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NECESSITY OF PUBLIC AND PRIVATE INTEREST HARMONISATION IN PUBLIC SERVICE FOR THE AIMS OF SUSTAINABLE DEVELOPMENT OF THE STATE

Algimantas Urmonas¹, Virginijus Kanapinskas², Agnė Tvaronavičienė³, Indrė Juozapaitytė⁴

^{1,2,3,4} Mykolas Romeris University, Ateities st. 20, LT-08303 Vilnius, Lithuania

E-mails: ¹aurmonas@gmail.com; ²virginijuskanapinskas@yahoo.com;

³a.tvaronavicienne@mruni.eu; ⁴i.juozapaityte@yahoo.com

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Abstract. The aim of this article is to analyse the essence of the harmonisation of public and private interests in the public service. The necessity of the harmonisation of public and private interests in the public service is based on the following features: civil service reliability and implementation of its purpose in order to guarantee the public interest; clear, binding standards of conduct applicable to all persons employed in the public service, regardless of their duties and career development nature; aim to prevent the emergence and spread of corruption in the public service; constitutional requirements for the implementation of public service. The article reveals that there are two key elements of a conflict of interest: 1) official duties that ensure the implementation of a public interest; 2) private interest which may negatively affect the performance of official duties. It follows that if a conflict of interest in the public service is not resolved or addressed properly, sooner or later it turns into corruption, and cause significant damage to the state itself. It is therefore very important timely identification, removal and management of the conflict of interest.

Keywords: sustainable development, civil service, public service, conflict of interest, private interests, public interests, public procurement.

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JEL Classifications: O1, K00, K2

1. Introduction

In public sector, one of the most important challenges in the implementation of the concept of sustainable development is a conflict of interests that are hardly avoidable in this field and require professional and responsible management. Although the issue is urgent and common for the whole activity of the public sector, the institution of public service is extremely sensible to it. It is necessary to distinguish between a possession of any interest and a situation of conflict of such interests as well as to learn which social needs and other informative signs lead to such a situation.

Each situation where a decision-making person must choose certain behaviour bears high risk of a conflict between his personal interest and interest of a legal entity represented by him. This issue is highly acute for persons serving in public sector. Former Vice-President of the Office of Values and Ethics of Canada Public Service Agency R.Heinzman clearly defined the essence of private and public interest conflict in public service:

“Avoiding situations that may cause a conflict of interest or an impression of a conflict, or preventing such situations - what is equally important for the public sector - is one of the main tools in order to maintain public confidence in objectivity and impartiality of public service and government decisions, and that is our main task.” (Paliduskaitė, 2005). Therefore, public service and successful functioning thereof in democratic states highly depends on public trust.

In this article, the object is being analysed using an example of legal relation of public procurement as emerging in an environment favourable for occurrence of conflict of private and public interest as well as highly dependent on negative social factors.

In the study, the theoretical research methods of systematic analysis, analysis of documents, comparative, and generalisation have been applied. The method of analysis of documents was used in order to get information through qualitative investigation of scientific publications, legal acts and documents of various institutions that are related to the subject of the research. The systematic analysis method was used for the examination of the essence of private and public interest conflict in civil service, in the levels of scientific doctrine, substantive law and legal practice. The comparative method was used for comparing positions of different scientists, provisions of the legislation and case-law documents related to the subject of the investigation. The generalisation method was used for summarising data collected and analysed as well as for defining of conclusions.

2. Factors of obligatory harmonisation of private and public interest as a condition of sustainable development

Harmonisation of public and private interest in public service is relevant to the application of the provisions of the concept of sustainable development in relation to institutional, functional and procedural regulatory approaches to the country's development processes. Moreover, actualisation and addressing of these legal and regulatory issues is related to the professed values of the society, social and especially legal practices, human and financial resources, as well as identification of components of prevention and adverse effects of other social conflicts.

In terms of value, causes, problems and solutions of a conflict can be addressed in three interrelated social macro (general public, national, complex organisations' aspects), meso (local community, organisations, government, group of individual officials' aspects) and micro (individual, small group aspect) levels.

It is recognised that the concept of sustainable development involves a balanced economic, social and environmental development in order to minimise the damage done to humans and the environment. Thus, harmony of economics, society (humans), and environment is those objects of value that together make a public interest in the activity of people, society and state. In this activity, in macro, meso and micro levels it is necessary to ensure harmonisation of public and private interests in public service, where implementation of objectives of sustainable development usually takes place, both in the preparation of strategic documents, coordinated with social partners and the public concerned as well as in the accurate implementation thereof. For example, feasibility of implementation of valuable provisions of public and private interest sustainability focuses in public procurement. Therefore, conflict of public and private of interest can include a range of forms of emerging sustainable development dysfunctions, both criminal such as abuse of office or corrupt practices, and non-criminal, such as misconduct (due to carelessness or negligence), “improper” behaviour of public officials for incompetence, override of institutional ethics guidelines, principles or values, subjectivism, etc. In that sense, it is evident that in decisions taken by public servants, the discrepancy between the values of sustainable development (in public interest levels), which could lead to responsible behaviour of public servants, and the purposeful duties to be performed by a civil servant in order to avoid public and private interests conflict, can increase.

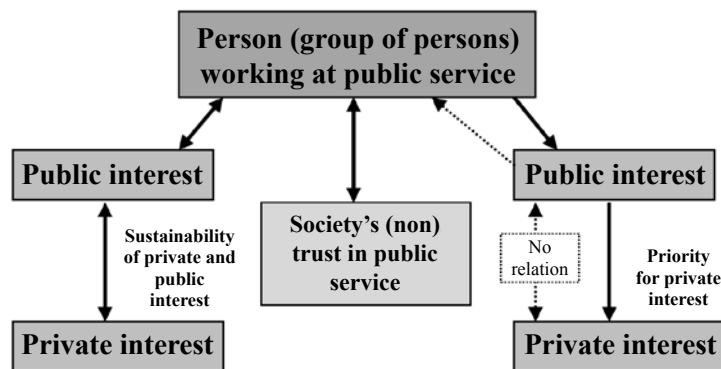
Public and private interest conflict adversely affects the civil service system. *First*, public and private conflicts of interest undermine the reputation and professionalism in the performance of official duties of the specific person in public service, show failure to recognize their share of responsibility and comply with institutional

ethics standards. *Second*, conflict of interest of a single person working in the public service affects not only that person, but also the state or municipal institution or agency to which they belong, authority and performance. *Third*, uncontrolled or poorly managed conflicts of interest undermine public confidence in civil service and the state itself. Having assessed all the above, it is very important to ground the necessity of harmonisation of public and private interests in public service and the need to provide a characteristics of such conflicts in the levels of scientific doctrine, positive law and legal practice.

In modern democracies the prevailing concept of public service is inextricably linked with the role of the state as a whole society organisation, and enshrined in national constitutions to ensure human rights and freedoms and to guarantee the public interest (Constitutional Court of the Republic of Lithuania, 2004) (eg. Czech Republic, Chile, Greece). Therefore, inappropriate public officials conduct and non-addressed or poorly managed servants' conflicts of interest destroy expectations of individuals and public and undermines faith in the civil service capacity to protect the public interest in responsible manner.

Having in mind the above, we can formulate *the first feature of necessity to harmonise public and private interests in public service, i.e. reliability of public service and implementation of its purposes, in order to guarantee the public interest of society* (see Fig. 1).

Fig. 1 Compatibility and conflict of interest and society's (non) trust in public service



In each country of advanced democracy, common ethical standards that shape and foster a mature approach of civil workers to their appointments, a feeling of personal responsibility and accountability for their actions (inaction) are raised to a public service fulfilling the needs of the society. The public reasonably expects that public servants (especially heads of institutions) will comply with institutional ethics requirements in defending and protecting the public interest. For example, the Lithuanian Supreme Administrative Court has repeatedly noted that the heads of state institutions are held to a higher performance and accountability standards than ordinary officers. The public has a legitimate expectation that the heads of public institutions are not only of higher professional qualifications, but also act in accordance with higher moral and official ethics principles (eg., Case No. A3-750-2004 etc.).

It must be accepted that in the process of implementation of assurance of public interest in the civil service, the role of the highest state politicians is unique. The political power is acceptable to the people, if the community combines civil and political interests of society and therefore involves the ability to avoid antagonism of interests. First, the politicians can spread proper ethical behaviour model for their example and so increase society's confidence in public service. If the most important leaders fail to comply with generally accepted standards of official ethics, it is difficult to expect that persons accountable thereto comply with those standards. Second, being directly elected and acting on behalf of society, they must be proactive and may require the avoidance of conflicts of interest and responsibility from public servants in lower positions.

Summarizing the ideas above, the second feature of necessity to harmonise public and private interests in pub-

lic service can be distinguished, i.e. *clear, binding standards of conduct applicable to all persons working in public service, regardless of the nature of their official duties and activities.*

The analysis of legal provisions shows that the Law on the Adjustment of Public and Private Interests in the Public Service, and other legislation associate arising conflict situations mostly with possible infringements of established standards of professional ethics and the ongoing investigations and decisions upon thereof. In these cases, a contradiction between performance of official duties, governed by the rule of ethics, and the public interest, where the official meets the private interest, is determined. It seems that less attention is paid to other circumstances of emergence of public and private interest conflict that require not less study than directly supervised professional ethics. These include conflicts of interest arising between public institutions and performance of their servants and the people, the society, public expectations and needs. Studies performed by public opinion and market research centre Vilnius show that the courts, the prosecutor's office, the National Audit Office are particularly distrusted. Distrust in other government agencies is lower (Vilnius, 2015). Some state authorities have increased i.e. specific professional ethics of civil servants' rights and duties, but their performance (what professional duties require to act in the field of public interest) does not satisfy the public. There is a plenty of causes and their interactions for such social conflict. This, of course, is a subject for a large separate research - to act ethically and together professionally in the interest of a human, a society, and a state. In this regard, a certain professional ethical decision-making and control system should be implemented, the main objective thereof should be to keep the goals of moral, professional and state behaviour sustainability, the necessity of their compliance with for all parties concerned. But attention should be also drawn to solely repetitive and not clearly addressed problems. The researchers found that 'position's economic motivation' of some public servants (Misiunas, 2010) determines a passive, irresponsible carrying out of duties, reduce efficiency of agencies' performance and raise the public's confrontational distrust in public service. The aim of efficiency of legal status of the servant is "to produce quality in the execution of institutional functions, to acquire necessary qualifications, to enjoy set rights and duties, to have reasonable limits of liability and receive a maximally motivating remuneration and social guarantees" (Misiunas, 2010). Thus, the lack of effective public servants' legal status is a factor which can raise conflicts of interest of a servant and a public in the macro, meso and micro levels. We think that can be clearly observed during civil servants' 'simulated activities', such as a preparation and implementation of various national concepts, programmes, projects and other documents. As a rule, the national social programmes formulate goals in abstractive manner, not itemised, and where more detailed it is limited to one or another random measure that will not cause substantial positive social change. As A.Kiškis and A.Kuodytė noticed, such objectives as "to enhance the security of the rural population", "to improve preventive work" does not show any specific results to be achieved through the implementation of these programs, as the stated objectives are vague. While formulating preventive action objectives in this way, one does not take any responsibility for ensuring objectives to be achieved. Program execution report indicating that it was succeeded to increase the security of the rural population, seems to suggest that the target of the prevention programme has been achieved, however it is unclear whether this had any impact on crime (Kiškis, Kuodytė, 2012).

It should be noted that the issue of conflict of public and private interest is involved in a number of anti-corruption measures and review mechanisms, including those of the United Nations (UN) Convention against Corruption (UNCAC), *Organisation for Economic Co-operation and Development*, hereinafter OECD, Council of Europe Group of States against Corruption (GRECO) and other international organisations' scope of legislation. It is generally recognized that if conflicts of interest in public service are not resolved or addressed properly, sooner or later they become abuse of office and turn into corruption, and cause significant damage to the state itself.

Public procurement make an illustrative example. According to the European Commission, conflicts of interest in decision-making, allocation of public funds and public procurement, particularly at local level, form a recurrent pattern in many Member States (European Commission, 2014). Legal relation of public procurement occurs between the supplier and the contracting authority. The vast majority of contracting authorities are public entities represented by public servants. Meanwhile, most of suppliers are of the private sector, intending to sell their goods, services or works, and to receive the greatest possible financial benefits. The relation between these

two entities, due to sufficiently broad discretion of public servants coordinating the procurement procedures develops in the environment where exist many factors encouraging violation of laws and other legislation and taking decisions which violate the public interest. It is in public procurement due to the direct relationship between the beneficiary and the provider of the benefit, conflicts of interest are extremely common and difficult to manage. Their scale is surprising taking into account financial flows (annual public authorities and public bodies spend approximately one-fifth of the EU's GDP for goods, works and services procurement) (European Commission 2012). Thus, public procurement is one of the key areas which are vulnerable to corruption and conflicts of interest in the logical probability of occurrence (identifying the likely truth in comparative terms such as "more", "less"). Haven't ensured prevention of conflict of interest or precluded conflicts in public procurement, it is difficult to expect rational and efficient use of public funds, as well as to ensure equal treatment of suppliers. This conclusion is also confirmed by empirical data, eg. the research identifying and reducing corruption in public procurement in the EU, made in 2013, states, that the overall direct costs of corruption in public procurement in 2010 for the five sectors studied (Road & Rail, Water & waste, Urban/utility construction, Training, Research & Development) in the 8 Member States (France, Italy, Hungary, Lithuania, the Netherlands, Poland, Romania and Spain) constituted between EUR 1.470 million and EUR 2.247 million. (Identifying and Reducing Corruption in Public Procurement in the EU, 2013). It should be noted that within public procurement, not only the public interest of the society and the state (in the example above identified as the direct costs of corruption), but also the private interest of honest suppliers are to be protected as collateral for fair competition. Taking into account the above, in the public procurement context, it can be said that harmonisation of public and private interest in public service is one of the most important anti-corruption and abuse of office prevention policy instruments. This feature is striking in many other areas as well (in the control of construction sector, migration institutions, licensing of certain activities, and many others). Thus, the third feature of the necessity to harmonise public and private interest in public service is an intention to prevent the emergence and spread of abuse and corruption in public service.

It has been mentioned that in democratic states, for persons working in public service, the Constitution makes an operational basis. The purpose of public service determines public servants, as a professional group with a special procedure of formation, special features of the legal status thereof, as well as their different responsibilities to the public for the performance of the assigned (entrusted to them) areas of activity, eg., to avoid public and private interests conflict, not to act voluntarily and abuse the service, to comply with ethical requirements, to protect its reputation of a public servant, and the reputation, prestige and so on of the institution where he works. (Case No. I-4245-171/2013). It raises a major feature of the necessity to adjust public and private interests in public service, which connects all the other above-mentioned features: proper implementation of the constitutional requirements for public service. If these requirements are not met, then there is no idea of public institutions serving the people, and there is no society's confidence in public service, its potential to fulfil its mission.

Analysing the Lithuanian example, it seems that the legislator is aware of the need to adjust public and private interest. It is obvious from the purpose of the Law on the Adjustment of Public and Private Interests in the Public Service: 1) adjustment of private interests of persons employed in the public service and public interests of the community (the idea is to pursue to distinguish those interests, avoid conflicts, and upon identification thereof - to manage and eliminate in time); 2) ensuring that holders of public office should make decisions solely in terms of the public interests (the authors believe that priority should be given to the public interest not only in decision making but also in their preparation, considering, performing other official functions); 3) securing the impartiality of the decisions being taken (we think that the principle of impartiality should be respected not only in decision making but also on any other matters relating to the official activities); 4) preventing the emergence and spread of corruption in the public service.

After summarizing the points made above, it follows that the necessity of harmonisation of public and private interests in public service in macro legal level is determined by the following *general features*: reliability of public service and implementation of its purposes in order to guarantee the public interests of the society; clear, binding standards of conduct applicable to all persons working in public service, regardless of the nature of

the position or the office; the prevention of abuse of office, the emergence and spread of corruption in public service; proper implementation of constitutional requirements raised for the civil service of Lithuania. In this respect, “Lithuania accumulated sufficient capacity of the central government, needed for public service policy coordination and control” (Meyer-Sahling, Nakrošis, 2009a). Research shows that the country’s civil service career system confidently meet the principles of the European public administration, because “62.07 percent of Lithuanian servants support that in their ministries, promotion depends on good individual performance” (the average of the new EU members is as much as 42.25 percent)” (Meyer-Sahling, Nakrošis, 2009b).

In meso legal level, requirements of harmonisation of public and private interest in public service, alongside the general signs gain certain features specific for individual groups of officials, sectors, communities. These requirements can be found in legal acts of different institutions of public service. For example, the Public Procurement Office indicate what measures (Public Procurement Office, 2011) must be taken by the official-carrying out or participating in Office’s public procurement to adjust his official activities with the Law on the Adjustment of Public and Private Interests in the Public Service of the Republic of Lithuania. Among public and private interest conflict-causing situations the Recommendations (paragraph 11.1-11.2.2.) indicate:

1. An employee of the Office and (or) their close person or a legal entity in which an employee of the Office and (or) their spouse, cohabiting, partner is a member, and (or) hold office and participate in the activities of a legal entity;
2. An employee of the Office or their close person:
 - 2.1 possesses a part of authorized capital, or property contribution to it of the legal entity participating in public procurement procedures;
 - 2.2 receives from a participant of public procurement procedures, the natural or legal person, any kind of income;
 - 2.3 any other conditions that may cause a conflict of interest or appearance of conflict of interest turn out.

Among circumstances causing conflict situations recommendations separately mention gifts. It is stressed that “the staff of the Office can not accept gifts or services that are given for their own functions in the Office, unless the Office employee receives gifts or services in accordance with international protocol or traditions that are normally associated with a person working in the civil service duties, as well as entertainment gift (state, institutions and other symbols, calendars, books and other informative printed matter), the value of which does not exceed LTL 100” (paragraph 13).

In terms of conflict prevention, the Public Procurement Office also governs the behaviour of civil servants in the events of duty leave, vacations, permission to work in another job, prevention of nepotism (13). Conflict prevention system, no matter how effective in a strategic point of view, can not fully protect against potential conflicts of interest situations. Therefore, in the micro legal level it is necessary to be able to assess each situation unconventionally, separately and take the appropriate procedural steps to subtly address the conflict of interest, to assess the employee’s practices, expectations, goals and other important subjective and objective information, sometimes revealing duplicity of servant’s behavioural objectives. Evaluating all the above considerations, it should be noted that they have common features to the entire civil service system, make the conditions for sustainable development, so their further regulation must be unified in currently prepared the Civil Servants Code of Ethics.

3. Definition of conflict of public and private interest in public service

The category of conflict of interest¹ was commenced to use in legal texts as late as in seventh decade of 20th century (Case No. I-4245-171/2013). Notably, in different countries, a conflict of public and private interests is understood in different ways. This is caused by uneven level of economic development, democratic maturity, historical, political experience, culture, legal tradition and other factors (Kiškis, Kuodyte, 2012), eg., in the

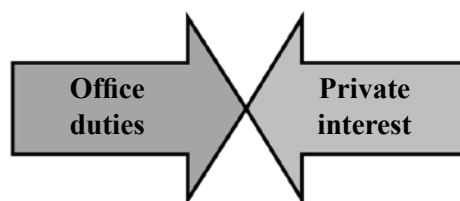
¹ The conflict term comes from the Latin word conflict, meaning the clash. In social sciences, the conflict is seen as a struggle for social and legal status, authority, goodies or own values. For example, J. Guščinskienė (2001) names the social conflicts as “various kinds of struggle between individuals which purpose is to reach (or retain) the means of production, economic position, power or other values that are valued in society, as well as compulsion to obey, neutralisation or elimination of perceived or real enemy.

Southwest Asian region, the obligation to the family is considered the most important, so in those states it is normal that people start to work in the civil service, using family-position, although in advanced democratic countries it is prohibited by law (Meyer-Sahling, Nakrošis 2009b). Therefore, what in some countries (including Lithuania), in the civil service is considered nepotism², favouritism, protectionism and violation of the principle of evaluation for the ability, in other countries is recognised as the usual “help our neighbour”. Due to such “help” as estimated by World Bank, in public procurement it is paid 2-3 times more than the market price (World Bank 2000, p. 16).

European Council defines conflict of interest as a situation “in which a public official has a private interest which is such as to influence (or appear to influence), the impartial and objective performance of his or her official duties”, where private interest is understood as “any advantage to himself or herself, to his or her family, close relatives, friends and persons or organisations with whom he or she has or has had business or political relations” (Committee of Ministers to Member states, 2010). OECD, which member Lithuania seeks to become, provides such a definition of a conflict of interest: “A conflict of interest involves a conflict between the public duty and the private interest of a public official, in which the official’s private-capacity interest could improperly influence the performance of their official duties and responsibilities.” (OECD, 2005). A conflict of interest is also defined as a conflict of direct or indirect personal benefit and professional obligations (European Commission, 2014), as a situation in which public servants operate, intend to operate or make an impression operating in private interest (Stevenson, 2010). In the Law on the Adjustment of Public and Private Interests in the Public Service, a conflict of interest means a situation where a person in central or local public service, when discharging his duties or carrying out instructions, is obliged to make a decision or participate in decision-making or carry out instructions relating to his private interests (Law on the Adjustment of Public and Private Interests in the Public Service, 1997). Noteworthy, the term ‘decision’ includes any action, eg., a person carrying out duties or assignment (of his immediate superior etc.) is involved in the activity of task forces, commissions, committees, writes official letters, prepare orders, sanctions the documents etc.

The analysis of these definitions of conflict of interest, it is possible to distinguish these two essential elements of the conflict: 1) duties, which are to ensure the implementation of the primacy of public interest; 2) private interest which must comply with the public interest guarded by public service, as might otherwise dysfunctionally affect the performance of official duties (see Fig. 2).

Fig. 2 Elements of a conflict of interests



If any element is missing, there is no conflict of interests. In this regard, it is appropriate to quote the first US president’s words, spoken in response to a friend’s request to appoint him to some public office, which very clearly reveals the primacy of ensuring the public interest: “You are welcome to my house, you are welcome to my heart, however my personal feelings have nothing to do with the present case. I am not G. Washington, I am the president of the USA. As George Washington I would do anything in my power for you. As President I can do nothing.” (Palidauskaite, 2010). This example shows that public and private interests are closely related, and the public service workers have a dual role - public and private. The performance of official duties is attributed to the public role, but at the same time, the person does not cease to be a private person, eg., a member of a family, a relative, a friend, a business partner etc. This creates a different, and in many instances contradictory subsystems of values (eg., a civil servant’s main value is a public interest, serving people and that of an entrepreneurs is to gain personal benefits and so on), that could adversely affect the performance

² In dictionaries in Lithuanian language, nepotism is generally defined as the recruitment of relatives by using official position.

of official duties and the general image of public service. Thus, the concept of conflict of interest is related to the collision of public and private roles and together interests, when a person employed in public service is to impartially, objectively and fairly carry out his duties, however he is affected by personal preferences based on personal interest (his own or his close persons' business; close relatives work at the same institution; work in other enterprises, institutions and organisations; professional or individual activities; membership, relationships and responsibilities in various associations; financial or moral obligations (debt) to other persons, other civil relationships; hostility (dispute or competition) to other persons or groups; search for a new job, negotiations with a prospective employer etc.). It is therefore clear that persons working in public service, can realise their private interest in a private capacity only and in the performance of official duties they must always give priority to the public interest.

To illustrate the above thoughts, in the example of public procurement, it is necessary to say that the people of the contracting authority responsible for the implementation of public procurement have the right to take decisions, practically anyone of which can implement or damage the public interest. Decisions made for personal gain if they were taken in an official capacity, generally violate either the public interest (in the narrow sense) or private interest of other supplier (public interest in a broader sense, as a fair and equitable competition enforcement tool). In any case, it is a threat to the authority and general grounds of functioning of public service, which are largely based on public trust.

In addition, it should be noted that any conflict of interest must be direct and obvious. For example, violation of the principle of impartiality can be found only after recognition that the person acted in circumstances that gave rise to a conflict of interest, i.e. having a personal (or of a person closely associated) pecuniary or non-pecuniary interest. Assessment of those facts can not be based on assumptions, unrealistic and unlikely, hypothetical conclusions and suppositions upon possibly gained or potentially emerging in the future interest of a public servant (eg., Case No. I-4245-171/2013 etc.) (LVAT 2006). From the other hand, paragraph 2 of part 1 of article 3 of the Law On the Adjustment Of Public And Private Interests In the Civil Service (1997) stipulates the general duty of a public official - "to avoid conflict of interest in accordance with the procedure and measures laid down by legal acts, and act in such a way as to avoid suspicions about the existence of such a conflict." In this case, there is an issue of alleged or potential conflict of interest as the standard of appearance.

In this respect, it should be noted that the OECD identifies three types of conflicts of interest: 1) an actual conflict of interest, in which the public official's private-capacity interests improperly influence the performance of their official duties and responsibilities; 2) an apparent conflict of interest, where it appears that an official's private interests could improperly influence the performance of their duties but the fact of such conflict is subject to investigation; 3) a potential conflict of interest that occurs where a public official holds a private interest which are not important or not influence their duty, but would become important if the relevant circumstances were to change in the future (OECD, 2003).

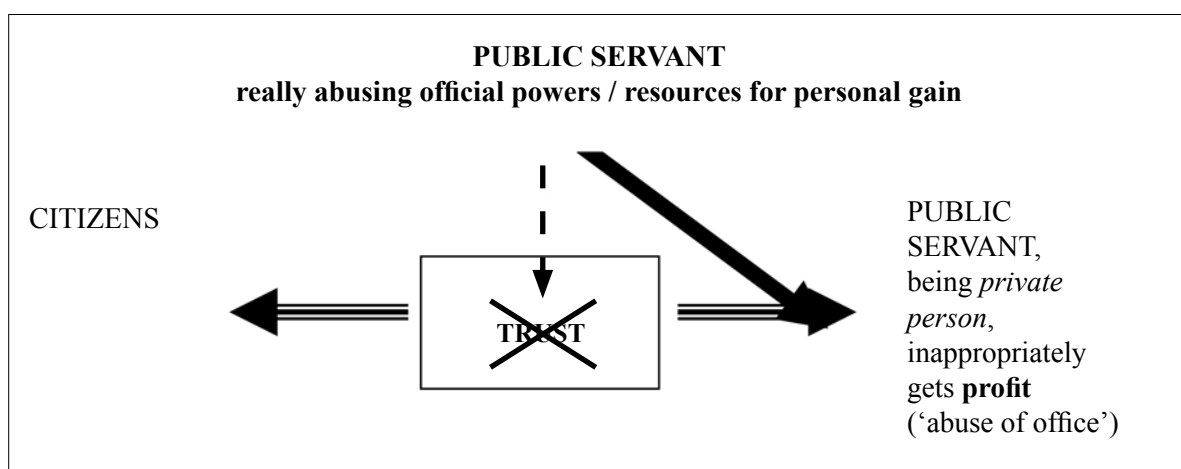
Such classification of conflicts of interest is not a new phenomenon. As early as on May 8, 1965, US President L. Johnson in Executive Order 11222 - Prescribing Standards of Ethical Conduct for Government Officers and Employees formulated a standard of appearance that prohibited to act in the way that gives the appearance of private gain from using the office (Johnson, 1965). Lithuanian case law also recognises the appearance standard, eg., SACL in its ruling of June 10, 2013 in the administrative case No. A525-998 / 2013 made it clear that the Law On the Adjustment Of Public And Private Interests In the Civil Service in its essence is preventive and public servant must avoid even the appearance of bias. On the other hand, it should be noted that Lithuanian administrative courts clearly distinguish the circumstances which may give rise to a conflict of interest and conflict situation already emerged: in the first case there is an obligation to declare such circumstances, in the second case it is necessary to opt out, eg., SACL in the ruling of November 2, 2010 in the administrative case No. A442-1422 / 2010 noted that: "The circumstances which may give rise to a conflict of interest in itself does not mean a conflict of interest. They describe a common position of a person working in the civil service (his previous or existing relationship with others, participation in non-official activities, transactions or the like) and in its essence it is just an assumption for a conflict of interests. When certain specific circumstances occur in the

office of a public servant (when needed to prepare or adopt a specific decision, upon a particular order, and so on), those circumstances, expressing the assumptions of conflict of interests, in conjunction with these specific official circumstances become a conflict of interest.”

It was already mentioned that adjustment of public and private interests is one of the most important anti-corruption instruments, therefore it is appropriate to briefly discuss interfaces of corruption and conflict of interest. Scientific literature distinguishes the following differences between corruption and conflict of interest: 1) the ‘corruption’ term is used to identify large forms of venality and self serving, and minor cases are covered by conflict of interest; 2) corruption is considered a crime, and conflict of interest in most cases, is not seen as a crime; 3) corruption is related more to large financial benefits, and conflict of interest pertains to the social relationships and behaviour, which is assessed as biased performance of official duties (Palidauskaitė, 2005).

Thus, corruption and conflict of interest is not the same phenomenon: corruption in all cases involves a conflict of interest, but a conflict of interest does not necessarily mean corruption, eg., bribe is aimed at property or other personal benefit for himself or another person, it is offered, promised, given for a public servant’s or an equivalent person’s legal or illegal act or failure to act in discharge of duties, however, a conflict of interest is not necessarily associated with economic gains, biased behaviour of an employed in the civil service is enough. Furthermore, criminal responsibility is prescribed for acts of corruption (ex. the Criminal Code of the Republic of Lithuania (2000), articles 225 ‘Bribery’, article 226 ‘Bribery of an Intermediary’, article 227 ‘Graft’ etc.), and violations of conflict of interest do not cause such severe legal consequences. Possible transformation of conflict of interest into corruption is illustrated in Fig. 3.

Figure 3. How a conflict of interest can turn into corruption (Palidauskaitė, 2010)



However, it is considered that conflicts of interest are neither less dangerous nor cause smaller negative effects on development of the state than corruption. First of all, conflicts of interest are almost always associated with personal advantage that, even if not pecuniary, may be tangible. For example, loyalty, giving no current financial profit, but possibly awarding in the future. Secondly, conflicts of interest being not addressed in time, have a tendency to degenerate into corruption. Third, the society and the state should attach importance not to a fact of gaining of pecuniary advantage, but to the breach of desirable standards of behaviour, both equally inevitable in the event of conflict of interest and corruption.

Considering the circumstances, it is very important for timely identification, disposal and management of conflicts of interest. In this regard, it is appropriate to quote words of the president of the USA J. F. Kennedy from the Special Message to the US Congress of April 27, 1961: “Criminal statutes and Presidential orders, no matter how carefully conceived or meticulously drafted, cannot hope to deal effectively with every problem of ethical behavior or conflict of interest. Problems arise in infinite variation. They often involve subtle and difficult judgments... And even the best of statutes or regulations will fail of their purpose if they are not vigorously and

wisely administered.” (Kennedy, 1961)

Summarising the above, it can be concluded that conflicts of public and private interest in public service occur when a person is required to perform certain duties, which should ensure the implementation of the public interest, but the person’s actions (inaction) are related to his private interest, which may adversely affect the performance of official duties. If conflicts of interest in public service are not resolved or addressed properly, sooner or later they turn into corruption, and cause significant damage to the state itself, so it is very important for timely identification, disposal and management of conflicts of interest.

Conclusions

The necessity of harmonisation of public and private interests in public service is determined by the following *features*: reliability of public service and implementation of its purposes in order to guarantee the public interests of the society; clear, binding standards of conduct applicable to all persons working in public service, regardless of the nature of their position or the office; the aim to prevent an abuse of office, the emergence and spread of corruption in public service, and the need of proper implementation of constitutional requirements raised for the civil service. These features show significance of conflicts of interest in public service and the need for more attention to this issue.

The analysis of the categories of public and private interest conflict in public service reveals that two essential elements of conflict of interest can be distinguished: 1) the duties that ensure the implementation of the public interest; 2) private interest which may negatively affect the performance of official duties. With these two elements, a significant risk of public and private interests conflict is identified. A conflict of interest must be direct and obvious, however it is generally recognised that the person employed in public service must avoid even the appearance of improper behaviour. This shows that public servants are subject to higher requirements in order to prevent inappropriate behaviour. Conflicts of interest and management thereof should be the priority area of every state’s internal public policy, because if conflicts of interest in public service are not resolved or addressed properly, sooner or later they turn into corruption, and cause significant damage for the state itself and inhibit its development.

In terms of implementation of the purposes of sustainable development, causes, problems and solutions of public private interest conflict shall be addressed in three interrelated social macro (general public, national, complex organisations’ aspects), meso (local community, organisations, government, group of individual officials’ aspects) and micro (individual, small group aspect) levels.

Conflicts of interest arising between the state authorities and their officials for the performance hit (what is required by a professional obligation to act in the public interest) and the people, the public, public expectations and needs are insufficiently researched and evaluated.

References

Administracinių bylų dėl tarnybinių ginčų nagrinėjimo teismuose praktikos apibendrinimas, aprobuotas Lietuvos vyriausiojo administracinio teismo teisėjų 2006 m. liepos 3 d. Pasitarime [Summary of Practice of Litigation for Office Disputes, approved by the Lithuanian Supreme Administrative Court judges on July 3, 2006]. Lietuvos vyriausiojo administracinio teismo biuletenis. Administracinių teismų praktika. 2006. Vilnius, No. 9.

Anticorruption in transition: a contribution to the policy debate. Washington, DC: World Bank, 2000.

Ar Jūs pasitikite, ar nepasitikite šiomis Lietuvos institucijomis? Visuomenės nuomonės ir rinkos tyrimų centras “Vilmorus”, 2015. Available at the Internet: <<http://www.vilmorus.lt/index.php?mact=News,cntnt01,detail,0&cntnt01articleid=2&cntnt01returnid=20>>. [18 August, 2015]

Constitution of the Republic of Lithuania. OJ. 1992, No. 33-1014.

Criminal Code of the Republic of Lithuania. Official Gazette, 2000, No. 89-2741.

Ethics in the Public Service - Current Issues and Practice. Public Management Occasional Papers No. 14 [interactive]. OECD, 1996, p. 11-17; 27-44. Available at the Internet: <http://78.41.128.130/dataoecd/59/24/18_98992.pdf> [accessed 12/02/2015].

Europos Komisijos kovos su korupcija ataskaita Tarybai ir Europos Parlamentui [Report From The Commission To The Council And The European Parliament: EU Anti-Corruption Report] [interaktyvus]. Brussels: European Commission, 2014. Available at the Internet: <http://ec.europa.eu/dgs/home-affairs/e-library/documents/policies/organized-crime-and-human-trafficking/corruption/docs/acr_2014_lt.pdf> [accessed 13/05/2015].

Guščinskienė, J. Sociologijos įvadas: struktūrinės loginės schemas ir komentarai [Introduction to Sociology: Structural Logical Schemes and Comments]. Kaunas: Technologija, 2001. 89 p. ISBN 9986 – 13 – 888 - 4.

Identifying and Reducing Corruption in Public Procurement in the EU. Development of a methodology to estimate the direct costs of corruption and other elements for an EU-evaluation mechanism in the area of anti-corruption. Brussels: PwC ir Ecorys [interaktyvus], 2013. Available at the Internet: http://ec.europa.eu/anti_fraud/documents/anti-fraud-policy/research-and-studies/identifying-reducing-corruption_in_public_procurement_en.pdf [accessed 05/01/2015].

Johnson, L. B. „Executive Order 11222 - Prescribing Standards of Ethical Conduct for Government Officers and Employees“. May 8, 1965. Online by Gerhard Peters and John T. Woolley, The American Presidency Project. [interactive] Available at the Internet: <<http://www.presidency.ucsb.edu/ws/?pid=106245>> [accessed 29/05/2015].

Kennedy, F. J. „Special Message to the Congress on Conflict-of-Interest Legislation and on Problems of Ethics in Government“. April 27, 1961. Online by Gerhard Peters and John T. Woolley, The American Presidency Project. [interactive] Available at the Internet: <<http://www.presidency.ucsb.edu/ws/?pid=8092>>. [accessed 29/05/2015].

Kiškis, A.; Kuodytė, A. Nusikalstamumo prevencijos programų rengimo Lietuvoje tyrimas [Research of Crime Prevention Programmes Preparation in Lithuania]. Jurisprudencija. 2012, 19(2): 771-801.

Law On the Adjustment Of Public And Private Interests In the Civil Service. Official Gazette, 1997, No. 67-1659; 2000, No. 18-431.

Managing Conflict of Interest in the Public Service. OECD Guidelines And Country Experiences. [interactive] 2003, p. 58. Available at the Internet: <<http://www.oecd.org/corruption/ethics/48994419.pdf>> [accessed 10/05/2015].

Meyer-Sahling, J.H.; Nakrošis, V. Modernising the Lithuanian Civil Service. Vilnius, 2009, p. 25-26.

Meyer-Sahling, J.H.; Nakrošis, V. Viešojo politika ir administravimas [Public policy and administration]. 2009. No. 27, p. 10.

Miliauskas, P. Interesų konfliktas: sąvoka ir galimi sprendimo būdai [Conflict of Interest: Concept and Possible Solutions]. Teisė. Mokslo darbai. Vilnius: Vilniaus universiteto Teisės fakultetas, 2010, Nr. 75. p. 95.

Misiūnas, E. Policijos pareigūnų teisinis statusas [Legal Status of Police Officers]. Doctoral dissertation. Socialiniai mokslai, teisė (01 S). Vilnius: Mykolas Romeris University, 2010, p. 36-38.

OECD, Managing Conflict of Interest in the Public Sector. A toolkit [interactive]. Paris: OECD Publishing, 2005, p. 17. Available at the Internet: <<http://www.oecd.org/gov/ethics/49107986.pdf>> [accessed 13/05/2015].

Palidaukaitė, J. Etika valstybės tarnyboje [Ethics in Public Service]. Kaunas: Technologija, 2010, p. 175.

Palidaukaitė, J. Korupcijos ir atsakomybės problema viešojo administravimo sistemoje [The Problem Of Corruption And Responsibility In the Public Administration System]. Viešojo politika ir administravimas. Kaunas Technology University: Kaunas, 2005, No. 13, p. 28.

Public Procurement Indicators 2011 [interactive]. Brussels: European Commission, 2012. Available at the Internet: <http://ec.europa.eu/internal_market/publicprocurement/docs/modernising_rules/public-procurement-indicators-2011_en.pdf>. [accessed 10/05/2015].

Recommendation No. R (2000) 10 of the Committee of Ministers to Member states on codes of conduct for public officials [interactive]. 2010. Available at the Internet: <[http://www.coe.int/t/dghl/monitoring/greco/documents/Rec\(2000\)10_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/documents/Rec(2000)10_EN.pdf)> [accessed 13/05/2015].

Stevenson, W. Recognizing and Avoiding Conflicts of Interest [interaktyvus]. Enago, 2010. Available at the Internet: <<http://www.enago.com/blog/recognizing-and-avoiding-conflicts-of-interest/>> [accessed 10/12/2014].

Stuart, C.; Gilman, Ph.D.; Joseph, J.; Raven, Ch. Conflicts of Interest: balancing appearances, intentions and values [interaktyvus]. Ethics Resource Center, 2002, Available at the Internet: <<http://www.ethics.org/resource/conflicts-interest-balancing-appearances-intentions-and-values>>. [accessed 10/12/2014].

Supreme Administrative Court of Lithuania. Ruling of June 10, 2013 in administrative case No. A525-998/2013.

Supreme Administrative Court of Lithuania. Ruling of November 2, 2010 in administrative case No. A442-1422/2010.

Supreme Administrative Court of Lithuania. Ruling of November 9, 2004 in administrative case No. A3-750-2004.

The Constitutional Court of the Republic of Lithuania. Ruling of December 13, 2004 „Dėl kai kurių teisės aktų, kuriais reguliuojami valstybės tarnybos ir su ja susiję santykiai, atitikties Lietuvos Respublikos Konstitucijai ir įstatymams [On Some Laws That Regulate the Civil Service And Related Relationships, Compliance With the Constitution Of the Republic of Lithuania and the law]“. Official Gazette, 2004. No. 181-6708.

The Government of the Republic of Lithuania. Resolution of April 14, 2003 No. 477 „Dėl kaimo gyvenamųjų vietovių gyventojų saugumo ir jaunimo policijos apylinkės inspektorių veiklos gerinimo 2003–2005 metais programos patvirtinimo [On the Approval Of the Programme for Public Safety in the Rural Residential Areas, and Improving the Performance of Youth Police Inspectors in 2003-2005]“. Official Gazette. 2003, No. 37-1619.

The Government of the Republic of Lithuania. Resolution of March 24, 1993 No. 197 „Dėl nusikaltimų asmeninei (privatinei) nuosavybei prevencijos ir jų kontrolės gerinimo [On the Prevention of Crimes towards Personal (Private) Property and Control Improvement]“. Official Gazette. 1993, No. 13-333.

Viešųjų pirkimų tarnybos rekomendacijos dėl priemonių, kurių asmuo turi imtis, kad savo tarnybinę veiklą suderintų su Lietuvos Respublikos viešųjų ir privačių interesų derinimo valstybinėje tarnyboje įstatymo nuostatomis [Public Procurement Office Recommendations on Measures to be Taken by the Person in order to adjust his public duties with the provisions of the Law On the Adjustment Of Public And Private Interests In the Civil Service]. Patvirtinta Viešųjų pirkimų tarnybos direktoriaus 2011 m. gruodžio 30 d. įsakymu Nr. 1S-202 (Viešųjų pirkimų tarnybos direktoriaus 2013 m. gegužės 31d. įsakymu Nr. IS-444).

Vilnius Regional Administrative Court Decision of December 31, 2013 m. in administrative case No. I-4245-171/2013.

Vveinhardt, J. Nepotizmo vertinimo dichotomija: socialinės ir etinės dimensijos [Nepotism Evaluation Dichotomy: Social and Ethical Dimensions] Organizacijų vadyba: Sisteminiai tyrimai, 2012, p.124.

Algimantas URMONAS is Phd (in the field of Law) and professor at Mykolas Romeris University (Lithuania). Main scientific interests: administrative law, social changes, sustainable development.

Virginijus KANAPINSKAS is Phd (in the field of Law) and lecturer at Mykolas Romeris University (Lithuania). Main scientific interest: conflicts of interests, public procurement.

Agnė TVARONAVIČIENĖ is Phd (in the field of law) and associated professor at Mykolas Romeris University (Lithuania), Chairperson of Lithuanian Arbitration Court. Main scientific interests: public procurement, dispute resolution procedures.

Indrė JUOZAPAITYTĖ is master of law at Mykolas Romeris University (Lithuania). Main scientific interests: dispute resolution, public procurement, administrative law.