



REPUBLIC OF SERBIA  
ANTI-CORRUPTION  
AGENCY

Tirana, 19 April 2011





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## **Rules concerning prevention of conflict of interest in discharge of public function**

- *The Law on the Anti-Corruption Agency*  
(implemented from the 1<sup>st</sup> of January 2010,  
amendments to the Law entered into force on the 6<sup>th</sup> of August 2010)
- The Anti-Corruption Agency – in charge for the implementation of the Law  
(establishment of the Agency:
  - × 15 April 2009, the constitution of the Board
  - × 19 July 2009, the election of the director)





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→ “public function”

→ “official”

→ “conflict of interest”

→ “private interest”





## The basic rules on conflict of interest

- ➔ An official shall observe the regulations concerning his rights and duties and shall secure and foster and maintain the trust of citizens concerning his conscientious and responsible discharge of public office.
- ➔ An official shall observe the regulations concerning his rights and duties and shall secure and foster and maintain the trust of citizens concerning his conscientious and responsible discharge of public office.
- ➔ An official shall avoid creating of relations of dependency towards persons that may influence his impartiality in discharge of public office and if such relation cannot be avoided or already exists he shall undertake everything that is necessary to protect the public interest.
- ➔ An official must not use public office to acquire any benefit or advantage for himself or any associated person.





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## Performing other jobs or engagements

➤ **Prohibited** if the tenure of public function requires a full-time work or a permanent employment

➤ **Exceptions:**

research, educational, cultural, humanitarian and sports activities (if it doesn't compromise impartial discharge and dignity of public function or represents a conflict of interest)

√ approval of the Agency





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### **Duty to notify of conflict of interest**

- ◆ On taking the office and during discharge of public office, the official shall notify in writing his superior and the Agency within eight days regarding any doubts concerning his conflict of interest or an associated person's conflict of interest.
- ◆ Should the Agency establish that a conflict of interest specified in paragraph 1 of this Article exists, it shall accordingly notify the official and the body wherein such official holds public office and propose measures for eliminating conflict of interest.
- ◆ An act whose passing involved the official who was disqualified due to conflict of interest shall be null and void.





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## **Prohibition of other employment or business relations following termination of public function**

- Two years after termination of the public function
- Employment or business cooperation with a legal entity, entrepreneur or international organization engaged in activity relating to the function the official held

### Exceptions:

- ✓ Approval of the Agency
- ✓ An official elected directly by citizens





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## **Holding of function in private legal entities during tenure of public function**

**Prohibited** if the tenure of public function requires a full-time work  
or a permanent employment

### **Exceptions:**

- x** professional associations
- x** other associations if the Agency doesn't determine conflict of interest







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## Transfer of Managing Rights for Duration of Public Office

- ✘ Within 30 days of election, appointment or nomination, an official shall transfer his managing rights in any commercial company to a legal entity or natural person who is not an associated person, which rights shall be discharged by such legal entity or natural person on behalf of the official until termination of his term in office.
- ✘ An official may not give information, directives and orders to the person to whom the managing rights have been transferred.
- ✘ Exception: an official owning up to 3% share in a company





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## Violation of the Law – Procedure

- ◆ by the Agency ex officio
  - ◆ upon the request of an official and his/her immediate officer
  - ◆ on the basis of the report of a legal entity or natural person
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- ➔ The Agency shall notify the official of initiating the procedure.
  - ➔ The official must have an opportunity to give a statement in the procedure before the Agency.





## Measures

- Warning
- public announcement of recommendation for dismissal
- public announcement of the decision on the violation of the Law (an official elected to public function directly by citizens, an official whose public function has terminated and a related person)
- obligation of returning material gain

### **Decisions by the Director:**

- a decision establishing whether there is a violation of the Law and ordering the measure
- the deadline to appeal against this decision to the Board – 15 days

### **Decision by the Board:**

- final
- an administrative dispute may be instituted against this decision





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## Penalties for violation of the Law

- ◆ When the Agency establishes that an official has violated the Law, it shall notify the competent body for the purpose of instituting misdemeanor procedure.
- ◆ An official shall be fined from 50.000 to 150.000 RSD (from 475 to 1.425 EUR).
- ◆ The security measure of banning the responsible person to perform specific jobs may be ordered against an official for a period of one year.





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## CASE STUDY

I

Against official – the member of local government, a complaint has been filed that he owns the gas station which supplies the fuel to all users of the budget of that local government.

To obtain information on conflict of interest Agency invited all users of the budget of local government to provide information on whether the company owned by the official carried out the transfer of funds, or whether there is cooperation between local government and the company.

All budget users have responded positively and indicated that the procurement procedures were conducted with the participation of the company and that the agreements were concluded. The company didn't act in accordance with Article 36 of the Law on Anti-Corruption Agency and failing to report all activities in public procurement procedures, nor has submitted a final decision. The Agency has initiated proceedings against company, as well as against official.

**Procedures are in progress.**

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## II

A public official - the mayor filed a request for approval to perform the job of doctor. Under Article 30 there is a prohibition to officials to perform other work or activity during performance of public functions, which requires a full-time or permanent work, and the Law on local self-government provides that the mayor is permanently employed in the municipality.

- **The Agency rejected the request of the mayor and committed him to inform the Agency that he stopped to perform the tasks of doctor by filing the request for suspension of the employment during the function within 30 days of receipt of the notice.** After making the decision public official filed a proof of the suspension of employment during the function.





III

Against alderman who is also a board member of one institution, a compliant has been filed on suspicion that he had violated the provisions of the Law on Anti-Corruption Agency, because while serving as a board member he participated in the process of approving the amendments to the Rules of job systematization of this institution, and these changes provided a new position according to qualifications of relative official. When he resigned as a board member, he became an employee on that workplace.

Agency was imposed on official a **measure of public announcement of the decision on the violation of the law** because he acted in contravention of the article 27th because in the time while being the public office as a board member he was employed in that institution. The rationale to the decision states that the participation in the process of changes of the Rules, which systematized new job and finding a job at specified position in the institution at the time of being public official, he subordinated public interest to the private and used his position in the institution in order to obtain a benefits for himself, thus prejudicing the trust of citizens in conscientious and responsible practice of public functions.





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IV

Acting Director of Health centre concluded with this institution a contract on the rights and duties as Acting Director. At the same time, he is employed at the position of the Secretary of Faculty. Provisions of Article 30 provides that the official may not engage in other business or activity while that officer perform public functions that require full time or permanent work. According to the provisions of Article 27 the official is obliged to comply with regulations that regulate their rights and duties and to promote and maintain confidence of citizens in conscientious and responsible practice of public functions.

Health centre activities are activities of general interest to public health in a local government, causing the increased responsibility of public officials and requiring the engagement of a full-time jobs in order to efficiently and quality perform. Therefore, a full-time engagement in position of director of health center is contrary to performing a job as Secretary of Faculty. Administrative, legal and other normative and legal matters within the jurisdiction of the Secretary requires a certain quality and time commitment that can not be limited to the minimum working hours which would not affect the performance of the public health center director.

**A measure of warning has been imposed.**

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V

Alderman at the session of the Municipal Assembly participated in making the decision which was appointed to the position of Acting Director of the Health Center. According to Article 27 officer is required to perform a public function so that the public interest is not subordinated to private interests, to promote and maintain confidence of citizens in conscientious and responsible performance of public functions and must not use public office to gain any benefit or convenience for themselves or related persons.

- **A measure of public announcement of the decision on the violation of law has been imposed.**





VI

Member of Parliament has not informed the Agency that he has transferred the management rights in the company and therefore the Agency has ex officio initiated proceedings and left the official deadline to respond. The official did not plead, and therefore, considering the importance of his function, a measure of public announcement of the decision on the violation of law has been imposed. In addition, a request for initiating criminal proceedings, which is in progress, was submitted. The Agency has the authority to impose a measure of official warnings and a measure of public announcement of the decision on the violation of law, depending on the circumstances of the case, and the imposition of public measure is not conditioned by the previous imposition of a measure of a caution.

- **In this case, the imposition of public announcement of the decision on the violation of the law is justified by the importance of function.**





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Thank you for your attention!

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