

Limitations by Law on the Private Interests of Magistrates. The Case of Albania in Preventing Conflict of Interest and Corruption in Justice System

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Abstract

This study examines the legal framework on prevention of conflict of interest and corruption in the Albanian judicial system. It focuses on the limitations on the private interest of magistrates, regulated under the special law no.96/2016 “On the status of judges and prosecutors in the Republic of Albania” as amended. In 2016, a profound reform of the justice system was undertaken in Albania, which brought several changes to the status of judges and prosecutors. The paper explores how Albanian legislation, in alignment with international standards, imposes restrictions to prevent conflict of interest, particularly in the context of judicial independence and impartiality. The study analyzes the legal restrictions on the private interest of magistrates and especially their families’ members, in relation to the protection of individual rights. The author raises some questions about whether these limitations are fair and necessary to safeguard the judicial system without infringing upon the fundamental rights of individuals. The paper also assesses the effectiveness of current legal measures and suggests possible legal improvements in strengthening judicial independence.

Keywords: magistrates, conflict of interest, human rights, limitations.

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1. Introduction

Given the fundamental importance of an independent and impartial justice system represents for the individual and the rule of law, many legal systems have established regulatory frameworks and preventive measures to address conflicts of interest within the judicial sector. These frameworks are tailored to the specific challenges that judicial institutions must face. In Albania, a comprehensive set of legal provisions aims to prevent conflict of interest on the exercise of the duties of judges and prosecutors. The Constitution of the Republic of Albania, under article 143, explicitly stipulates that serving as a judge is incompatible with any political or state function, as well as with remunerated professional activity, except for academic,

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scientific, and teaching engagements, or assignments delegated within the justice system as permitted by law. In particular, the law on the status of judges and prosecutors in the Republic of Albania has sanctioned restrictions on the private interests of magistrates due to their function. In the civil and criminal procedural legislation, specifically in the Code of Criminal Procedure and the Code of Civil Procedure, are defined detailed rules which oblige the judge/prosecutor to withdraw from the trial or prosecution of a specific case, or give the parties to the trial the opportunity to request the exclusion of the judge/prosecutor from the process, in case there is a conflict of interest situation. While these two codes have defined the procedural rules for avoiding conflicts of interest on a case-by-case basis, the Constitution and the law on the status of judges and prosecutors have defined the rules for preventing continuous conflicts of interest, or cases of incompatibility with the function.

The law on the prevention of conflicts of interest, in addition to prohibitions for senior officials, has also sanctioned a series of prohibitions for judges, prosecutors and their families, which will be the subject of legal analysis in this paper. This paper examines whether the legal restrictions imposed on the private interests of judges and prosecutors are proportionate to the public interest they intend to protect. It also explores whether absolute prohibitions affecting their related persons, family members of magistrates are justified, considering the potential limitation on their right to freely engage in private sector activities.

2. Literature Review and Legal Framework

Magistrates are required to recuse themselves from cases where they have a conflict of interest, or where their impartiality could reasonably be questioned. This is an international standard that you see foreseen in many countries, as an obligation to guarantee a due process of law. The problem today remains with the enforceability of the law. First, with the integrity that the magistrate shows when faced with a situation of conflict of interest and second, with the necessary transparency needed to ensure not only that decision-making is fair and impartial, but above all the fact that the public perceives it as such.

Some years ago, a Wall Street Journal investigation found that at least 131 federal judges in United States, violated the law by hearing cases in which they had a financial interest in one of the parties. What's more, 61 judges actively traded shares in a party to an ongoing case.² Referring Andrew L, there are several compelling reasons for requiring automatic disqualification of a judge from a criminal trial when the judge owns stock in the victim of the crime...the judge can benefit financially from his own rulings because of their effects on the corporation's revenues, which in turn may influence the value of the corporation's stock. Additionally, a judge's stock ownership might influence his decision making because of psychic, rather than financial, interests

² Gabe Lezra. 2022. *Justice Roberts gets it wrong: federal judges' conflicts of interest threaten the entire judiciary*, Crew, January 13, 2022, <https://www.citizensforethics.org/news/analysis/justice-roberts-gets-it-wrong-fe-dederal-judges-conflicts-of-interest-threaten-the-entire-judiciary/>, accessed on 15 June 2025.

such as loyalty to the company. A biased judge has many opportunities to harm a defendant during a criminal trial³. As Thomas R. White stated in his article, *an investment owned by a judge becomes objectionable only as the relationship between it and the litigants in a specific case in which the judge is acting becomes direct and specific*⁴.

But how the private interest of a judge can be identified case by case? Leslie W. Abramson, in his article "Judicial disclosure and disqualification" (2007), stated that, when a lawsuit is filed, a computer program compares the names of the parties and the judge's financial holdings, or names of the judge's family members, to reveal whether a conflict will exist if the case is assigned to the judge through random assignment. Operation of the computer program alerts the court clerk about the conflict of interest, so that the clerk can reassign the case before the disqualified judge ever sees it. Until recently, however, it was left to the individual judge to run the financial information through the software program⁵.

The procedural position of the prosecutors could be another problem in this regard. A personal interest for a prosecutor may be even their public image. Bruce A. Green, Rebecca Roiphe, in the article *Rethinking Prosecutors' Conflicts of Interest*, stated that: Prosecutor's personal interest in their public image undermines their ability to view evidence objectively. This may explain some prosecutors' failure to avert or correct wrongful convictions. Prosecutors' self-interest provides an incentive to continue cases once they are initiated even if new evidence casts doubt on the defendant's guilt. Likewise, prosecutors might fail to admit reversible errors due to their interest in preserving their image both in their own eyes and that of the public⁶.

In many legislations lecturing is the only external activity that a magistrate is allowed to do, even in Albania. But in some cases, it can lead to a risk of conflict of interest and influencing decision making. For example, it is known that judges of the European Court give open lectures to participants of such events free of charge and in contactless to the listeners, so any risks of influencing their independence and objectivity during the consideration of specific cases are excluded. However, practice shows that giving lectures by judges to lawyers and any other people, which is not carried out on a permanent basis for remuneration, is not always perceived as a teaching activity, and is even regarded as a precondition for corruption-related offenses, namely violation of requirements on the prevention of the conflicts of interests (Decision of the Constitutional Court of Ukraine, 2010). Therefore, it is especially important in this process to maintain a balance between the teaching activities of a judge in the form of

³ Andrew L. Wright. 1998. "Invested in the Outcome: When the Judge Owns Stock in the Victim of the Crime," *University of Chicago Legal Forum*: Vol. 1998, Article 20. Available at: <https://chicagounbound.uchicago.edu/uclf/vol1998/iss1/20>.

⁴ Thomas R. White III. 1970. „To Have or Not to Have—Conflicts of Interest and Financial Planning for Judges”, *Law and Contemporary Problems*, vol. 35 (Winter), 202-228. Available at: <https://scholarship.law.duke.edu/lcp/vol35/iss1/13>.

⁵ Leslie W. Abramson. 2007. „Judicial disclosure and disqualification: The need for more Guidance”, *The Justice System Journal*, Vol. 28, Number 3, p. 303.

⁶ Bruce A. Green, Rebecca Roiphe. 2017. „Rethinking Prosecutors' Conflicts of Interest”, *Boston College Law Review*, Vol. 58. Available at: https://ir.lawnet.fordham.edu/faculty_scholarship/869.

lectures, trainings or webinars for prosecutors, lawyers, and other legal professionals and maintaining judicial objectivity and independence in their case with their direct participation⁷.

2.1. Compliance Versus Integrity

There are two general approaches to ethical issues. One focuses on strict rules to be followed, sanctions for wrongdoing, and control systems to ensure that rules are respected. The other is an integrity-based approach to promoting ethical behavior and providing incentives for good conduct. To be effective, an ethics framework must incorporate both elements and use them in a complementary and balanced way. Regulation is essential, but not sufficient⁸. Given the nature of judicial office and the vital – indeed, paramount – importance of public confidence in the integrity and impartiality of the courts, the use of social media by judges implicates specific ethical risks that should be thoroughly considered⁹.

Existing rules and policies can only be effective if EU Institutions and Member States are willing to invest in the implementation, monitoring and enforcement of rules. However, if in the past there were seen to be regulatory gaps and a lack of enforcement, the more recent concern is that some governments have gone overboard in building an elaborate ethics apparatus that reflects the prevailing negative assumptions about the motivations and capabilities of both politicians and public servants. Today, trying to pursue absolute individual integrity in every sense of the word could mean that public institutions, organizations and their leaders end up pleasing no one. Current developments generate ever more administrative and bureaucratic burdens but are not necessarily effective¹⁰.

2.2. The Obligation of the Magistrate for Recusal in Case of Conflict of Interest

Generally, judges will disqualify, or recuse, themselves from any court proceeding in which their impartiality might be questioned, and most do it informally when they spot someone in the courtroom. But they are particularly sensitive to

⁷ Kurylo Volodymyr, Kurylo Inna, Mashevska Oksana, Gulac Olena, Iarmolenko Iuliia. 2021. „The Conflict of Interests and Teaching Activity of a Judge”, *Journal of Legal, Ethical and Regulatory Issues*, vol. 24, Special Issue 1. Available at: <https://www.abacademies.org/articles/the-conflict-of-interests-and-teaching-activity-of-a-judge.pdf>.

⁸ OECD, (2003), Recommendation of the Council on guidelines for managing conflict of interest in the public service, June 2003.

⁹ Keith R. Fisher. 2019. *Judicial Ethics in a World of Social Media*, in Anja Schoeller-Schletter (ed.), *Impartiality of Judges and Social Media: Approaches, Regulation and Results*, Konrad Adenauer Stiftung, p. 7-13. Available at <https://www.kas.de/en/web/rspno/single-title/-/content/impartiality-of-judges-and-social-media-3-1>.

¹⁰ The Effectiveness of Conflict of Interest Policies in the EU-Member States, Policy Department for Citizens' Rights and Constitutional Affairs, October 2020. This document is available on the internet at: <http://www.europarl.europa.eu/supporting-analyses>.

members of the legal community - especially new judges who still have recent ties to law firms. What started out in 1975 as the names of a few lawyers gradually grew into a list, said Barnard F. Jennings, chief judge of the Circuit Court. He said most lawyers placed on the list generally fall into one of three categories: former law associates, business partners and close friends.

The list notes some of the judges' business interests, such as hospitals, banks and companies, that might pose potential conflicts if they are parties in a case. Court Administrator Mark A. Zaffarano said court clerks consult the list each day before they assign cases to the judges¹¹.

"The term 'recusal' simply means withdrawal, and its roots are in the English Roman Catholic concept of 'recusant'. The laws which deal with judicial recusal are based on the primary idea that a court should be fair and impartial so that public confidence in the institution remains intact¹²."

But we must not permit recusals to be used as a tool to maneuver justice, as a method to selecting benches of a party's will, and as an instrument to evade judicial work.¹³

Most recusal rules in the United States put the decision squarely into the hands of the judge. While some rules mandate recusal in certain circumstances, most of the time, whether a judge recuses will depend on whether the judge herself perceives the potential conflict as problematic. The recusal process itself is the foundational factor behind why judges are not likely inclined to recuse. In the first place, the entire premise of employing a judge to make legal determinations is based on the well-known edict that "[n]o man is allowed to be a judge in his own cause." And yet, with few exceptions, the judge to whom the recusal motion is filed and the judge who rules on the recusal motion itself is the very individual whose impartiality is being questioned¹⁴.

A judicial system free from actual or apparent conflicts of interest is generally fundamental for a citizens' trust in its government as well as more generally the perception of a country's adherence to rule of law. Addressing conflicts of interest in law enforcement is as critical as it is in other aspects of governance. However, it is an area where a conflict of interest management system may need to be tailored to the functions involved. Because of the concern for the independence of the judiciary, a conflict of interest management system for judges is often separated and apart from that of other public officials¹⁵.

¹¹ Patricia Davis. 1987. *Judges keep a list to avoid conflict*, The Washington Post, May 23, 1987. <https://www.washingtonpost.com/archive/local/1987/05/24/judges-keep-a-list-to-avoid-conflict/bdad281d-f9f8-4d27-aa99-f433001295fb/>.

¹² Tanya Tekriwal & Shilpi. 2020. „Recusal of judges - a step towards impartial adjudication”, *NLIU Law Review* vol IX, Issue II. p. 487-509. Available at: <https://nliulawreview.nliu.ac.in/wp-content/uploads/2021/11/Volume-IX-Issue-II.pdf>

¹³ Suhrith Parthasarathy. 2019. *Land acquisition case: Attempt for recusal of judge nothing but 'bench hunting', says Supreme Court*, The Economic Times, October 16, 2019.

¹⁴ Dane Thorley. 2023. „The Failure of Judicial Recusal and Disclosure Rules”, *Northwestern University Law Review*, Vol. 117, No. 5, p. 1-16, <https://scholarlycommons.law.northwestern.edu/nulr/vol117/iss5/2>.

¹⁵ Preventing and managing conflicts of interest in the public sector: Good practices guide, July 2020, Prepared at the request of the G20 Anticorruption Working Group by the World Bank, OECD and UNODC

The concept of conflicts of interest does not cover the mere need by a decision-maker to arbitrate between conflicting interests. Rather, it encompasses situations where the conflict is internal to the decision-maker. It is not an action but an objective situation in which lies an abnormal risk of improper considerations influencing a decision. This situation is objective in the sense that it can be assessed by facts showing 1) the possession of an interest, 2) an interference of this interest with the main mission, and 3) that this interference is sufficiently intense to raise doubts about the ability to make an independent and impartial decision. This objectivity means that a conflicted person can be perfectly honest, yet not that all conflicted persons are perfectly honest (but then the conflict slides into offences like influence peddling or corruption). What is at stake once a conflict of interests exists is the risk of an improper decision. That this risk does not materialize is not the issue once doubts exist regarding the reliability of the decision. Appearances of conflict count as much as actual conflicts, echoing the mantra according to which “*justice must not only be done, but it should also be seen to be done.*”¹⁶

2.3. International standards

The “Bangalore Principles of Judicial Conduct” and accompanying documents contain the most comprehensive guidance on conflict of interest. The Bangalore Principles¹⁷ define conflict of interest as follows:

“4.7 A judge shall inform himself or herself about the judge’s personal and fiduciary financial interests and shall make reasonable efforts to be informed about the financial interests of members of the judge’s family.

4.8 A judge shall not allow the judge’s family, social or other relationships improperly to influence the judge’s judicial conduct and judgment as a judge.

4.9 A judge shall not use or lend the prestige of the judicial office to advance the private interests of the judge, a member of the judge’s family or of anyone else, nor shall a judge convey or permit others to convey the impression that anyone is in a special position improperly to influence the judge in the performance of judicial duties.”

The Bangalore Principles also contain a provision on managing conflicts of interest:

“2.5 A judge shall disqualify himself or herself from participating in any proceedings in which the judge is unable to decide the matter impartially or in which it may appear to a reasonable observer that the judge is unable to decide the matter impartially. Such proceedings include, but are not limited to, instances where [...]

2.5.2 the judge previously served as a lawyer or was a material witness in the matter in controversy; or

2.5.3 the judge, or a member of the judge’s family, has an economic interest in

Available: <https://www.unodc.org/documents/corruption/Publications/2020/Preventing-and-Managing-Conflicts-of-Interest-in-the-Public-Sector-Good-Practices-Guide.pdf>.

¹⁶ Hélène Ruiz Fabri. 2019. “Conflicts of Interests: Navigating in the Fog.” *AJIL Unbound* 113: 307–11. <https://doi.org/10.1017/aju.2019.43>.

¹⁷ Available at: https://www.unodc.org/pdf/crime/corruption/judicial_group/Bangalore_principles.pdf, accessed on 15 June 2025.

the outcome of the matter in controversy:

Provided that disqualification of a judge shall not be required if no other tribunal can be constituted to deal with the case or, because of urgent circumstances, failure to act could lead to a serious miscarriage of justice."

The "Consultative Council of European Judges" (CCJE) has briefly addressed "impartiality and other professional activities of judges" in its Opinion no. 3 "on the principles and rules governing judges' professional conduct, in particular ethics, incompatible behavior and impartiality" (at No. 37-39). Furthermore, paragraph no. 21, of the Recommendation CM/Rec (2010)12 by the Committee of Ministers¹⁸ contains a brief, general statement on incompatibility: "*Judges may engage in activities outside their official functions. To avoid actual or perceived conflicts of interest, their participation should be restricted to activities compatible with their impartiality and independence.*"

In the Decision no. 5/14 on "Prevention of corruption" by the Ministerial Council of the "Organization for Security and Co-operation in Europe" (OSCE) of 5 December 2014 is stated: "*Adopt, maintain and strengthen systems that prevent conflicts of interest in the public sector, including, for example, by addressing conflicts of interest through enforceable codes of conduct and by establishing and strengthening asset declaration systems applicable to public officials and politically exposed persons, in accordance with the fundamental principles of their domestic law [...].*"

In Albania, since 2004 is established and operating the High Inspectorate of Declaration and Audit of Assets. By law¹⁹, every judge, prosecutor and their family members²⁰ (when they have separate assets on their names), are obligated to declare every year their assets and are subject of periodic audit of his private interests, incomes, movable and immovable assets created, financial obligations etc.

Specific cases of conflict of interest in the Albanian judicial system are governed by civil and criminal procedural laws. The Criminal Procedure Code²¹ and the Civil Procedure Code²² establish the circumstances under which a judge or prosecutor is required to recuse themselves from adjudicating specific cases. These provisions also recognize the right of the parties to the proceedings to request the disqualification of a judge or prosecutor when there are substantiated concerns regarding their impartiality. The types of private interests that may serve as grounds for the disqualification of a judge in a particular case are not exhaustively listed. The procedural legislation adopts an open-ended approach, allowing for case by case assessment and evaluation. It provides for a mandatory recusal whenever serious circumstances or well-founded

¹⁸ Available at: <https://rm.coe.int/cmrec-2010-12-on-independence-efficiency-responsibilities-of-judges/16809f007d>, accessed on 15 June 2025.

¹⁹ Law no.9049, dated 10.03.2004 "On the declaration and audit of assets, financial obligations of elected persons, and certain public officials" (as amended).

²⁰ Family members that are subject of declaration of assets, are the spouse, or the cohabiting and the adult children, in the case they have separate assets in their name.

²¹ Refer to article 17-23 of the Criminal Procedure Code of the Republic of Albania.

²² Refer to article 72-76 of the Civil Procedure Code of the Republic of Albania.

reasons exist that may give rise to perception of bias²³.

3. Methodology

This study presents a comprehensive legal analysis of the Albanian legal framework on preventing conflict of interest and corruption in judicial system after the constitutional reform of 2016, focused also on the status of judges and prosecutors. The comparative method is another scientific method applied in this study, analyzing specific legal provisions in relation to the balancing of individual rights and interests. The author has raised questions regarding the proportionality of restrictions and prohibitions imposed on magistrates and their families, seeking a balance between the protection of the public interest and the individual rights of the individuals involved.

This comparison is a common method used in legal analysis, to assess to what extent restrictions are fair and necessary to protect the public interest, without violating the rights of individuals. Focusing on the analysis of the application of rules for preventing conflict of interest within the judiciary system, the paper examines the impact of legal and constitutional changes on the functioning of the judicial system, assessing the effectiveness of the measures in place and opportunities for further improvements.

This methodology can be described as a legal and critical analytical approach, aiming to thoroughly examine the consequences of legal changes, with a particular focus on their impact on judicial independence.

4. Limitations of Office for Magistrates in Albanian Legislation

Before the amendments of 2016, the Constitution of the Republic of Albania in Article 143 provided that: "Being a judge is incompatible with any other state, political or private activity". Such a constitutional provision for the absolute prohibition of exercising economic activity did not exist for prosecutors. Prosecutors, according to the specific law²⁴, were prohibited from joining political parties or participating in political activities; The function of prosecutor was incompatible with running for office and with any electoral mandate, public duty or activity with the exception of teaching; the prosecutor was prohibited from having two jobs, except for teaching; the prosecutor was prohibited from participating in the governing bodies of commercial companies.

With the approval of the changes within the framework of the justice reform, Article 143 of the Constitution is reformulated with the following content: "*Being a judge shall not be compatible with any other political, state as well as any other compensated professional activity, except for teaching, academic, scientific activities,*

²³ Fjorida Ballauri. 2015. *Konflikti i interesave në veprat penale të kryera nga punonjësit shtetërorë ose në shërbim publik*, Doctoral thesis. Available at: <https://unitir.edu.al/wp-content/uploads/2015/09/Doktoratura-Fjorida-Ballauri-Kallco-Fakulteti-i-Drejtësisë-Departamenti-i-te-Drejtës-Penale.pdf>.

²⁴ Law no. 8737, dated 12.02.2001 "On the organization and functioning of the Prosecutor's Office in the Republic of Albania", repealed by Law nr.96/2016 "On the status of judges and prosecutor in the Republic of Albania", as amended.

or secondment to justice institutions in accordance with the law". Also, Article 149/ç has been added, which provides for the same restriction for the Prosecutor General, prosecutors and members of the High Prosecutorial Council, prohibiting any type of political or state activity, as well as professional activity that is exercised for payment, with the exception of teaching, academic, scientific activity.

In addition to sanctioning incompatibilities with the magistrate's duties, Law No. 96/2016 "On the Status of Judges and Prosecutors in the Republic of Albania" has provided for several cases of restriction of private interests, due to their function. In the article 7, point 4 of the Law nr. 96/2016 "On the status of judges and prosecutor in the Republic of Albania" as amended is foreseen that a magistrate is prohibited from:

a) Administering, directing, or influencing any commercial or any profit-making company, personally or by representation.

b) Actively owning shares or parts of capital in commercial companies in accordance with the legislation in force on the prevention of conflicts of interest.

c) Passively owning shares or parts of capital in commercial companies, if the company is gaining profits or benefits from public contracts in accordance with the legislation in force on the prevention of conflicts of interest.

ç) Passively owning shares or parts of capital in commercial companies in which the magistrate's activity would be prohibited, because it could compromise the magistrate's independence, give rise to a conflict of interest or otherwise lead to a perception of bias or partiality.

d) Acting as expert before the domestic courts or arbiter in a commercial arbitration.

The Law has provided that the prohibition of active ownership of shares or parts of the capital of a commercial company shall be in accordance with the legislation in force on the prevention of conflict of interest. This Law, in Article 3, point 6, has provided the definition of passive ownership of shares or parts of the capital. Specifically, "Passive ownership of shares or parts of the capital" is the situation in which the owner retains the right to benefit from the civil fruits of ownership but cannot exercise any other civil action on this property himself. All other actions (administration, possession, alienation, etc.) are carried out by a person trusted by the owner, based on an agreement concluded between them, which determines the criteria for benefiting from the fruits of the property, as well as other necessary rights and obligations. The trustee does not exchange any opinion or information with the owner, nor is he influenced by him in carrying out these actions with the property. The trusted person should act only for the good of the preservation and growth of the assets, with the same motivation as if these actions were performed by the owner himself. The restrictions on selecting the trusted person are given in this Law. In any case, the parties retain the right to dissolve this agreement. The owner has the right to retake at any time the rights to perform other civil actions with the ownership when, according to this Law, the conditions that dictated this action no longer exist. The other rights and obligations not mentioned above are regulated by the Civil Code of the Republic of Albania.

For the judge and the prosecutor, this prohibition is clear, according to the concept that is given in the law on the prevention of conflict of interest. The discussion

in this regarding arises when these restrictions are extended to the circle of related persons of the magistrate (the spouse, cohabitant, adult children and parents of the official and parents of the spouse or cohabitant), as long as the law on prevention of conflict of interest equates the ownership of shares or parts in the capital of a person related to the official, by equally limiting the property rights over them.

The introduction of the passive ownership mechanism in the law on the prevention of conflicts of interest was intended to prevent possible situations of conflict of interest of senior officials, who came from the business sector with previous economic interests and activities, who for the period they held public functions, would have to give up active ownership of their shares. This type of restriction is related only to the function of the official and not due to a possible conflict of interest in decision-making on a case-by-case basis. In this way, in order not to lose the rights over these commercial companies and their shares, the law has offered a solution by transferring their management to a trusted person. After leaving the office, the public official can regain the rights of active ownership of his shares at any time.

The instrument of transferring shares to passive ownership is treated in the law on prevention of conflict of interest as one of the ways of resolving the continuing conflict of interest for those officials who, at the time of assuming office, owned shares or shares in the capital of a commercial company. In the author's opinion, this legal mechanism of managing the conflict of interest through passive ownership of shares cannot be equally applicable to magistrates who, after taking office, seek to exercise economic activity.

4.1. Prohibition on Entering Into Contracts with a Public Institution

The Law on the Prevention of Conflict of Interest has dedicated a special article to the prohibition of concluding contracts (Article 21), calling the conclusion of a contract a special public decision-making, which, due to its importance and public property values, is at risk of being damaged by the action of the private interests of the officials involved in this decision-making. Conflict of interest in concluding contracts with a public institution is a special type of case-by-case conflict of interest²⁵.

Article 21 of the Law on the Prevention of Conflict of Interest presents prohibitions at two different levels. Special prohibitions are provided for certain categories of officials, regardless of their role in concluding contracts with a public institution (points 1, 2 and 6) and other prohibitions that depend on the specific role of the official in decision-making for these contracts (point 3). Specifically, in point 1 of article 21 of the law on the prevention of conflict of interests, in relation to the function of the judge and prosecutor, it is sanctioned that: *"judges and prosecutors at the first instance and appeal courts, and any commercial company, partnership or simple partnership, where this official possesses, actively or passively, shares or parts of capital, at whatever amount, cannot enter into a contract or sub-contract with any*

²⁵ Refer to article 21-26 of the law no.9367, dated 7.4.2005 "On the prevention of conflicts of interest in the exercise of public functions of elected persons, and certain public officials", as amended.

public institution". In the article 24 of this law is foreseen that: "*Restriction of the Interests of Persons Related to an Official*" is foreseen that: "*The circle of persons related to the official, by way of applying the prohibitions set out in Articles 21 and 22 of this law, consist of the spouse, cohabitant, adult children and parents of the official and those of the spouse and cohabitant*". The prohibitions and restrictions for an official defined in this section are also applicable to people related to him, in conformity with the above points of this article.

Consequently, in the analysis of this provision it results that people related to the official, *the spouse, cohabitant, adult children and parents of the official and those of the spouse and cohabitant*, have the same restriction, meaning they are prohibited from entering a contract or subcontract with a public institution.

4.2. What Are the Types of Prohibited Contracts?

For the above categories of officials, the absolute prohibition includes, as a rule, all types of contracts such as: public procurement of buildings, goods or services, sale, exchange, lease/emphyteusis, donation, supply, undertaking, transport and any other contract with a public institution as a party, which is not excluded by point 4 of article 21²⁶ of the law on prevention of conflict of interest.

The reference that the specific law on the status of magistrates makes to the law on the prevention of conflict of interest brings effects of an absolute ban on the ownership and conclusion of contracts with a public institution, even for person related to the magistrate. Since the mandate of the magistrate in Albanian legislation is unlimited in time, it seems that these bans on the exercise of the rights of related persons are disproportionate in relation to the purpose of protecting the public interest and preventing corruption.

At this stage in the drafting of the article, there are no available monitoring reports²⁷ regarding the progress and implementation of this legal prohibition from the responsible monitoring structures such as the High Judicial Council, the High Prosecutorial Council or the High Inspectorate for Declaration and Control of Assets and Conflict of Interest (HIDAACI). The prohibition of persons related to the magistrate, to freely own shares in a commercial company, or to compete for contracts and public funds with a state institution as a party (the prohibition is absolute, regardless of the country, city/municipality where these contracts are competed for), in the case of

²⁶ According to this point of the law, contracts that relate to: employment in a public institution or the legal status of the official/person related to it are exempt; the receipt of a service provided by the public institution or organizations and entities created or under the control of the public institution, when these services are provided for in the scope of activity of the public institution, as well as with the condition that the service is not provided to the official in a favorable manner or as preferential treatment in relation to others; the contract is based on special laws, for public purposes, or for special treatment of different categories of officials.

²⁷ For this assessment the author reviewed the official web pages of High Judicial Council, the High Prosecutorial Council or the High Inspectorate for Declaration and Control of Assets and Conflict of Interest (HIDAACI), <https://klgj.al/raporte-vjetore-klgj/>, <https://klp.al/raportime/> and <https://www.ildkpki.al/raporte-vjetore/>, accessed 28.04.2025.

magistrates seems to exceed the principle of proportionality, as long as the basic procedural laws, the Code of Criminal Procedure and the Code of Civil Procedure of the Republic of Albania, guarantee the mechanism of waiver or exclusion at the request of the interested party, of the judge or prosecutor who may have a conflict of interest, even if only in appearance, with the case under review.

4.3. Professional Activities of Magistrates

According to the law, the professional activities of magistrates are monitored by the High Judicial Council for the judges and the High Prosecutorial Council for the prosecutors, with detailed procedures. Exercising professional activities is possible only after receiving their approval by the respective council. Meanwhile, regarding the rights to exercise economic activities by magistrates, we do not have a detailed provision from the law on how they will be regulated or monitored. The only legal provision is the declarative form in Article 7, point 4 of Law No. 96/2016 “On the Status of Judges and Prosecutors”, as amended, which states that the president of the office shall notify the Council in case there is reasonable suspicion to believe that a magistrate of the relevant court or prosecutor’s office does not meet the criteria provided for in this provision. Meanwhile, judges and prosecutors are subject to periodic declaration of private interests in the HIDACCI. Referring to law no.9049, dated 10.03.2004, as amended, they are obliged to declare the assets, spouse or cohabitant and adult children when they have separately registered assets. The data collected by the HIDACCI within the framework of the process of declaration and control of assets and private interests of magistrates should be available to the heads of the respective institutions. This would constitute a mechanism to help identify and avoid in time cases of conflict of interest during the allocation of cases for treatment by magistrates.

5. Conclusions

Albanian legislation has provided for a series of restrictions on the property rights and economic activity of magistrates, forcing them to give up active ownership of shares in companies and delegate their administration to a trusted person. This has been aimed at reducing the risk of conflict of interest and corruption and to ensure that the private activities of magistrates do not undermine the independence and integrity of the justice system.

As for the judge and the prosecutor this prohibition seems clear and reasonable because of the fact that Albania, has the fight against corruption as one of its priorities, the situation does not seem to be the same for the persons related to them, as long as the law on the prevention of conflict of interest equates the ownership of shares or parts in the capital of the person related to them, by equally limiting the property rights over them. The reference that the law on the status of magistrates makes to the law on the prevention of conflict of interest brings effects of an absolute prohibition on ownership and contracting with a public institution, even for the persons related to the magistrate. Because the mandate of the magistrate in the Albanian legislation is unlimited in time,

it seems that the prohibitions for the persons related to them are disproportionate in relation to the purpose of protecting the public interest and preventing corruption. This conclusion comes due even because, in Albanian procedural legislation, the resolution of conflicts of interest is regulated on a case-by-case basis through the withdrawal of the judge or prosecutor from the process. Of course, this would require more complete and comprehensive monitoring tools and mechanisms, to identify in a timely manner cases of private interests of magistrates and their families, which could cause a potential conflict of interest in the justice system, forcing the latter to resign in time or giving the parties the opportunity in any case to request their exclusion.

Failure to withdraw in the event of a conflict of interest has the effect of invalidating the process and has serious disciplinary consequences for the magistrate. Consequently, monitoring by the responsible structures and increased care in respecting the legal obligation to withdraw would be more than sufficient to guarantee independence in the justice system and prevent conflicts of interest. The restriction imposed on persons related to judges and prosecutors, who are prohibited from entering public contracts or competing for public funds, solely because they are family members of a judge or prosecutor, seems unbalanced with the purpose intended to be achieved by the law. The restrictive legal remedy imposed on family members does not justify the purpose and does not solve the problem of conflicts of interest in the justice system.

The provision of Article 21 of the law on the prevention of conflict of interest was intended to impose absolute restrictions on senior public officials and their family members, due to the role they have in public decision-making, on the administration of state assets or the management of public funds. The judge and prosecutor do not have a decision-making role in the administration and circulation of public assets and funds, which is a fundamental duty of the government. This is the reason that in most European countries and beyond, we do not see such a model of restriction on the family members of judges or prosecutors.

In conclusion, we emphasize that transparency and increased citizen access to the justice system, while strengthening internal monitoring mechanisms that ensure due process, are the fundamental pillars that can guarantee the independence and impartiality of the magistrate. The advancement of information technology can significantly contribute to the development of tools for identifying the private interests of magistrates, thereby enhancing the effectiveness of recusal mechanisms in cases of conflict of interest.

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