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CONFLICT OF INTEREST IN PUBLIC SERVICE AND RESTRICTIONS FOR POST-PUBLIC SERVANTS IN UKRAINE AND LITHUANIA

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Abstract. Resolving conflict of interest in public service is one of the key mechanisms for combating corruption. Its principles are defined in international legal documents. The United Nations (UN) Convention Against Corruption states that each State Party should strive, in accordance with the fundamental principles of its domestic law, to establish, maintain and strengthen systems that promote transparency and prevent the appearance of conflict of interest. All State Parties shall endeavour to establish, maintain and strengthen measures that promote transparency and prevent conflicts of interest, in accordance with the fundamental principles of their domestic law. The article raises the problem that the confusing legal regulation and the variety of situations that arise in public service result in public servants not always correctly identifying conflicts of interest, not avoiding conflicts of public and private interests, and persons who have ceased to work in the public service not complying with restrictions on work, restrictions on concluding contracts or using individual benefits, and restrictions on representation. The aim of this article is to reveal the peculiarities of the legal regulation of conflict of interest, to analyse means of resolving conflicts of interest in the public service and restrictions for post-public servants in Ukraine and Lithuania. The authors set out a number of tasks in the article: (i) to define the concept of conflict of interest in the public service; (ii) to identify means of resolving conflicts of interest in the public service in Ukraine and Lithuania; (iii) to compare the restrictions (limitations) for post-public servants in each country. The research methods employed included: (i) comparative method, comparing the regulations on conflict of interest in each country; (ii) generalisation method, to formulate conclusions; (iii) document analysis method, focusing on the legal acts and documents of Ukraine and Lithuania; (iv) statistical method, to reveal the number of investigation identifying conflicts of interest in public officials' activities.

Keywords: Conflict of Interest, Public Service, Post-public Servants, Withdrawal from Decision-making, Restrictions, Limitations, Liability.

Introduction

Resolving conflicts of interest in public service is one of the key mechanisms for combating corruption. Its principles are defined in international legal documents. For instance, the United Nations (UN) Convention Against Corruption (2003) states that each State Party should strive, in accordance with the fundamental principles of its domestic law, to establish, maintain and strengthen systems that promote

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transparency and prevent the appearance of conflict of interest. All State Parties shall endeavour to establish, maintain and strengthen measures that promote transparency and prevent conflict of interest, in accordance with the fundamental principles of their domestic law. The United Nations Anti-Corruption Toolkit (2004) states that most forms of corruption involve creating or exploiting a conflict between a corrupt person's professional duties and private interests.

The Organization of Economic Cooperation and Development Toolkit on Managing Conflict of Interest in the Public Sector (OECD, 2005) provides the following definition: "A conflict of interest is a conflict between an official's public duty and private interests, where the official's private interests may improperly influence the performance of their official duties and responsibilities". Recommendation № R(2000)10 of the Committee of Ministers to Member States on Codes of Conduct for Civil Servants states that a conflict of interest arises when an official has a personal interest that may influence, or appear to influence, their objectivity and impartiality in performing their official duties.

The legal term "conflict of interest" is a much younger term than the concept it represents, which plays a significant role in addressing the broader issue of corruption (Pastukh, 2021). A conflict of interest is a component of most corruption offences and is always based on a contradiction between an official's personal and official interests, where his or her personal interests may affect the improper performance of official duties. In his work 'Defining Political Corruption', Philp comprehensively explores the phenomenon of corruption and notes that people who hold office inevitably have several interests. These interests relate to various aspects of their private lives as well as to their official duties, which they must fulfil in the public interest (Philp, 1997).

This article addresses the instruments that Ukrainian policymakers could adopt to align Ukraine's legal framework with EU standards on solving conflict of interests in the public service, improving capabilities of public officials (public servants) to avoid of conflicts of interests, to comply with restrictions after service in the public sector. The article raises the problem that the confusing legal regulation and the variety of situations that arise within the framework of public service result in public servants not always correctly identifying conflicts of interest, not avoiding conflicts of public and private interests, and persons who have ceased to work in the public service not complying with restrictions on work, restrictions on concluding contracts or using individual benefits and restrictions on representation. The aim of this article is to reveal the peculiarities of the legal regulation of conflict of interest, to analyse means of resolving conflicts of interest in the public service and restrictions for post-public servants in Ukraine and Lithuania. The authors set out a number of tasks in the article: (i) to define the concept of conflict of interest in the public service; (ii) to identify means of resolving conflict of interest in the public service in Ukraine and Lithuania; (iii) to compare the restrictions (limitations) for post-public servants in each country. The research methods employed included: (i) comparative method, comparing the regulations on conflict of interest in each country; (ii) generalisation method, to formulate conclusions; (iii) document analysis method, focusing on the legal acts and documents of Ukraine and Lithuania and (iv) statistical method, to reveal the number of investigation identifying conflict of interest in public officials' activities.

The essence of the conflict of interest, the measures applied to avoid the conflict of interest and the restrictions applied for post-public servants were analysed from different perspectives and in different contexts Pastukh (2021), Philp (1997), Reed (2008), Oleshko (2018; 2023), Soloveičik and Šimanskis (2019), Havronyuk (2018), Rivchanenko (2017), Zheng (2015), Brezis (2023), Reyes (2018), Wilks-Heeg (2015), Cortese (2011), Novikovas (2022) and others.

AI-assisted technology was not used in the preparation of this article.

1. Conflict of interest in the public service: concept, signs, types

In fact, a conflict of interest exists whenever a person has a private interest that could affect the objectivity or impartiality of a decision, even if the decision is objective, impartial and legal. A particular

danger of a conflict of interest is that it leads to a loss of public trust in the official and the authority in which he or she works (Havronyuk, 2018).
Reed believes that a conflict of interest is "a situation where a public official (civil servant) has a personal or other interest that may affect his impartiality and objective performance of official duties <…>. conflicts of interest are naturally occurring phenomena, not pathology – they are an inevitable consequence of a situation where a person occupies more than one social role" (Reed, 2008).

Nikolov provides a summary of the legislation of most European countries and highlights the following features of conflicts of interest:

- A conflict of interest is a situation that arises in the performance of professional duties.
- A person with authority and power has a personal interest in situations that may be beneficial to him.
- Such exercise of power is based on the authority he has, the source of which is usually public law.
- The interest of such a person may affect the performance of his authority or duties (Nikolov, 2013).

Different scientific sources have different approaches to defining a conflict of interest. According to Oleshko, a conflict of interest is a situation with its own preconditions, course and consequences. It is important to understand how this situation emerges, its characteristics and the possible outcomes, as well as the potential consequences (Oleshko, 2018). Understanding conflict of interest requires a set of components: situational, behavioural and consequential. Pastukh's definition of a conflict of interest as "the presence of a private interest of a public official that may affect or influence the objectivity or impartiality of decision-making or the performance or omission of actions in the exercise of discretionary official, representative, or other powers as a public official" is also noteworthy (Pastukh, 2021). According to the scientist, the components of a conflict of interest are: (i) discretionary official, representative and other public powers (including non-governmental powers); (ii) private interests of those exercising such powers; (iii) potential influence of private interests on the objectivity or impartiality of discretionary official or other public powers. It should be noted that private interest is important for establishing a conflict of interest and it could be defined as the declarant's (or that of a person close to them) interest in personal property, non-property benefits, moral obligations, duties, or similar interests in the performance of their official duties.

The case law of the European Union has also been revealed the concept of conflict of interest. One of the first cases in which a conflict-of-interest situation was discussed episodically is Ismeri Europa v Court of Auditors (Case No. T-277/97). The General Court of the European Union ruled that a conflict of interest is a situation where a person who has influence over the decision-making process uses that influence to obtain personal benefit. The Court did not separately examine the concept of conflict of interest and did not specify any criteria or characteristics of such a concept, but attempted to define such a situation, emphasising the influence of the person as a decisive factor (Judgment in Case No. T-277/97).

In the case of Nexans France v European Joint Undertaking for ITER and the Development of Fusion Energy the General Court of the European Union summarised the previous case-law of the General Court and the Court of Justice of the European Union and made some progressive findings on conflict of interest. Firstly, the Court stated that the concept of conflict of interest is objective in nature and that, in order to define it, it is necessary to disregard the intentions of the persons concerned, even if they acted in good faith. Secondly, contracting authorities are not obliged to exclude tenderers who find themselves in a situation of conflict of interest; such exclusion would not be justified in cases where it can be demonstrated that the situation did not influence their actions or that it did not distort fair competition between suppliers. Thirdly, the exclusion of a tenderer who is in a situation of conflict of interest regarding public procurement procedures is necessary only if there are no other appropriate measures to avoid infringement of the principles of equal treatment and transparency (Judgment in Case No. T-415/10)

In Cases Deloitte Business Advisory NV v Commission of the European Communities (Case No. T-195/05) and Intrasoft International SA v European Commission (Case No. T-403/12), the General Court,

interpreting the provisions of EU Regulation No 1605/2002, repealed and replaced by EU Regulation No 966/201225, stated that a conflict of interest is an appropriate legal basis for excluding a tenderer from a public procurement procedure. However, this should only be considered when the conflict of interest becomes real. This risk must be determined by assessing the tenderer and its tender since the mere theoretical possibility of a conflict of interest is not sufficient. The Court states that a conflict of interest is (i) a situation which (ii) is objective in nature and (iii) must be real and not theoretical. Furthermore, exclusion from the competition is (iv) a measure of last resort, which means that it is the exception rather than the rule.

The administrative courts of the Republic of Lithuania have also expressed their views on the assessment of conflict of interest in practice. This practice is still followed when considering cases in administrative courts. The Supreme Administrative Court of Lithuania emphasises that a conflict of interest cannot be hypothetical, but must be direct and obvious. Recognising that a person's activities are influenced by a conflict of interest, it is necessary to clearly and unambiguously indicate in each case what factual circumstances confirm the existence of a specific property or non-property interest of the person. The assessment of these circumstances cannot be based on assumptions, unrealistic or unlikely hypothetical conclusions and speculations about the possible past or future interests of a person working in the civil service (administrative case No A442-1009/2014). The law cannot be interpreted too broadly – private interest and personal interest in the decisions made must be clear and direct, and linked to the declarable data established in this law that may give rise to a conflict of interest (administrative case No A756-1601/2013). The legislator has clearly and unambiguously established the relevant legal measures that must be followed by persons working in the civil service so that the public does not have any doubts about the impartiality and transparency of decisions made in the civil service i.e. the legislator. Prohibiting persons working in the civil service from participating in the preparation, consideration or adoption of decisions, which give rise to a conflict of interest, has clearly defined what measures a person working in the civil service must take to avoid a conflict of interest situation and in what order they must be taken (administrative case No A602-230/2013.).

Under Ukrainian legislation, the specifics of preventing and resolving conflict of interest are defined in The Law of Ukraine On Prevention of Corruption (2014) in Section V. Additionally, the National Agency for the Prevention of Corruption has developed the Guidelines for the Application of Certain Provisions of the Law of Ukraine On Prevention of Corruption Regarding the Prevention and Settlement of Conflict of Interest and Compliance with Restrictions on the Prevention of Corruption (Methodological Recommendations, 2024), which are updated systematically. The latest version of the guidelines was issued on January 12, 2024 and was updated on February 3, 2025. Although these guidelines do not contain legal provisions and are purely advisory, they are intended to ensure the uniform application of the Law of Ukraine On Prevention of Corruption and to establish a consistent approach to complying with the rules for preventing and resolving conflict of interest and preventing corruption. In essence, the guidelines serve as a corruption prevention handbook for public servants, offering clear algorithms for addressing various situations and providing practical examples.

It is important to pay attention to that The Law of Ukraine On Prevention of Corruption (2014) does not contain a definition of the term “conflict of interest”. It can be defined by analysing such concepts as “potential conflict of interest”, “real conflict of interest” and “private interest”, which are enshrined in Article 1 of the aforementioned Law:

- a potential conflict of interest is the presence of a private interest in the area in which a person exercises his/her official or representative powers, which may affect the objectivity or impartiality of his/her decision-making, or the performance or non-performance of actions in the exercise of these powers;
- a real conflict of interest is a conflict between a person's private interest and his/her official or representative powers, which affects the objectivity or impartiality of decision-making, or the performance or non-performance of actions in the exercise of these powers;
- private interest means any property or non-property interest of a person, including those arising from personal, family, friendly or other non-service relations with individuals or legal entities, including those

arising from membership or activity in public, political, religious or other organisations (The Law of Ukraine On Prevention of Corruption, 2014).

Thus, it can be concluded that a conflict of interest may exist when the following three components are present simultaneously: - the person has a private interest; - the person has official powers, which he or she may exercise at his or her discretion to take actions or make decisions on the issue in which he or she has a private interest; - such official powers are discretionary, meaning the person may choose from several legally permissible actions or decisions at his or her discretion. Only when these factors are present can it be asserted that a person's private interest may affect their objectivity and impartiality when performing an action or making a decision; the person therefore has a conflict of interest (Methodological Recommendations, 2024).

It is important to remember that a conflict of interest exists whenever a person has a private interest that may affect the objectivity or impartiality of a decision, even if the decision (action) is objective and impartial and complies with the law. While a conflict of interest does not necessarily lead to an illegal decision or act, it can create such a situation and cause a crime related to official or professional activity involving the provision of public services if the conflict is not identified, assessed and resolved in a timely and proper manner (Methodological Recommendations, 2024).

Currently, the Ukrainian legal definition of "conflict of interest" consisting of a triptych of concepts – private interest, potential conflict of interest and actual conflict of interest – does not meet the requirements of legal certainty, clarity and unambiguity. There is either a conflict of interest or there is not. There cannot be “a little bit of a conflict of interest”. It would be appropriate to refer to the Law on Coordination of Public and Private Interests of the Republic of Lithuania, (1997), where Article 2(2) contains a clear definition of the concept of “conflict of interest”. It defines it as a situation in which the declarant, in the performance of his or her official duties or in the performance of his or her official assignment, is required to take or participate in a decision or to carry out an assignment that also concerns his or her private interests.

According to Soloveičik and Šimanskis, conflict of interest are not illegal in themselves. They can be the beginning of all kinds of illegal actions (civil or administrative offences, criminal acts, etc.). However, negative actions and their consequences can be avoided due to (i) appropriate legal regulation and (ii) correct behaviour of the person who finds himself in such a situation. Traditionally, a conflict-of-interest situation is not a violation of the law per se (in itself, by itself), it is rather a necessary condition for its occurrence if the responsible person or the legal ecosystem in which this person operates does not interfere. (Soloveičik & Šimanskis, 2019).

From a practical standpoint, it is important to note that a conflict of interest is not a violation in and of itself. Violations may occur when the situation is concealed or not detected in time, or when it is not properly resolved. According to the Code of Ukraine on Administrative Offenses (1984) (Article 172(7)), liability is incurred for violations of the requirements for preventing and settling conflict of interest, including: - failure to notify a person in the cases and in the manner prescribed by law of a real conflict of interest; or - taking actions or making decisions in the context of a real conflict of interest. However, parts 1 and 2 of Article 172(7) the Code of Ukraine on Administrative Offenses (1984) are broad and only describe the essence of these administrative offences. For a full definition of their features, refer to other legal and regulatory acts or bylaws that define the legal and organisational framework for Ukraine's anti-corruption system, the content and procedure for applying preventive anti-corruption mechanisms and the rules for addressing the consequences of corruption offences. This provision has general and specific content. The general content of a blanket disposition is conveyed in the verbal and documentary form of the relevant article of the Code of Ukraine on Administrative Offenses (1984) and necessarily includes provisions of other regulatory legal acts. The general content of the blanket disposition relates to defining an act as a certain type of offence and establishing administrative liability for it. The specific content of this disposition details the relevant provisions of other regulatory legal acts, filling the administrative legal provision with more specific content (Resolution of the Shevchenkivskyi District Court of Kyiv in case № 761/3217/24).

As can be seen from the explanations provided by the High Specialised Court of Ukraine for Civil and Criminal Cases in the information letter "On Bringing to Administrative Liability for Certain Corruption-Related Offenses"(2017), the analysis of the terms "potential interest" and "real interest", as defined in Article 1(1) of the Law of Ukraine On Prevention of Corruption, reveals that a potential conflict of interest differs from a real one. In a potential conflict, only the existence of a person's private interest is established. This private interest may affect the objectivity or impartiality of decision-making. In contrast, a real conflict of interest is defined as a contradiction between a person's private interests and their official or representative powers. This contradiction directly affects the objectivity or impartiality of decision-making or the performance of actions. Additionally, it also determines the degree of influence of this contradiction on decision-making or performance of an action, which should have an objective expression, as well as the temporal relationship between decision-making and the presence of certain signs that occur in this case. In other words, the difference between these concepts is that in order to establish the facts of a real conflict of interest, it is not enough to state the existence of a private interest that may potentially affect the objectivity or impartiality of decision-making, but it should be directly established that firstly, a private interest exists, secondly, it contradicts official or representative powers and thirdly, such a contradiction actually affects the objectivity or impartiality of decision-making or actions in practice.

Thus, under Ukrainian law, there is no liability for potential conflict of interest. A person may only be held administratively liable for failing to report, perform actions, or make decisions in the context of a real conflict of interest. According, Article 23(3) of the Law on Coordination of Public and Private Interests of the Republic of Lithuania, Declaring persons who have been recognised as having violated the requirements of this Law in accordance with the procedure established by legal acts may not be promoted, accepted, transferred, appointed or elected to an equivalent or higher position in an institution or in the system of institutions in which they work for one year from the date of adoption of such a decision.

Some researchers point to another type of conflict of interest: the perceived conflict of interest. According to Oleshko, a perceived conflict of interest is a situation that creates the perception, based on a sufficient set of objective features, that a conflict of interest exists or may exist when, in fact, this perception is false (Oleshko, 2023).

The conclusions and recommendations "Conflict of Interest Management in Ukraine and the National Agency for the Prevention of Corruption" prepared by Kalninsch and Hoppe (2018) also suggest introducing the term "apparent conflict of interest" into Ukraine's current anti-corruption legislation. This would align with paragraph 12 of Recommendation of the Council on OECD Guidelines for Managing Conflict of Interest in the Public Service (2004). It says that "By contrast, an apparent conflict of interest can be said to exist where it appears that a public official's private interests could improperly influence the performance of their duties, but this is not in fact the case. A potential conflict arises where a public official has private interests which are such that a conflict of interest would arise if the official were to become involved in relevant (i.e. conflicting) official responsibilities in the future".

From time to time, civil servants and other persons authorised to perform the functions of the state or local self-government may have doubts about whether they have a conflict of interest or not. To distinguish a perceived conflict of interest from a potential or real one, the National Agency for the Prevention of Corruption developed a conflict-of-interest test. Public officials can use the test to determine if they have a conflict of interest and take the necessary steps to resolve it. The test helps identify potential conflict that may arise in different situations and prevent their negative consequences. It is an important tool for ensuring transparency and integrity in the work of those authorised to perform public functions. This test is interactive and is designed to help officials quickly understand many typical problematic situations and identify conflict of interest in a timely manner. While the test does not provide answers to every question, it serves as a guide to help officials determine if they have a conflict of interest. If the test indicates that a conflict of interest exists, the official must follow the approved National Agency for the Prevention of Corruption algorithm of actions to prevent a corruption offence.

It is worth noting that the existence of such a self-testing tool in the Ukrainian anti-corruption system is consistent with Managing Conflict of Interest in the Public Sector: A Toolkit (2005), which provides a self-test for identifying conflict of interest in Section 6. This is a Short questionnaire/memory-jogger for senior managers. As explained in A Toolkit (2005) "As a diagnostic measure, senior managers and heads of public organisations can use the following short questionnaire to remind themselves of the need for personal efforts, specifically targeted, to discourage the growth of conflict of interest, corruption and misconduct in the organisations for which they are responsible".

2. Means of resolving conflict of interest in the public service

The Law of Ukraine on Prevention of Corruption (2014) provides a clear set of guidelines for individuals authorised to perform the functions of the state or local self-government to avoid or further resolve conflict of interest. Thus, they are obliged to: (i) take measures to prevent the emergence of a real or potential conflict of interest; (ii) notify no later than the next business day from the moment when the person learned or should have learned about the existence of a real or potential conflict of interest to his/her direct supervisor and in case of holding a position that does not require a direct supervisor, or in a collegial body - to the National Agency for the Prevention of Corruption or other body or collegial body determined by law, while performing the duties in which the conflict of interest arose, respectively; (iii) not to take actions or make decisions in the context of a real conflict of interest; (iv) take measures to resolve a real or potential conflict of interest.

There is a gap in the law because it does not specify what form the conflict of interest should take. The National Agency for the Prevention of Corruption has issued recommendations (Methodological Recommendations, 2024) for reporting and registering real and potential conflict of interest in writing, in accordance with the existing record-keeping system.

The Law of Ukraine on Prevention of Corruption (2014) regulates the actions of the immediate supervisor of the person / head of the body authorised to dismiss / initiate dismissal from office / the National Agency for the Prevention of Corruption. The respective entity is obliged to: (i) upon receipt of the notification of a conflict of interest, decide on the settlement of the conflict of interest of the subordinate within two business days. The manager must also notify the relevant subordinate of the decision; (ii) if he/she becomes aware of a conflict of interest (from other persons, corruption reports, The National Agency letters, etc.), take measures provided by the Law to prevent and resolve the conflict of interest of the subordinate.

If a person (who holds a position that does not involve a direct supervisor) reports a conflict of interest to the National Agency for the Prevention of Corruption, he or she must be advised of the procedure for resolving such a conflict of interest. At the same time, the National Agency for the Prevention of Corruption, unlike the direct supervisor of the person with a conflict of interest, is not empowered to make decisions on the settlement of the conflict of interest.

Any person with doubts about a potential conflict of interest may apply to the National Agency for the Prevention of Corruption for clarification. The Law of Ukraine on Prevention of Corruption (2014) states that if a person has not received confirmation of the absence of a conflict of interest, he or she must act in accordance with the requirements of this law. The Law provides certain immunity to a person who has received confirmation from the National Agency for the Prevention of Corruption that he or she has no conflict of interest. In this case, the person is exempt from liability, even if their actions are later found to constitute a conflict of interest.

The legal acts of the Republic of Lithuania regulate the obligation to declare a conflict of interest and to recuse oneself from decision-making in a very similar way. In article 11(1) of Law on Coordination of Public and Private Interests of the Republic of Lithuania (1997) a declarant shall be prohibited from participating in the preparation, deliberation or adoption of decisions, or from otherwise influencing or attempting to influence them, or from performing other official duties (hereinafter referred to as "the performance of official duties") if the official duties performed are related to his private interests. Before

performing or commencing the performance of official duties, the civil servant must inform the head of the institution or establishment or the person authorised by him or another entity accepting or appointing to office, or a collegial state or municipal institution (where the declarant is a member of a collegial state or municipal institution) and persons who perform official duties together, of the cases referred to in Article 11(1) and to declare dismissal and not to participate in any form in the further performance of official duties (Article 11(2)).

Accordingly, administrative courts specify the provisions of the law, indicating that the following rules of conduct are established for a person working in the civil service:

1) prohibition to participate in the preparation, consideration or adoption of decisions or otherwise influence decisions that cause a conflict of interest;
2) obligation to inform the head of his institution and persons who are also participating in the preparation, consideration or adoption of a decision about the existing conflict of interest and to declare his withdrawal from the adoption of such a decision;
3) the head of the institution or his authorised representative may not accept the declared withdrawal and oblige the person to participate in the subsequent procedure. The Supreme Administrative Court of Lithuania indicates that it follows from these legal norms that the rules of conduct established therein for a person working in the civil service become mandatory and must be implemented in cases where a situation arises that meets the criteria of a conflict of interest arising between private and public interests (administrative case No. eA-1446-520/2021).

Novikovas indicates that the declaring person is prohibited from performing official duties if the official duties performed are related to his private interests. Accordingly, the declaring person must, before performing official duties or after starting to perform them, firstly, inform the head of the institution about the indicated cases, secondly, declare his resignation and thirdly, not participate in any form in the further performance of official duties. Public administration entities must prepare written preliminary recommendations, which would clearly indicate from which official duties the civil servant must resign. The head may not accept the resignation of the declaring person only in exceptional cases (Novikovas, 2022).

The Supreme Administrative Court of Lithuania has stated that there are no exceptions when a person working in the public service may not inform his/her direct superior or an authorised representative of the head of the institution and persons who are also participating in the procedure for preparing, considering or adopting a decision about the existing conflict of interest and not withdraw from participating in the procedure for preparing, considering or adopting a decision that causes a conflict of interest. The Supreme Administrative Court of Lithuania has also stated that a circumstance regarding whether a person working in the public service, having violated the prohibition on participating in the preparation, consideration or adoption of decisions or otherwise influencing decisions that cause a conflict of interest, achieved the desired result is not legally significant (administrative case No. A146-2624/2012).

A specific procedure for resolving conflict of interest is provided for members of collegial bodies. This includes local self-government bodies, such as city, regional and district council deputies; members of the Antimonopoly Committee of Ukraine; and so on. If a member has a real or potential conflict of interest, he or she is not entitled to participate in this body's decision-making process. Any other member of the relevant collegial body or meeting participant directly concerned with the issue under consideration may declare the conflict of interest of such a person. Any conflict of interest statement made by a member of a collegial body must be recorded in the minutes of the collegial body's meeting. However, there may be situations in which the relevant person's failure to participate in this body's decision-making process could result in the entire body losing its competence. According to the law, this person's participation in decision-making is subject to external control, as determined by the relevant collegial body.

In addition, the following entities are subject to the rules of special legislation governing the status of the respective persons and the principles of organisation: the President of Ukraine; members of the Parliament of Ukraine; members of the Cabinet of Ministers of Ukraine; heads of central executive bodies that are not members of the Cabinet of Ministers of Ukraine; judges; judges of the Constitutional Court of Ukraine; heads and deputy heads of regional and district councils; city, village and settlement heads; secretaries of city, village and settlement councils; and deputies of local councils.

For example, the procedure for resolving conflict of interest among judges of the Constitutional Court of Ukraine is quite complex and different from others, since according to the Law of Ukraine on the Constitutional Court of Ukraine (2017), it is a collegial body of constitutional jurisdiction. If a judge of this body has a conflict of interest, he or she cannot participate in preparing, considering, or adopting decisions, nor can he or she exercise other powers in matters in which he or she has a conflict of interest. A judge must inform the Constitutional Court of Ukraine in writing of a conflict of interest within one working day and recuse himself or herself. For the same reason, participants in constitutional proceedings may also recuse themselves from the Constitutional Court (Law on the Constitutional Court, 2017), Article 60). Recusal (self-recusal) is applied, in particular, if: - the judge is directly or indirectly interested in the outcome of the case; - the judge is a family member or close relative of the persons involved in the case; there are other circumstances that cast doubt on the objectivity and impartiality of the judge. Failure of the Constitutional Court judge to notify the Constitutional Court of a real conflict of interest, or to take actions or make decisions in the context of a real conflict of interest will also entail administrative liability under the Article 172(7) of Code of Ukraine on Administrative Offences (1984).

However, the question remains whether there will be a conflict of interest for the Constitutional Court judge who has recused himself or herself from a case (where he or she may have a potential/real conflict of interest), but such recusal was not satisfied by this collegial body. Thus, in the Resolution of the Holosiivskyi District Court of Kyiv in (case № 752/5194/21), the court pointed out that it was impossible to bring the Constitutional Court judge in respect of administrative responsibility, since the judge's application for recusal was submitted to the Grand Chamber of the Constitutional Court of Ukraine, but the Grand Chamber refused to satisfy it. Additionally, the resolution emphasises that the Constitutional Court of Ukraine is a collegial body and that all of its decisions are made by majority vote. It also stresses that there is no direct or immediate causal link between voting and the decision-making of particular judges.

It is worth noting that Law on Coordination of Public and Private Interests of the Republic of Lithuania (1997) contains a similar provision for the recusal of members of collegial bodies. Thus, a person is obliged to comply with the preliminary written recommendations of the first supervisor, head of an institution or establishment, or an authorised representative in connection with the performance of official duties from which he or she is obliged to refrain. These recommendations are based on declarations and data from the Conflict of Interest Risk Management Information System, or at the person's request. The collegial body shall suspend the person in question from performing official duties by a reasoned written decision if there are sufficient grounds to believe that his or her participation is related to private interests and may lead to a conflict of interest (Article 11).

As we can see, neither Ukrainian nor Lithuanian legislation provides a clear answer to the above question. We believe that the situation in which a member of a collegial body participates in adopting a joint decision, after submitting a self-recusal that the collegial body did not address, requires clear provisions in Ukraine's current anti-corruption law.

Ukrainian legislation provides for a number of measures to resolve conflict of interest: - self-settlement; - external settlement. The choice of a particular measure depends on a number of factors: the type of conflict; its duration; the status of the entity that has arisen and the entities authorised to resolve it; the presence (absence) of a person's consent to the application of a particular measure; the form of settlement (oral or written), etc. (Pastukh, 2021).

Self-settlement. Persons authorised to perform the functions of state or local self-government who have a real or potential conflict of interest may independently resolve it by divesting themselves of the relevant private interest. They must also provide supporting documents to their immediate supervisor or the head of the body authorised to initiate dismissal. It is important that divesting oneself of the private interest exclude any possibility of concealing it.
In fact, the relevant person must constantly compare each decision or action (or inaction) to the possibility of a conflict between private and public interests, considering how to avoid such a conflict. Even a person who takes all possible measures in good faith to prevent a conflict of interest may face a conflict between private interests and official (representative) powers.

The point of view of Havronyuk is interesting, as he points out that the clause to Article 28(1)(1) of the Law of Ukraine on Prevention of Corruption should not be interpreted restrictively (in relation to the ability to fulfil the obligation provided for by this provision). In this case, the legislative requirement to prevent at least a potential conflict of interest may sometimes (especially given the diversity of private interests of the obliged person as a member of society and a professional in a particular field) be perceived as excessive (Havronyuk, 2018).

In summary, the current Law of Ukraine on Prevention of Corruption (2014) does not allow for any other means of independently resolving conflict of interest besides relinquishing the relevant private interest and providing supporting documents. Thus, conflict of interest will most often be resolved by external measures.

The external settlement of the conflict of interest is carried out by applying a number of measures by the direct supervisor or the head of the body authorised to dismiss (initiate dismissal) of a person from his/her position: (i) removal of the person from performing a task, taking actions, making a decision or participating in its making in conditions of a real or potential conflict of interest; (ii) application of external control over the performance of the relevant task, taking certain actions or making decisions; (iii) restriction of the person's access to certain information; (iv) review of the scope of the person's official powers; (v) transfer of the person to another position; (vi) dismissal of the person.

Each of these measures to resolve a conflict of interest has its own specifics since it is chosen depending on a number of conditions: - the type of conflict of interest (potential or real); - its duration (permanent or temporary); - the subject of the decision to apply it (direct supervisor and/or head of the relevant body, enterprise, institution, organisation); - the presence (absence) of alternative settlement measures; - the presence (absence) of the person's consent to the application of the measure (regarding transfer); - the possibility of involving other employees in decision-making (regarding removal from the task) (Methodological Recommendations, 2024).

Whether a particular method can be applied to resolve a conflict of interest depends on the nature of the conflict. Depending on the duration of the conflict, the following method may be applied:

- In case of a conflict of interest that is permanent, the following are applied: -restriction of a person's access to certain information; -review of the scope of a person's official powers; -application of external control over the performance of a person's relevant task, performance of certain actions or decision-making; -transfer of a person to another position; -dismissal of a person;
- In case of a conflict of interest that is temporary in nature, the following shall be applied: - removing a person from performing a task, taking actions, making a decision or participating in its adoption in conditions of a real or potential conflict of interest; - applying external control over the performance of a person's relevant task, taking certain actions or making decisions.

Rivchanenko rightly points out that the grounds and procedures for applying measures to resolve a conflict of interest must be thoroughly regulated to avoid gaps that could lead to abuse and reduce the effectiveness of the anti-corruption preventive mechanism. At the same time, the choice of measures to resolve conflict of interest should aim to ensure an optimal balance of interests: (i) the individual with the conflict of interest; (ii) the direct subject of the conflict of interest settlement; (iii) other legal entities

entering into legal relations with the direct subject of the conflict of interest settlement; (iv) the state or territorial community (Rivchanenko, 2017).

Regarding the process of the declarant's withdrawal, it should be additionally mentioned that Lithuanian legislation provides for the possibility of not accepting the withdrawal declared by the declarant. Article 11(3) of Law on Coordination of Public and Private Interests of the Republic of Lithuania (1997) states that the head of an institution or establishment or a person authorised by him or her or another entity accepting or appointing to office, or a collegial state or municipal institution (when the declaring person is a member of a collegial state or municipal institution) may, in accordance with the criteria established by the Chief Official Ethics Commission of Lithuania, refuse to accept the withdrawal of the declarant person by a reasoned written decision and oblige him or her to continue performing official duties.

In a Decision of the Chief Official Ethics Commission of Lithuania "On approval of the criteria for not accepting the withdrawal of a person declaring private interests"(2019). It is stated that a withdrawal shall not be accepted:

1) in the opinion of the head of the institution or his/her authorised representative, the entity accepting or appointing the head of the institution or institution to office, or a collegial state or municipal institution, the circumstances indicated by the person who has declared the withdrawal do not constitute sufficient grounds for a conflict of interest to arise;
2) if the withdrawal declared by the person declaring private interests is accepted, there would be no possibility of making a decision;
3) the issue under consideration relates to public services of institutions, institutions, enterprises or companies (e.g. education, healthcare, telecommunications, heat energy, water supply, utilities, etc.) used by the person declaring private interests or their close relatives, except in cases where: i) if the decision is adopted, these persons would use such services on exceptional conditions and offers provided due to the position held by the person declaring private interests, or ii) the issue under consideration is clearly and directly related to the private interests of the person declaring private interests or persons close to them.

A similar provision on the right not to be obliged to withdraw oneself applies to the head of institution as well. Article 11(4) of the Law on Coordination of Public and Private Interests of the Republic of Lithuania (1997) provides that he head of an institution or establishment shall not be obliged to withdraw oneself when deciding current internal administration issues related to him or her (except for issues regarding all kinds of bonuses, granting of benefits, other substantially similar payments), unless otherwise provided for in legal acts. In such a case, the head of an institution or establishment, while performing his official duties, must comply with the obligations imposed on declarants.

These provisions on the non-acceptance of the withdrawal of a person declaring private interests and on the possibility of a head of institution not to withdraw from decision-making allow a more flexible approach to the process of decision-making and an objective assessment of all circumstances relevant to the emergence of real conflicts of interest. Accordingly, similar regulation should be established in Ukrainian legislation.

When examining the National Agency for the Prevention of Corruption's law enforcement practice of identifying conflict of interest in public officials' activities over the past three years (since Russia's full-scale invasion of Ukraine), the following should be noted. According to the Conclusion of the Public Council of the National Agency for the Prevention of Corruption on the Report on the activities of the National Agency for the Prevention of Corruption, 2023, (2024), in 2022, the National Agency for the Prevention of Corruption drew up 72 administrative protocols on conflicts of interest and violations of anti-corruption restrictions. In 2023, the National Agency for the Prevention of Corruption drew up 31 protocols under Article 172(7) of the Code of Ukraine on Administrative Offences (1984) (regarding conflict of interest). In 2024, they drew up 11 protocols. According to the National Agency for the Prevention of Corruption, the decrease in the number of recorded cases of violations of the conflict of interest legislation is an indicator of increased awareness of public officials of the requirements of anti-

corruption legislation (Conclusion of the Public Council of the National Agency for the Prevention of Corruption on the Report on the activities of the National Agency for the Prevention of Corruption, 2024, (2025)).

A similar trend regarding a decrease in violations of the Law on Coordination of Public and Private Interests of the Republic of Lithuania (1997) is also observed in the Republic of Lithuania. As indicated by the Chief Official Ethics Commission of Lithuania, the number of reports received regarding violations of the Law on Coordination of Public and Private Interests of the Republic of Lithuania (1997) is decreasing, in 2024 215 reports were received (in 2023 – 247). Many reports do not meet the established content requirements, i.e. data and information are not indicated, without which it is impossible to initiate an investigation, or the investigation of the specified circumstances is not within the competence of the Chief Official Ethics Commission of Lithuania, therefore, investigations are not initiated in such cases. The share of established violations remains high. In 2024, 28 investigations were conducted; violations were established in 25 of these cases (in 3 cases no violations were established or the investigation was terminated) (Report on the Activities of the Chief Official Ethics Commission, 2025). In addition, the decrease in the number of investigations is determined by pre-emptive actions, i.e. initial analysis of the report, calls to clarify declarations, etc., which are applied only in justified cases. The Chief Official Ethics Commission of Lithuania also follows the practice developed by the courts and establishes violations only in the case of a direct, obvious conflict of interest when the official actions performed by the person are clearly related to his private interests (Report on the Activities of the Chief Official Ethics Commission, 2025).

It is worth agreeing with Rivchanenko, who highlights the diversity of conflicts of interest due to the varied practices of public administration bodies and other legal entities of public law. This diversity also explains the ambiguity of court practices when considering cases under Article 172(7) of the Code of Administrative Offenses (1984) for violations of conflict-of-interest prevention and resolution requirements (Rivchanenko, 2017).

3. Restrictions after dismissal from public service (“cooling-off period”)

Restrictions after termination of activities related to the performance of public service functions, established today by legislation in both Ukraine and Lithuania, are of great importance for building a professional and ethical public service and for preventing and countering conflict of interest among public officials (public servants). This concerns the legislative enshrinement of the so-called “cooling-off period” requirement for a former public official, which is understood as a legally or institutionally established interval after leaving office during which the former official is prohibited from engaging in certain types of activities defined by law. The use of cooling-off periods has become the most common response to dealing with post-public employment conflicts. This means that, for a certain period, former members of government or public office holders are prohibited from undertaking tasks in the private sector related to their previous public duties (Transparency International, 2015). It is considered that the importance of this period lies in the fact that it: 1) prevents conflict of interest – the former official cannot immediately use official connections and insider information for the benefit of private entities; 2) preserves public trust in the public service – citizens see that public office is not a “springboard” for a lucrative private career through personal contacts; 3) reduces the risk of corruption and undue influence – it limits the possibility of making “informal arrangements” while still in office; 4) ensures integrity and impartiality – decisions during service are made without considering future personal gain in the private sector.

Resolution of the Constitutional Court of the Republic of Lithuania "On Civil Service" (2004) states that the constitutional requirements for the civil service system may lead to the fact that, in order to avoid conflicts of interest, ensure trust in the civil service and protect other constitutional values, certain requirements are also established for former civil servants. By agreeing to work in a specific job, one acquires not only rights but also takes on certain obligations that must be observed. When establishing such restrictions, it is necessary to observe the norms and principles of the Constitution in all cases; the restrictions must be proportionate to the legitimate and socially significant goal pursued, which is necessary in a democratic society. The restrictions on work established in the Law on Coordination of

Public and Private Interests of the Republic of Lithuania are one of the important measures for the prevention of not only conflicts of interest but also corruption, helping to combat the arbitrary use of power, creating and consolidating trust in the government and its institutions. The so-called cooling-off period is an effective measure to deal with conflicts of interest that may arise when taking up employment after ceasing to hold public office(Constitutional Court of the Republic of Lithuania, 2004).

The establishment of a "cooling-off period" prevents the risk of "revolving doors" – a phenomenon where public officials, after leaving office, move to work for private companies whose activities they previously regulated, controlled, or had official relations with. Conversely, it also covers cases where business representatives move into government positions while maintaining ties with their former employers. The practice of revolving doors refers to the movement of individuals between public and private employment (Zheng, 2015). The "revolving door" is a widespread phenomenon in developed countries, where heads and top officials of state agencies, after completing their bureaucratic terms, transition into positions within the sectors they formerly regulated (Brezis, 2023). According to Reyes (2018) and Wilks-Heeg (2015), this practice creates fertile ground for corruption and influence-peddling. In any case, this phenomenon negatively impacts decision-making processes to the detriment of the public interest (Cortese, 2011). As Brezis emphasises, the utilisation of the revolving door can be explained by greed, manifested as an "abuse of power" through the creation of "bureaucratic capital". Essentially, regulators have the potential to increase their lifetime compensation by generating a novel form of capital – "bureaucratic capital" – during their tenure in office. Bureaucratic capital refers to rules and regulations established by regulators that are unnecessary and adversely affect economic efficiency. It also includes the accumulation of an extensive contact list through investment in good relationships with lower-level bureaucracy, ties that will benefit the official in the future (Brezis, 2023). Pons-Hernández describes the "revolving door" as a form of state-corporate crime that requires a broader consideration of the original concept (Pons-Hernández, 2022).

The cooling-off period required at the end of a term of office, which is becoming more common in ethics policies worldwide, including US and EU (Avril, L., & Korkea-aho, 2024). The normative establishment of the "cooling-off period" requirement for a former public official is considered one of the basic international standards for combating corruption in the public service according to a number of international acts. In particular, the United Nations Convention against Corruption (2003), in Article 12(e), provides that anti-corruption measures inter alia may include "preventing conflict of interest by imposing restrictions, as appropriate and for a reasonable period of time, on the professional activities of former public officials or on the employment of public officials by the private sector after their resignation or retirement, where such activities or employment relate directly to the functions held or supervised by those public officials during their tenure" (UN Convention, 2003).

The advisability of establishing the "cooling-off period" requirement for public officials after their dismissal is also provided for in European legal acts, including "soft" law instruments. In particular, the Recommendation of the Council on Improving Ethical Conduct in the Public Service Including Principles for Managing Ethics in the Public Service (1998), provide a framework requirement that there should be clear guidelines for interaction between the public and private sectors (Recommendation, 1998). Recommendation No. R(2000)10 of the Committee of Ministers to member states on codes of conduct for public officials (2000), establishes a detailed list of requirements regarding the "cooling-off period" for former public officials: a) the public official should not take improper advantage of his or her public office to obtain the opportunity of employment outside the public service; b) the public official should not allow the prospect of other employment to create for him or her an actual, potential or apparent conflict of interest. He or she should immediately disclose to his or her supervisor any concrete offer of employment that could create a conflict of interest. He or she should also disclose to his or her superior his or her acceptance of any offer of employment; c) in accordance with the law, for an appropriate period of time, the former public official should not act for any person or body in respect of any matter on which he or she acted for, or advised, the public service and which would result in a particular benefit to that person or body; d) the former public official should not use or disclose confidential information acquired by him or her as a public official unless lawfully authorised to do so (Recommendations, 2000).

The provisions of the aforementioned international acts are implemented both in Ukraine and Lithuania, albeit with national legislative modifications. In Ukraine, the corresponding requirements have received the formal title of "restrictions after termination of activities related to the performance of state or local government functions" and are systematised in Article 26 of the Law of Ukraine on Prevention of Corruption (2014). Such restrictions the following components.

The first component of the prohibition consists in the ban on employment and contract conclusion with subjects defined by law. It is stipulated that public officials who have resigned or otherwise terminated activities related to the performance of state or local government functions are prohibited, for one year from the date of termination of the respective activity, from: (a) entering into employment contracts or (b) performing transactions in the field of entrepreneurial activity with private law legal entities or individual entrepreneurs, if such public officials exercised powers of control, supervision, or preparation or adoption of relevant decisions regarding the activities of these private legal entities or individual entrepreneurs within one year prior to the termination of their public functions.

The prohibition on employment in a similar manner is defined in article 15 of Law on Coordination of Public and Private Interests of the Republic of Lithuania (1997). A person who, in the performance of the duties, during the last one year of his employment in this position, directly prepared, considered or made decisions related to the supervision or control of the activities of a legal entity (regardless of its legal form and ownership) or decisions by which funds were allocated to this legal entity from the state or municipal budgets and monetary funds of the Republic of Lithuania, or other decisions relating to property, after leaving the office, he may not hold office for one year in the legal person referred to in this Article, unless otherwise provided for under other laws.

Restrictions on concluding contracts are provided for in another Article 16 of the Law on Coordination of Public and Private Interests of the Republic of Lithuania (1997). A person who has ceased to work in the public service, or a legal person in which he or persons close to him owns more than 10 percent of the shares or other rights of a participant in a legal entity in legal entities of other legal forms, shall not be entitled for one year to enter into contract with the institution or institution in which this person has been employed for the last year (Article 16(1)). The restrictions shall not apply in respect of a contract concluded before the person took up the public service or one that is being renewed, as well as a contract concluded by public tender and a contract of an amount not exceeding EUR 5,000 per year.

Methodological Recommendations (2024), specify the details of this prohibition: (a) the said restriction applies only to the conclusion of employment contracts or transactions in the field of entrepreneurial activity with private law legal entities or individual entrepreneurs. Accordingly, this restriction does not apply to concluding employment contracts or performing transactions with state authorities, state or municipal enterprises, other public law legal entities, or individuals; (b) it concerns the actual exercise of powers of control or supervision; therefore, mere possession of such powers, if they were not exercised in relation to a specific private law legal entity or individual entrepreneur, does not prohibit subsequently concluding employment contracts or transactions with such persons; (c) control usually means a system of measures aimed at checking and ensuring compliance with laws, rules, norms and procedures in various fields of activity. Forms of control and supervision are defined by law (e.g., inspections, audits, reviews, examinations); (d) the exercise of such powers or decision-making must have occurred within one year prior to the termination of the state or local government functions, i.e., dismissal from office or termination of the respective status (Methodological Recommendations, 2024).

When analysing the restrictions on work provided for in Article 15 of the Law on Coordination of Public and Private Interests of the Republic of Lithuania, It should be noted, that this regulation provides for the direct participation of a person in the preparation, consideration or adoption of decisions. <...> In the absence of data on the instructions given by V. A. to subordinate persons to make decisions, as defined in Article 15 of Law on Coordination of Public and Private Interests of the Republic of Lithuania, the decisions made by subordinate persons, when assessing V. A.'s behaviour, cannot be equated with V. A.'s direct participation in the adoption of such decisions (administrative case No. eA-

180-556/2025). The Supreme Administrative Court of Lithuania presupposes the conclusion that not absolutely all decisions lead to the prohibition established in Article 15 of the Law on Coordination of Public and Private Interests of the Republic of Lithuania. The legislator in Article 15 of the Law on Coordination of Public and Private Interests of the Republic of Lithuania speaks only about such decisions that 1) a person directly prepared, considered or adopted and 2) which are related to the supervision or control of the activities of a legal person (regardless of its legal form and ownership) (only to the extent relevant to the dispute) (the speaker may speak). Thus, first of all, the condition is that those decisions are prepared, considered or adopted directly by a specific person and secondly, the decisions prepared, considered or adopted by a specific person must be related to the supervision or control of the activities of a legal person (administrative case No. eA-180-556/2025).

Violation of the prohibition regarding employment and contract conclusion under Ukrainian legislation does not entail legal liability. However, violations entail other legal consequences. In the event of a violation, upon a request from the National Agency for the Prevention of Corruption, the court must: (a) terminate the employment contract if the person violated the prohibition on concluding employment contracts with private law legal entities or individual entrepreneurs whose activities the person controlled or influenced through preparation and/or adoption of decisions within one year prior to that; (b) declare the transaction invalid if the person violated the prohibition on performing transactions in the field of entrepreneurial activity with such private law legal entities or individual entrepreneurs Law of Ukraine on Prevention of Corruption (2014). Thus, in the absence of legal liability, the National Agency for the Prevention of Corruption's court appeal remains the only effective lever to restore lawful conditions. For example, in July 2021, the National Agency for the Prevention of Corruption filed a lawsuit with the Shevchenkivskyi District Court of Kyiv to terminate the contract between the National Joint Stock Company "Naftogaz of Ukraine" and the company's chairman, Yurii Vitrenko. Previously, the chairman held the position of Deputy Minister of Energy of Ukraine and acted as the Minister, simultaneously influencing Naftogaz of Ukraine.

The second component of the prohibition concerns the disclosure (use) of information. The law establishes that public officials are prohibited from disclosing or otherwise using information that became known to them in connection with the performance of their official duties for their own benefit, except in cases established by law. This prohibition is indefinite (Methodological Recommendations, 2024). The phrase "for their own benefit" is understood to mean that the individual is forbidden from using the information both for selfish motives and for other personal interests or the interests of third parties (Havronyuk, 2018). At the same time, exceptions to the prohibition may be provided by law. In particular, according to Article 29 of the Law of Ukraine on Information (1992), subjects of information relations are exempt from liability for disclosing information with restricted access if the court determines that this information is socially necessary, i.e., it is a matter of public interest and the public's right to know this information outweighs the potential harm caused by its dissemination. Information considered to be of public interest includes that which: a) indicates a threat to the state sovereignty or territorial integrity of Ukraine; b) ensures the realisation of constitutional rights, freedoms and duties; c) indicates possible violations of human rights, misleading the public, harmful environmental and other negative consequences of actions (or inactions) by individuals or legal entities, etc.

Violation of this component of the prohibition, under the set of conditions provided by law, may entail criminal liability. Criminal liability for the illegal use (including disclosure) of information obtained in connection with the performance of official duties arises – depending on the specific type of information and other circumstances – under Articles 163, 168, 182 and 359 (confidential personal information), 159 (voting secrecy), 231 and 232 (commercial and banking secrecy), 232-1 (insider information), 328, 381 and 422 (state secret), 330 (official information), 387 (pre-trial investigation data), 209-1, 387 (other types of information) and several other articles of the Criminal Code of Ukraine (2001).

The Law on Coordination of Public and Private Interests of the Republic of Lithuania does not establish a prohibition for persons who have ceased to work in the public service to disclose information that they received while performing their duties. However, the Criminal Code of the Republic of Lithuania (2000) provides for liability for persons who have ceased to work in the public service for the disclosure of various prohibited

information, for example, Article 125 of the Criminal Code of the Republic of Lithuania (Disclosure of a state secret); Article 168 (Unlawful disclosure or use of information about a person's private life); Article 211 (Disclosure of a commercial secret); Article 297 (Disclosure of an official secret).

The third component of the prohibition concerns the ban on representation. The law stipulates that public officials are prohibited for one year from the date of termination of their respective activities from representing the interests of any person in matters (including court cases) where the other party is an authority, enterprise, institution, or organisation in which they worked at the time of termination of such activity. The National Agency for the Prevention of Corruption Methodological Recommendations clarify that the term "authority in which the person worked" should be understood as a state body acting as a subject of public authority. In certain cases, the prohibition also extends to matters where the other party is a legal successor of the authority, enterprise, institution, or organisation in which the individuals authorised to perform state or local government functions worked at the time of termination of their activity. The prohibition applies to cases related to the functions and powers performed by the terminated authority and/or decisions, actions, or inactions of its officials. If the matter is unrelated to this, the prohibition does not apply and representation of interests is allowed accordingly. Violation of this component of the prohibition does not entail legal liability.

Similar limitations are established in the Law on Coordination of Public and Private Interests of the Republic of Lithuania (1997). Article 17 (Limitations of representation) of Law on Coordination of Public and Private Interests of the Republic of Lithuania provides, that person who has ceased to work in the public service may not represent natural persons or legal persons for one year in the institution or institution in which he has worked for the last one year, or, if the institution in which he has worked for the last year, in any institution of this system of establishments (Article 17(1)). Also, a person who has ceased to work in the public service may not represent natural or legal persons in institutions and establishments for the duration of one year with regard to issues that have been assigned to their official duties (Article 17(2)). Restrictions on representation do not apply to a person working in the public service who acts as a representative of a natural person under the law (father (adoptive parent), mother (adoptive mother) of a child, guardian (caretaker) of a child or a guardian (caretaker) of an adult person appointed by a court in accordance with the procedure established by law).

As indicated by the Chief Official Ethics Commission, representation, both in legal theory and in civil legal relations, is the implementation of rights or obligations through a representative who performs certain legal actions on behalf of the represented person. Representation is also a legal relationship when one person, without exceeding the limits of the powers granted to him, performs certain procedural (procedural) and other actions of legal significance on behalf and in the interests of another person. Representation is considered to be the conclusion of a transaction by one person (representative) on behalf of another person (principal), without exceeding the granted rights, thereby directly creating, changing or terminating the civil rights and obligations of the represented person (Article 2.133(1) of the Civil Code o Lithuania). The Chief Official Ethics Commission emphasises that the Law on Coordination of Public and Private Interests of the Republic of Lithuania does not establish a specific formalisation of representation (in writing or the like) and the method of representation - physical or remote, remunerated or unpaid. The method of formalising the representation and defence of interests is also not taken into account in the practice of the Supreme Administrative Court of Lithuania - the actions of a person working in the civil service are assessed and not the method of formalising the representation of interests. Thus, representation should be understood as any legal action performed on behalf of another person (in this case, a legal entity). (Decision dated 16 July 2025 No. KS-2025).

In practice, there are a number of disputes regarding the status of persons (un)able to represent natural persons or legal persons in the institution in which he has worked. In the case under consideration, it was established that the plaintiff's representative, the chief specialist, holds the position of a career civil servant both in Kaunas District Court and with the plaintiff. Article 2(5)(3), of the Law on Coordination of Public and Private Interests of the Republic of Lithuania provides that civil servants are classified as persons working in the public service. Thus, the chief specialist, transferred to work with the plaintiff by way of official rotation from 1 June 2023, has not ceased to work in the public service and continues

to work there except they are in another public legal entity and therefore the restriction on representation provided for in Article 17(1), of the Law on Coordination of Public and Private Interests of the Republic of Lithuania does not apply to them. The same conclusion is presented in the opinion of the Chief Official Ethics Commission (civil case No. e2S-807-1041/2024).

Component of the Restrictions		**Conditions for application of the Restrictions**	**Duration of the Restrictions**	**Possibility of legally avoiding the Restrictions**	**Legal liability for violation of the prohibition**
Ukraine	1) Prohibition on employment	It is prohibited to conclude employment contracts and engage in transactions in the sphere of entrepreneurial activity with private-law legal entities or sole proprietors if, within one year prior to termination of the exercise of state or local self-government functions, the person exercised powers of control, supervision, or preparation/adoption of relevant decisions regarding the activities of such legal entities or sole proprietors	Within one year from the date of termination of the relevant activity	None	Not provided. At the request of the National Agency for the Prevention of Corruption, relevant employment contracts may be terminated and transactions may be declared invalid
	2) Prohibition on transactions				
	3) Prohibition on disclosure (use) of information	It is prohibited to disclose or otherwise use for personal purposes information obtained in connection with the performance of official duties, except in cases provided by law	Indefinitely	None	Criminal liability related to disclosure (use) of defined information (Articles 163, 168, 182, 359, 159, 231, 232, 328, 381, 422, 330 and others of the Criminal Code of Ukraine)
	4) Prohibition on representation	It is prohibited to represent the interests of any person in cases (including those considered by courts) if the other party is the body, enterprise, institution, or organisation in which the person worked at the time of termination of the specified activity	Within one year from the date of termination of the relevant activity	None	Not provided
Lithuania	1) Prohibition on employment	It is prohibited to hold positions in a legal entity if, in the course of performing official duties, the person directly prepared, reviewed, or adopted decisions related to the supervision or control of the activities of the legal entity (regardless of its legal form or form of ownership), or decisions by which this legal entity was allocated funds from the state or municipal budgets and monetary funds, or other	Within one year from the date of termination of the relevant activity	Possible. By individual decision, if this does not contradict the objectives of the Law and other legal acts regulating ethics and conduct	Not provided. At the request of the Chief Official Ethics Commission of Lithuania, relevant employment contracts may be terminated

		decisions related to property, unless otherwise provided for by other laws			
	2) Prohibition on concluding transactions and using other individual advantages	It is prohibited to conclude transactions with the institution or body in which the person worked, as well as to use individual benefits granted by this institution or body	Within one year from the date of termination of the relevant activity	Possible. By individual decision, if applying the restrictions could harm the interests of society or the state	Not provided. At the request of the Chief Official Ethics Commission of Lithuania, transactions may be declared invalid
	3) Prohibition on disclosure (use) of information	The Law on Coordination of Public and Private Interests of the Republic of Lithuania does not establish a prohibition for persons who have ceased to work in the public service to disclose information that they received while performing their duties.	Indefinitely	None	Criminal liability related to disclosure (use) of defined information (Articles 125; 168; 211; 297 of the Criminal Code of Lithuania)
	4) Prohibition on representation	It is prohibited to represent natural persons (except for exceptions) or legal persons for one year in the institution or body and to represent a natural or legal person in institutions or bodies on issues that were within one's official duties	Within one year from the date of termination of the relevant activity	Possible. By individual decision, if applying the restrictions could harm the interests of society or the state	Not provided

Table 1. Comparative Analysis of "Cooling-Off" Restrictions in Ukraine and Lithuania

As can be seen from the information provided in the table, the restrictions (limitations) and liability applied post-public servants that have ceased to work in the public service are similar in both Lithuania and Ukraine. Administrative or criminal liability is not provided for persons who have violated the restrictions. According to Article 18(1)(5) of the Law on the Chief Official Ethics Commission of Lithuania (2008), the Chief Official Ethics Commission of Lithuania may propose to the head of an institution or agency or to the entity appointing or appointing the head of an institution or to a collegial state or municipal institution to impose official (disciplinary) penalties on persons who have committed violations of the Law on the Coordination of Public and Private Interests or the Law on Lobbying Activities. The Chief Official Ethics Commission of Lithuania may also make a proposal to the head of an institution or agency, or to the entity accepting or appointing the head of an institution, or to a collegial state or municipal institution to repeal, suspend or amend legal acts, decisions or transactions that do not comply with the requirements of the Law on the Coordination of Public and Private Interests or the Law on Lobbying Activities, or to propose to take preventive measures to prevent violations of legal acts (Article 18(1)(6)). If the proposals of the Chief Official Ethics Commission of Lithuania are not implemented in the specified cases, it may file claims (submit applications) with the court for the termination or invalidation of public service relations, employment contracts and transactions.

According to the authors, such measures are insufficient for persons who have violated the requirements of the restrictions. Such persons should be subject of administrative liability. Article 533 of the Code of Administrative Offenses of the Republic of Lithuania (2015) provides for liability for gross violation of the prohibiting, binding or restrictive provisions of the Law on Coordination of Public and Private Interests of the Republic of Lithuania. According to Article 23(7) of the Law on Coordination of Public and Private Interests of the Republic of Lithuania, it is recognised that the declaring person has grossly violated the provisions of this law if:

1) the provisions of this law are violated, although the declaring person has already been provided with prior written recommendations on which decisions he must recuse himself from;
2) the provisions of this law are violated repeatedly within one year from the date on which the person was recognised as having violated this law;
3) the provisions of this law are violated due to a conflict of interest, in the circumstances of which the declaring person (or a person close to him) realised his private interest
However, Article 23(7) of the Law on Coordination of Public and Private Interests of the Republic of Lithuania applies only to persons declaring interests, not to persons who have stopped working in the public service.

In its current wording, the disposition of Article 533 of the Code of Administrative Offenses of the Republic of Lithuania (2015) provides for liability for violation of restrictive provisions, including restrictions provided for in Articles 15-17 of the Law on Coordination of Public and Private Interests of the Republic of Lithuania, i.e. restrictions on work, restrictions on concluding transactions or using individual benefits and restrictions on representation. Taking into account this regulation, the proposal is to provide for liability in Article 23 of the Law on Coordination of Public and Private Interests of the Republic of Lithuania for post-public servants that do not comply with the restrictions established in Articles 15-17 of the Law on Coordination of Public and Private Interests of the Republic of Lithuania.

This regulation would be an effective mechanism to ensure compliance with ethical standards and prevent conflict of interest of post-public servants. The existence of such administrative sanctions would help to strengthen the integrity of the public service by deterring unlawful conduct through defined consequences that are distinct from criminal sanctions. A well-structured system of administrative liability can effectively complement existing legal instruments by ensuring a proportionate and timely response to violations of post-service restrictions. This approach is particularly useful in addressing issues that may not reach the threshold of a criminal offence but still undermine public trust and the integrity of institutions. The application of administrative sanctions would ensure that former public servants remain accountable for actions that could undermine the expected impartiality and integrity of public administration.

Ukraine could benefit significantly from integrating a similar system of administrative liability into its legal system. Currently, Ukrainian legislation lacks specific provisions on administrative penalties for violations of post-service prohibitions and relies mainly on contractual or criminal remedies. The introduction of administrative liability would fill this legislative gap by offering a clear, specialised and enforceable set of rules to regulate the conduct of post-public servants. This amendment would strengthen preventive measures against conflict of interest, promote transparency and strengthen public trust in mechanisms designed to support ethical governance. Adopting such an approach would bring the Ukrainian regulatory framework more in line with European standards, supporting the country's ongoing efforts to approximate legislation and integrate into Europe.

Conclusions

1 Conclusions on defining the concept of conflict of interest in the public service:

1.1. The Ukrainian legislation regulating the prevention of corruption does not clearly define the concept of conflict of interest. The attempt to define conflict of interest by analysing such concepts as "potential conflict of interest", "real conflict of interest" and "private interest" does not meet the requirements of legal certainty, clarity and unambiguity. There is either a conflict of interest or there is not. There cannot be "a little bit of a conflict of interest". Meanwhile, the Lithuanian legislation defines conflict of interest clearly and unambiguously – a situation in which the declarant, in the performance of his or her official duties or in the performance of his or her official assignment, is required to take or participate in a decision or to carry out an assignment which also concerns his or her private interests.

1.2. The components of a conflict of interest are: (i) the discretionary powers of an official, representative and other public authority (including non-governmental powers); (ii) the private interests

of persons holding such powers; and (iii) the possible influence of private interests on the objectivity or impartiality of the discretionary powers of an official or other public authority. Therefore, private interests always dominate in a conflict of interest. Accordingly, the declarant himself or the entities supervising him must identify the private interests of the declarant in a timely manner.

1.3. A conflict of interest cannot be hypothetical, it must be direct and obvious. A conflict of interest situation in itself is not a violation, but subsequent actions of the servant or official may lead to the commission of a violation. The legislator has clearly and unambiguously established the relevant legal measures that persons working in the public service must comply with so that the public do not have any doubts about the impartiality and transparency of decisions made in the public service, for example, declaration of interests, withdrawal from decision-making.

2. Conclusions on identifying means of resolving conflict of interest in the public service in Ukraine and Lithuania:

2.1. Each of measures to resolve a conflict of interest has its own specifics, as it is chosen depending on a number of conditions: the type of conflict of interest (potential or real); its duration (permanent or temporary); the subject of the decision to apply it (direct supervisor and/or head of the relevant body, enterprise, institution, organisation); the presence (absence) of alternative settlement measures; the presence (absence) of the person's consent to the application of the measure (regarding transfer); the possibility of involving other employees in decision-making (regarding removal from the task)

2.2. There are no exceptions when a person working in the public service may not inform his/her direct superior or an authorised representative of the head of the institution and persons who are also participating in the procedure for preparing, considering or adopting a decision about the existing conflict of interest and not withdraw from participating in the procedure for preparing, considering or adopting a decision that causes a conflict of interest.

2.3. The provisions on the non-acceptance of the withdrawal of a person declaring private interests and on the possibility of a head of institution not to withdraw from decision-making allow a more flexible approach to the process of decision-making and an objective assessment of all circumstances relevant to the emergence of real conflicts of interest. Accordingly, similar regulation should be established in Ukrainian legislation

3. Conclusions on comparing the restrictions (limitations) for post-public servants:

3.1. Restrictions for post-public servants, established by legislation in both Ukraine and Lithuania, are of great importance for building a professional and ethical public service and for preventing and countering conflict of interest among public servants. This concerns the legislative enshrinement of the so-called “cooling-off period” requirement for post-public servants, which is understood as a legally or institutionally established interval after leaving office during which the former official is prohibited from engaging in certain types of activities defined by law. The use of cooling-off periods has become the most common response to dealing with post-public conflict of interest.

3.2. Article 533 of the Code of Administrative Offenses of the Republic of Lithuania provides for liability for violation of restrictive provisions, as restrictions on work, restrictions on concluding transactions or using individual benefits and restrictions on representation. Taking into account this regulation, a proposal is made to provide for liability in Article 23 of the Law on Coordination of Public and Private Interests of the Republic of Lithuania for post-public servants that do not comply with the restrictions on work, restrictions on concluding transactions or using individual benefits and restrictions on representation established in Articles 15-17 of the Law on Coordination of Public and Private Interests of the Republic of Lithuania. In addition, similar regulation should be established in the Code of Ukraine on Administrative Offences

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