary to pay attention to the fact that the presence of international standards does not mean at all that there are any common generally accepted approaches to regulating conflicts of interest. Rather, the opposite site is true: international agreements leave countries with greater freedom of action, and their approaches to formulating the relevant legislation and building the necessary infrastructure differ markedly.

The regulation of conflicts of interest is not a very common anti-corruption tool. This can be explained by the fact that most anti-corruption measures are built on the principle of "prohibition – sanction": an employee is prohibited from specific actions or being in a certain situation, while penalties are provided for non-compliance with the relevant prohibition.

The very fact of being in a conflict of interest situation is not in itself an offense, since in this case the employee has the opportunity to use official powers for personal gain, but he has not yet realized this opportunity. At the same time, the employee can quite independently, without the intervention of the regulator, choose the right course of action.

Therefore, a conflict of interest in itself is not equal to corruption, and there is no reason to punish for it. But a conflict of interest can escalate into corruption.

Increasingly, countries are choosing to play it safe and not rely on the employee's completely free ethical choice. It is easier to try to prevent a corruption offense than to deal with its identification and elimination of its consequences later. As a result,

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measures are introduced to regulate such situations, legal acts are adopted, and typical situations are fixed that are considered a conflict of interest.

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