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## Measures for the Prevent and Resolve Conflicts of Interest in Public Authorities in the Russian Federation and Foreign Countries

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### ABSTRACT

The article is aimed at studying of measures to prevent and resolve conflicts of interest in public authorities in the Russian Federation and foreign countries. The **task** of the study is to analyze the list of methods to resolve conflicts of interest in public authorities in Russian and foreign legislation, with an emphasis on the need for its concretization and clarification of the boundaries of the applicable legal technique, and finding an alternative to the list. The article offers an instrumental basis for clarification of gradation of ways of exit from the real conflict of interests. The thesis is argued that indicating measures to prevent and resolve conflicts of interest in public authorities in Russian legislation is advisable to legally delineate and formalize them consistently, defining specific forms, stages and mechanisms for solving the problem, based on foreign practice, recommendations are made to prevent conflicts of interest in public authorities.

**Keywords:** conflict of interest; settlement of conflicts of interest; public authorities; public (municipal) employee; duties; powers

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## INTRODUCTION – INTERPRETATION OF THE CONCEPT OF “CONFLICT OF INTERESTS” IN RUSSIAN AND FOREIGN LEGISLATION

In accordance with the provisions of part 1 art. 10 of Federal Law No. 273 from 25.12.2008 “On combating corruption”, conflict of interest is defined “as a situation in which the personal interest (direct or indirect) of a person in a position whose appointment includes a responsibility to take measures to prevent and resolve a conflict of interest affects or may affect the appropriate, objective and impartial performance of his official responsibilities (exercise of the powers)”.<sup>1</sup> In the practice of foreign law-making, for example, the Bulgarian legislator takes a similar position. Thus, in the Law of the Republic of Bulgaria SG No. 97 from 10.12.2010 on the prevention and identification of conflict of interest was revealed that “conflict of interest arises when a person holding public office has personal interests that may affect the impartial and objective performance of his official responsibilities or powers”.<sup>2</sup>

Interpretation is accepted in the Russian legislation as the only legal. There is, for example, in part 1 art. 19 Federal Law No. 79 from 27.07.2004 “On State Civil Service of the Russian Federation”,<sup>3</sup> part 1 art. 14.1 Federal Law No. 25 from 02.03.2007 “On municipal service in the Russian Federation”,<sup>4</sup> art. 249.1

Labour Code of the Russian Federation<sup>5</sup> and other acts of private law indicate that for the purposes of these documents the concept of “conflict of interest” is used, installed of part 1 art. 10 Federal Law No. 273. Of course, in the national legal field, as well as in the existing research practice, there are other variants of the interpretation of the category in question.

## EXISTING METHODS TO RESOLVE CONFLICTS OF INTEREST

At the same time, the legislator does not give a detailed description of its conceptual components, in particular “preventing conflicts of interest” and “resolution of conflicts of interest”, that the position of S. N. Sheverdyayev is due to the variety of methods of such resolution (prevention), as well as the need to distinguish them from other measures that may be attributed to other types and reactions to an alleged or actual conflict of interest [1, p. 246]. Thus, the law defines the following methods to resolve conflicts of interest:

- 1) change of official position, which is a party to the conflict of interests of the civil employee up to dismissal from the performance of official responsibilities;
- 2) refusal by such an employee of the benefit resulting in a conflict of interest (p. 3.1 art. 19 No. 79);<sup>6</sup>
- 3) removal (recusal) of a civil employee in cases and order prescribed by law (p. 5 art. 11 No. 273);<sup>7</sup>
- 4) transfer of securities belonging to a person [shares of participation, share in

<sup>1</sup> Federal Law No. 273 from 25.12.2008 “On combating corruption” (amend. from 06.03.2022). No. 52. Part. 1. Art. 6228. URL: [http://www.consultant.ru/document/cons\\_doc\\_LAW\\_82959/?ysclid=159dot61rt144678407](http://www.consultant.ru/document/cons_doc_LAW_82959/?ysclid=159dot61rt144678407)

<sup>2</sup> Conflict of Interest Prevention and Ascertainment Act (SG No. 97/2010, effective 10.12.2010). Ministry of Economy and Industry of the Republic of Bulgaria. URL: <https://www.mi.government.bg/en/library/conflict-of-interest-prevention-and-ascertainment-act-447-c25-m258-2.html> (accessed on 25.03.2022).

<sup>3</sup> Federal Law No. 79 from 27.07.2004 “On State Civil Service of the Russian Federation”. URL: [http://www.consultant.ru/document/cons\\_doc\\_LAW\\_48601/?ysclid=15b18k1nkq345626980](http://www.consultant.ru/document/cons_doc_LAW_48601/?ysclid=15b18k1nkq345626980) (accessed on 25.03.2022).

<sup>4</sup> Federal Law No. 25 from 02.03.2007 “On municipal service

in the Russian Federation”. URL: [http://www.consultant.ru/document/cons\\_doc\\_LAW\\_66530/?ysclid=15b1f0y5he93362701](http://www.consultant.ru/document/cons_doc_LAW_66530/?ysclid=15b1f0y5he93362701) (accessed on 25.03.2022).

<sup>5</sup> Labour Code of the Russian Federation No. 197 from 30.12.2001. URL: [http://www.consultant.ru/document/cons\\_doc\\_LAW\\_34683/?ysclid=15b1mal2cd162425443](http://www.consultant.ru/document/cons_doc_LAW_34683/?ysclid=15b1mal2cd162425443) (accessed on 25.03.2022).

<sup>6</sup> See above.

<sup>7</sup> See above.

authorized (folding) capitals of organizations) into trust management in accordance with civil legislation in p. 7 art. 11 No. 273].

We should agree with the position of E.V. Parkhomenko that the content of some of the listed methods of resolving conflicts of interest is very ambiguous [2]. Thus, a change in an official position which is a party to a conflict of interests of a public servant, including his removal from the performance of official responsibilities, certain aspects of practical implementation of this method are prevented, in particular the fact that the very concept of “change of the official position of the civil employee” is not defined by law. On the basis of the positions of the authors of scientific sources, change of the latter should be understood to mean the transfer of an employee to another civil service post or dismissal.<sup>8</sup> At the same time, civil service law does not consider conflict of interest as a ground for termination of employment contract.

The same applies to the second method of resolve the conflict. Benefit category in anticorruption legislation is also not disclosed. Noting this, N. S. Ermachenkova considers that it is advisable to consider the benefit as “entitlement of an employee to benefits or advantages directly related to the use of its official status, as well as any other entitlement arising from outside activities” [3]. Other authors take a similar position, for example G.A. Alimov, B.I. Isroilov, O.N. Kostyuk [4, 5] and others. In addition, there is a lack of clarity in the implementation of the procedure and the form of disclaiming the benefit of the employee.

<sup>8</sup> Guide to the prevention of conflicts of interest in Croatia. Anti-corruption portal HSE. 19.11.2020. URL: [https://anticor.hse.ru/main/news\\_page/v\\_horvatii\\_vypuscheno\\_rukovodstvo\\_po\\_predotvrascheniyu\\_konflikta\\_interesov](https://anticor.hse.ru/main/news_page/v_horvatii_vypuscheno_rukovodstvo_po_predotvrascheniyu_konflikta_interesov) (accessed on 25.03.2022).

We share the view with T.R. Meshcheryakova, A.V. Ponomarev and I. A. Trofimova that the legal means of resolving conflicts of interest in public authorities lack specificity [6–8]; moreover, their legal techniques are blurriness, which may result in undue discretion in their application [9, p. 282]. For comparison, a list of methods to resolve conflicts of interest in the public service, as presented in the OECD Guide,<sup>9</sup> seems to be more appropriate because of the detail (see *Figure*).

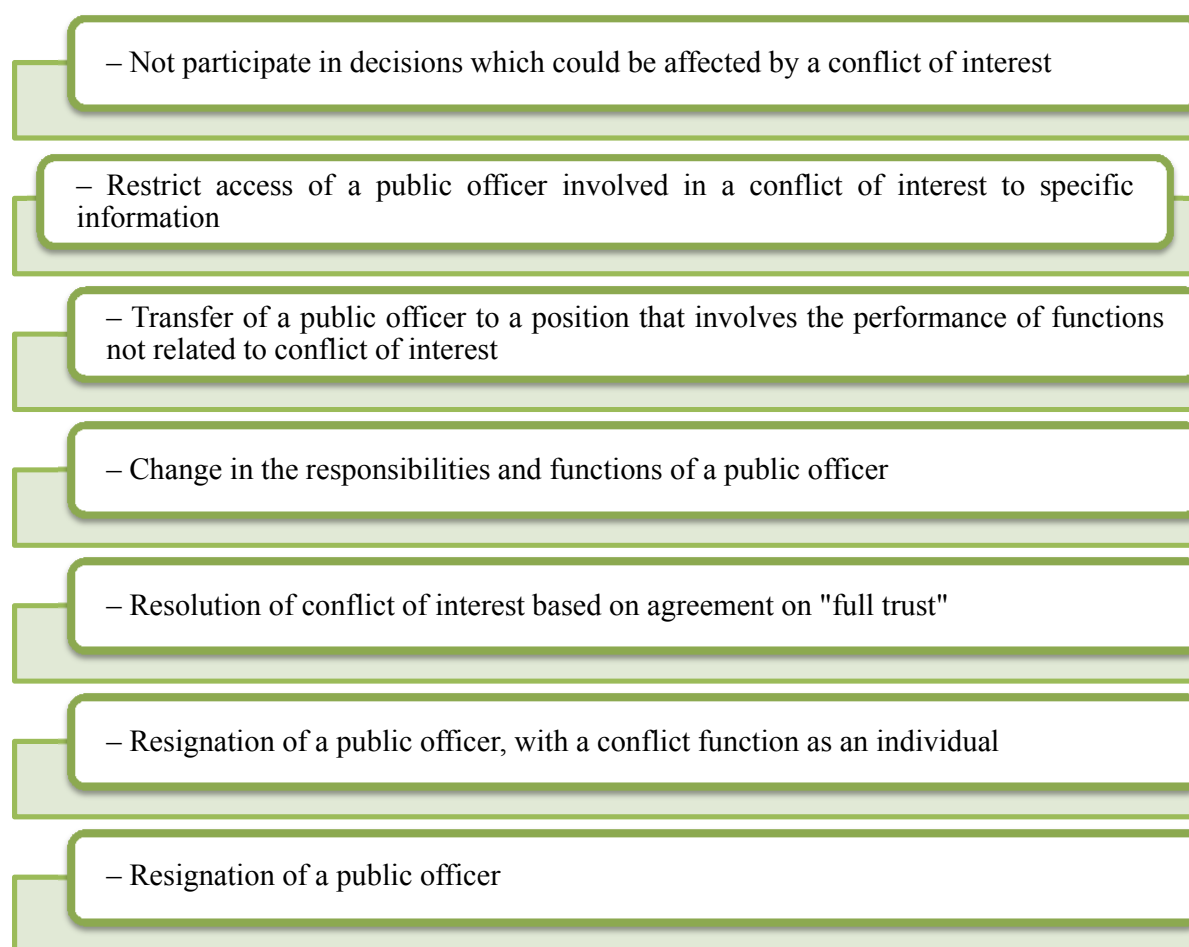
### ALTERNATIVE OPTIONS FOR RESOLVING CONFLICTS OF INTEREST

In our view, the following options can be considered as alternatives, taking into account domestic and foreign experience on this issue:

- first, implementation of temporary delegation of authority from a public officer who is a party to a conflict of interest to another officer;
- second, the suspension of a public officer on a permanent or temporary basis from functions that have become the source or background for a conflict of interest;
- third, delimitation for the duration of the conflict of interest in admitting a public officer to the data, if the conflict is related to their use;
- fourth, correcting (improving) the control measures adopted by the State body regarding the performance officer of official responsibilities in a conflict of interest situation;
- fifth, the establishment of a collegial decision-making process for issues involving conflicts of interest.

In fact, in the circumstances under consideration, there are only two possibilities:

<sup>9</sup> OECD Guidelines for Managing Conflict of Interest in the Public Service. URL: <https://www.oecd.org/gov/ethics/49106105.pdf> (accessed on 25.03.2022).



**Fig. Ways of resolving conflicts of interest presented in the OECD Guide**

Source: compiled by the author on the basis of the OECD Guide for managing conflict-of-interest in the public sector. URL: <https://www.oecd.org/gov/ethics/49106105.pdf> (accessed on 25.03.2022).

either to resolve (eliminate) the conflict of interest, or not to resolve it (do not eliminate). In this regard, for example, cases of its minimization to little or no significant (from this point of view) will relate exclusively to the specific situation. If a special decision has been taken to resolve the conflict of interest of the officer, then in this case the non-recourse of the conflict will be formally considered as a violation, although the latter may actually have lost its meaning. Certainly, for example, from the provisions of para. 3.1 art. 59.3 Federal Law No. 79 that penalty may be applied to a public officer in the form of a remark when the corruption

offence he committed is not significant,<sup>10</sup> then responsible authority, as an appropriate response, has the power to take less than stringent disciplinary measures against the public officer.

Nevertheless, we consider that the doctrine, in addition to detailing, will also be optimal to clarify the gradation of ways out of the real conflict of interest, and the classification of options for the response of the employee to the conflict situation may be taken as a basis: resolution of conflicts of interest in accordance with the methods

<sup>10</sup> See above.

recommended by the law or other means not expressly provided for by it but recommended by the commission for the settlement of such conflicts, compliance officer of the authority, external legal adviser (auditor), independently developed and other:

- minimization of conflicts of interest;
- erroneous involuntary non-elimination of conflict of interest in a situation where all necessary actions in such cases have been taken, but the fact of contradictions of service and personal interests is preserved;
- proposing action in situations of conflict of interest without sanctions;
- continuing to act in a situation of conflict of interest that does not entail the application of sanctions, combined with the application of additional measures that provide a guarantee against personal preferences of the public interest;
- non-resolution conflict of interest with sanctions: disciplinary and dismissal — due to loss of confidence.

Russian anti-corruption legislation uses the term “resolve to conflict of interest” when describing ways of eliminating conflicts of interest in pairs with the term “prevention of conflicts of interest” (art. 11 FL No. 273). The difference between these categories is clear, but the measures listed by the legislator are the same for both scenarios. To some extent it is justified: The joint indication of measures to prevent and resolve conflicts of interest in public authorities can be explained by differentiation as such, i.e. applicable to the apparent conflict, they will act as ways to prevent it, and to the real — resolution. At the same time, in our view, it is advisable to distinguish these measures by law and to formulate them consistently, defining specific forms, stages and mechanisms for solving the problem. This logic is followed by foreign legislators, who, despite the dominant soft law nature of regulating measures to prevent

and resolve conflicts of interest [10], do not exclude the reasoned use of prohibitions and restrictions.

For example, in the Croatian Law from 16.02.2011<sup>11</sup> on preventing conflict of interest mentioned, that upon election or appointment to public officer, an employee must organize its personal affairs accordingly to avoid a foreseeable conflict of interest, and, in the event of the actual occurrence of one, is obliged to resolve it in such a way as to protect the public interest.

In case of doubt about a possible conflict of interest, the employee must do whatever is necessary to separate the personal from the public interest. Moreover, the Law specifies the conditions for the prevention of the types of conflicts that arise as a result of the conscious will of officials, by establishing explicit prohibitions on the conduct of actions that lead to them [11].

Croatia Issues Guidance on conflict of interest prevention at the end of 2020,<sup>12</sup> in particular, the provisions of art. 7 of the above-mentioned law on the following prohibitions are explained: receive or request public officer benefits; acquisition of rights through violation of the principle of equality before the law; abuse of the special rights of an official that arise in connection with the holding of a particular public officer; additional remuneration for the performance of the responsibilities of a specific public officer; acceptance or receipt of values or services for a certain result of voting on a particular issue; influence on a decision taken by a public authority or for reasons of personal

<sup>11</sup> URL: [https://www.sukobinteresa.hr/sites/default/files/dokumenti\\_clanaka/osnovne\\_obveze\\_i\\_ogranicenja\\_duznosnika\\_sukladno\\_odredbama\\_zakona\\_o\\_sprjecavanju\\_sukoba\\_interesa.pdf](https://www.sukobinteresa.hr/sites/default/files/dokumenti_clanaka/osnovne_obveze_i_ogranicenja_duznosnika_sukladno_odredbama_zakona_o_sprjecavanju_sukoba_interesa.pdf) (accessed on 25.03.2022).

<sup>12</sup> Croatia Issues Guidance on Conflict-of-Interest Prevention. Anti-corruption portal of the HSE. URL: [https://anticor.hse.ru/en/main/news\\_page/croatia\\_issues\\_guidance\\_on\\_conflict\\_of\\_interest\\_prevention](https://anticor.hse.ru/en/main/news_page/croatia_issues_guidance_on_conflict_of_interest_prevention) (accessed on 25.03.2022).

benefit or benefit of a related person; promise of a work or other right in exchange for a gift or promise of a gift; influencing employment or contracting through public procurement; use of confidential information on the activities of public authorities for personal benefit and for the benefit of an associated person; use of official position in any other method, influencing the decisions of the legislative, executive or judicial authorities for the personal benefit or benefit of the related person, obtaining privileges or rights.

Also of interest are the provisions of the Law No. 159/2006 from 16.03.2006 “Conflict of interest in the Czech Republic”. So, in par. 2 art. 3 State that a public authority may not: use any information obtained by reason of their official position to obtain material or other benefits for themselves or any other person; seek help from your subordinates on issues of personal interest (such as doing business); use your name or invention in relation to your position for commercial and advertising purposes for reward [12]. The Estonian Law of 06.06.2012 mentioned that within one year after the termination of office, an official may not accept appointment (election) or conclude employment contracts with legal persons, officer with whom business relations were established during the performance of their responsibilities.<sup>15</sup>

From our point of view, the introduction of specific prohibitions for public authorities into the legal field would not be entirely appropriate, as the list of measures a priori

will remain open. Taking into account foreign law enforcement practice, we consider that for the purpose of developing the concept of conflict of interest prevention in Russian legislation it is necessary:

- firstly, to specify and avoid duplication of powers between authorities and state (municipal) employees;
- secondly, optimize the use of state (municipal) resources, placing orders for the supply of goods, the execution of works, the provision of services for state (municipal) needs;
- third, to develop an organizational and legal mechanism for transferring state (municipal) employees and persons filling state (municipal) positions to the trust management of securities, shares (shares in the authorized capital of organizations);
- fourth, to enhance the motivation component of the activities of state (municipal) employees by rewarding them for conscientious and effective performance of their responsibilities.

## CONCLUSION

In general, it is becoming evident that the institution of preventing and resolving conflicts of interest in public authorities in our country needs changes and additions. In any case, however, we believe that, even if a current list of measures, forms, methods and ways of prevention is formulated, as well as the settlement of such conflict shall be determined according to the circumstances of each case, taking into account the character and degree of aggravation, the type of State (municipal) service, the functions and powers of the State (municipal) employee.

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<sup>15</sup> Anti-corruption Action Plan 2021–2025. Justiitsministeerium. URL: <https://www.korruptsioon.ee/sites/www.korruptsioon.ee/files/elfinder/dokumendid/anticorruptionactionplan20212025.pdf> (accessed on 25.03.2022).



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