

Development on the asset Declaration system and audit of the High Ranking Officials - Means of investigation and future challenges

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Abstract

The system of declaration of private interests is a mechanism widely adopted by various countries, aiming to control or oversight a category of high ranking officials and civil servants who, by virtue of their function, have significant powers over the economic, social or financial resources of the state. This mechanism constitutes an institutional and public scrutiny, aiming to prevent the abuse of their power for personal gain, contributing to the prevention and resolution of conflicts of interest for public officials, in order to promote integrity and transparency in public administration.

This paper aims to bring the attention to the relevance of an effective system on declaration of private interests, as a means generally adopted in various countries within the mechanisms in the fight against corruption and increasing the integrity of the public officials. Throughout the paper is giving an analysis of the features chosen in different jurisdictions, the principles required from international instruments, with special focus on the legislative framework adopted and implemented in Albania. An overall evaluation is provided for the legislation's scope of application, the range of public officials bearing the obligation to declare their private interests, the transparency and procedures for the audit of the declarations of private interests.

Keywords: Asset Declaration, Private interests, Public Official, Audit.

Introduction

The system of declaration of private interests is a mechanism widely adopted by various countries, aiming to control or oversight a category of high ranking officials and civil servants who, by virtue of their function, have significant powers over the economic, social or financial resources of the state. This mechanism constitutes an institutional and public scrutiny, aiming to prevent the abuse of their power for personal gain, contributing to the prevention and resolution of conflicts of interest for public officials, in order to promote integrity and transparency in public administration.

The system of asset declarations for public officials began to evolve into their modern versions after World War II¹. In the United States, the increase number of government scandals and the high level of corruption served as an incentive for the initiatives to strengthen the integrity of public officials. This was the context of President Truman's political message to the Congress in 1951, in which he stated: *"For all the questions that are being raised today about the honesty and integrity of public officials, I think we should all be prepared to put the facts about our income in the public register"*². However, various

¹ Burdescu, R., G.J. Reid, S. Gilman and S. Trapnell (2009), "Stolen Asset Recovery – Income and Asset Declarations: Tools and Trade-offs, The World Bank, United Nations Office of Drugs and Crime, p.29.

² President Harry S. Truman's Message to Congress, 27 September 1951. Here quoted from G.C. Mackenzie and M. Hafken (2002), "Scandal Proof: Do Ethics Laws Make Government Ethical?",

factors prevented the establishment of a public official declaring system at the federal level in the 1950s. It was not until 1965 that President Lyndon B. Johnson introduced the request that federal officials shall disclose information about their private finances to public authorities³.

The Watergate scandal and other scandals urged the US Congress to pass the "Government Ethics Act" in 1978, which, still in force today, requires detailed disclosure of public finances by government employees above a certain level in all three branches of the federal government⁴. While, at the state level, since the 1950s, there were initiatives for public finance disclosure, which materialized in the following decades. By 1969, 11 states demanded public disclosure of officials' finances⁵. The financial disclosure systems for public officials were widely adopted in the 1970s. Nevertheless, U.S. court rulings led to a general recognition of the power of the state to force the disclosure of private finances⁶.

The systems for declaring the income, assets and financial interests of public officials were introduced in most of Western Europe a few years later, apart from the United Kingdom, which passed the Anti-Corruption Act in 1889. The historical experience showed that the parliament was generally reluctant to impose strict rules on the declaration. The asset declarations systems for the public officials were further approved in Western Europe in the 1980s. In 1982, Spain adopted a law on declarations. In Italy in 1982 members of the Italian parliament were forced to disclose their additional incomes and property status. In 1983 Portugal passed a law on public control of the assets of elected officials. The early and even the current Western European's systems of the declaration do not comply with the US system in terms of complexity, range of officials, or enforcement mechanisms. While in the late 1980s and 1990s the declaration systems were introduced in most of Central and Eastern Europe. Under socialist rule, public officials usually did not declare income or wealth. All the countries of the region that joined the European Union in 2004 and 2007 had adopted their own declaration systems by 2000. This was due to the conditions for EU accession, but the trend continues in the 21st century, when the young aspirants for EU membership and the former Soviet Republics developed their own rules of private financial disclosure.

In Albania, following the signing of the Stabilization and Association Agreement (SAA) on June 12, 2006, the approximation of Albanian legislation to the *acquis communautaire* and its implementation was a very complex and demanding process. This required Albania not only to build its regulatory framework according to its requirements, but also to provide the administrative structures and other conditions necessary for the implementation of *the acquis*. This required also the adoption of a legislative framework related to the transparency of the public official background through the introduction of forms for the declaration and control of their private interests.

Brookings Institution Press, p. 19.

³Mackenzie, G.C. and M. Hafken (2002), "Scandal Proof: Do Ethics Laws Make Government Ethical?", Brookings Institution Press., p.24.

⁴"Fighting Corruption in Eastern Europe and Central Asia, Asset Declarations for Public Officials a tool to prevent corruption", OECD (2011), p.21.

⁵Anechiarico, F. and J.B. Jacobs (1996), *The Pursuit of Absolute Integrity: How Corruption Control Makes Government Ineffective*, University of Chicago Press. P. 47.

⁶Rohr, J.A. (1998), "Public Service Ethics, and Constitutional Practice", University Press of Kansas., p. 44.

The priorities of the Albanian institutions and the continuous requests of various international organizations to strengthen the fight against the phenomenon of corruption in the public administration, have led to the adoption in 2004 of a legal package for amendments to the Criminal Code⁷ and the Code of Criminal Procedure⁸. These changes mainly affect the phenomenon of corruption in terms of a clearer definition of the criminal offense, as well as in terms of defining special means and methods of investigation to help collect evidence and achieve the probability of this criminal offense. Part of this package was the approval of Law no. 9049, dated 10.4.2003 "On the declaration and audit of assets, financial obligations of elected persons and certain public officials" and Law no. 9367, dated 7.4.2005 "On prevention of conflict of interest in the exercise of public functions".

1. The declaration system and international standards

In the 1990s, the declaration systems not only spread to countries in transition, but in this period international organizations focused on creating international standards, despite being largely soft /recommendatory in their nature. One of the earliest international instruments requiring the application of the disclosure system for public officials was the Inter-American Anti-Corruption Convention, adopted in 1996.

The Congress set out requirements that the States Parties shall consider measures for the establishment, maintenance and strengthening, inter alia, of "systems for registering the incomes, assets for certain public functions as specified by law and, where appropriate, to make such registrations public".⁹

The African Union Convention on Preventing and Combating Corruption, adopted in 2003, commits States Parties to require all public or designated officials to declare assets at the time of taking office, in office, and after their term in the public service.¹⁰

The earliest European standards in this regard were set out in Recommendation no. R (2000) 10 of the Committee of Ministers to Member States on codes of conduct for public officials (adopted on May 11, 2000)¹¹. In Article 14 of this recommendation is provided that: "The public official who occupies a position in which his or her personal or private interests are likely to be affected by his or her official duties should, as lawfully required, declare upon appointment, at regular intervals thereafter and whenever any changes occur the nature and extent of those interests"¹². As can be deduced, the recommendation emphasizes only the purpose of the declaration to control the conflicts of interest, not the monitoring of assets, which is also seen as important in a number of countries.

The conditions required to be met from the countries aspiring to join the European Union generally do not contain a clear requirement for the establishment of a declaration system for public officials (there is no EU law - or *acquis communautaire*

⁷ Amendments approved by law no. 9188, dated 12.2.2004 and law no. 9275, dated 16.09.2004.

⁸ Ibid.

⁹ Article III, Paragraph 4 of the Inter-American Convention Against Corruption, www.oas.org/ju-ridico/English/Treaties/b-58.html

¹⁰ Paragraph 1, Article 7 of the African Union Convention on Preventing and Combating Corruption, www.africainunion.org/Official_documents/Treaties_%20Conventions_%20Protocols/Convention%20on%20Combating%20Corruption.pdf

¹¹ Council of Europe Committee of Ministers Recommendation No. R(2000) 10 to Member States on codes of conducts for public officials, adopted by the Committee of Ministers on 11 May 2000 at its 106th session

¹² Article 14 of the Recommendation No. R(2000) 10 to Member States on codes of conducts for public officials, adopted by the Committee of Ministers on 11 May 2000 at its 106th session

- for declaration). The EU position, expressed in broad terms, included the demand that the candidate country has achieved the stability of the institutions that guarantee democracy, the rule of law, human rights¹³. Meanwhile, the candidate countries are expected to meet the requirements of relevant international standards and the introduction of various anti-corruption procedures. Furthermore, specific countries are given concrete requirements to implement or strengthen measures to control conflicts of interest and to verify the assets of public officials as part of the EU requirement to control corruption¹⁴. Hence, even though there is no legally binding basis and conclusive proof of effectiveness, the declarations of the public officials have become a de facto standard of the European Union towards candidate members. As already noted, the Central and Eastern European countries that joined the EU in the 21st century introduced such systems with a lower efficiency set up shortly before accession. The function of the declaration systems continues to be monitored by the European Commission in the current candidate countries.

Nowadays, the declaration of the public officials has become part of the global standard embodied in the United Nations Convention against Corruption (adopted in 2003). Article 8 paragraph 5 contains a soft standard, which requires States Parties *“shall endeavour, where appropriate and in accordance with the fundamental principles of its domestic law, to establish measures and systems requiring public officials to make declarations to appropriate authorities regarding, inter alia, their outside activities, employment, investments, assets and substantial gifts or benefits from which a conflict of interest may result with respect to their functions as public officials”*¹⁵.

The Convention, recalls the issue of private financial disclosure in the context of asset recovery by requiring *“each State Party to consider establishing, in accordance with its domestic law, effective financial disclosure systems for appropriate public officials and provide appropriate sanctions for noncompliance”*¹⁶. Each State Party shall also consider taking such measures as may be necessary to allow its competent authorities to share that information with the competent authorities in the other States Parties when necessary for investigation, claims and recovery of the proceeds of criminal offenses established in accordance with this Convention¹⁷. The Legislative Guide for the Implementation of the UN Convention against Corruption¹⁸ clearly states that States are required to consider adopting such reporting systems and attempt to determine if they are in line with their legal system. Further recommendations are provided in Technical Guide for the Convention Technical Guide, which includes the following:

- The disclosure includes all essential types of income and assets of the officials (all or from a certain level of appointment or sector and / or their relatives);
- E declaration forms allow year-on-year comparisons of official financial position;
- The declaring procedures exclude the possibility of concealing the assets of

¹³This was part of the so-called Copenhagen criteria; see Presidency Conclusions, Copenhagen European Council, 21-22 June 1993, www.europarl.europa.eu/enlargement/ec/pdf/cop_en.pdf.

¹⁴Fighting Corruption in Eastern Europe and Central Asia, Asset Declarations for Public Officials a tool to prevent corruption, OECD (2011), p 24

¹⁵Law no. 9492, dated 13.3.2006, that has ratified the “United Nations Convention against Corruption”.

¹⁶Article 52 of the United Nations Convention against Corruption.

¹⁷Article 52/5 of the United Nations Convention against Corruption.

¹⁸UN (2009), Technical Guide to the United Nations Convention against Corruption, www.unodc.org/documents/corruption/Technical_Guide_UNCAC.pdf”.

officials through other means or, as far as possible, assets held by those against whom a State party may not have access (e.g. held abroad or by a non-resident);

- There is a reliable system for controlling income and assets for all natural and legal persons - such as within the tax administration - to enter into contact with persons or legal entities related to public officials;
- The officials have a strong duty to prove / demonstrate their sources of income;
- As far as possible, officials are excluded from declaring non-existent assets, which can later be used as an excuse for otherwise unexplained assets;
- The oversight agencies have sufficient human resources, expertise, technical capacity and legal authority for meaningful controls;
- There are appropriate preventive penalties for violations of these requirements.

By Law no. 8778, dated 26.4.2001, the Albanian Parliament ratified the "Criminal Convention on Corruption" and in March 2006, with Law no. 9492, dated 13.3.2006, has ratified the "United Nations Convention against Corruption".

In fulfilling the commitments undertaken in respect and based on the International Conventions against Corruption, our state administration, the financial control bodies, those of criminal prosecution and justice, have followed some main directions for strengthening the fight against corruption, such as:

- Strengthen the law enforcement processes, by aligning the domestic legislation with international standards;
- Improving the existing state systems and mechanisms in terms of avoiding elements that favor corruption;
- Raising the education and public awareness regarding the importance of the fight against corruption.

The declaration of assets in the Republic of Albania was regulated for the first time by the Law no. 7903, dated 8.3.1995 "On the declaration of assets of elected officials and some directors and employees of public service"¹⁹. The practical implementation of this law has encountered a series of obstacles and the results of its implementation have been considered almost minimal. According to this law, the body empowered with the control and verification of the declaration of assets of senior officials was the Joint Commission appointed by the People's Assembly, the Council of Ministers²⁰,

¹⁹ Promulgated by the Decree no.1042, dated 20.3.1995 of the President of the Republic.

²⁰ For further information see:

Decision of the Council of Ministers no. 38, dated 15.1.1996 "On the implementation of law no.7903, dated 8.3.1995" "On the declaration of assets of elected officials and some Directors and employees of public service".

Instruction no.2, dated 7.3.1996 to the Ministry of Finance, for the implementation of DCM no.38, dated 15.1.1996 "On the declaration of assets of the elected and some Directors and employees of the Public Service".

Decision of the Council of Ministers no. 148, dated 11.3.1996 "On an amendment to DCM no. 38, dated 15.1.1996" "On the implementation of law no.7903, dated 8.3.1995 "On the declaration of assets of elected officials and some Directors and employees of public service"

Decision of the Council of Ministers no.644, dated 17.6.1996 "On an amendment to DCM no.38, dated 15.1.1996" "On the declaration of assets of elected officials and some Directors of public service".

Decision of the Council of Ministers no. 55, dated 3.2.1997 "On a change in DCM. no. .38, dated 15.1.1995 "On the declaration of assets of the elected and some Directors and employees of the public service".

the Supreme Court and the Supreme State Audit. The mandate of this commission was for one year. This Commission did not reveal any irregularities or concealment of assets or their illegal gain, at a time when our country was ranked among the countries with a high level of corruption within the state administration and judicial officials. Time proved that this law was not effective and did not work properly. Taking into consideration the fact that the obstacles in the implementation of this law were serious, the changes that could be proposed would damage the structure of the law and moreover would cause confusion in its interpretation and implementation. It was therefore concluded²¹ that it would be better to draft a new law. The new Law no.9049, dated 10.4.2003 "On the declaration and control of assets, financial obligations of elected officials and some public servants" was promulgated by decree no.3805, dated 5.5.2003 of the President of the Republic.

2. Subject of the declaration system. Different approaches between the political and professional officials

Some countries, especially in Western Europe, have adopted different means for regulating the disclosure as for political officials (MPs and cabinet members, politically appointed, i.e officials appointed on the basis of a political decision), versus the professional officials. Although the boundary between political and professional officials is not always clear and varies from system to system, these countries do not extend the obligation to file property declarations to common civil servants.

In doctrinal discussions, special arguments have emerged in favor of making the declaration by the public political officials. As for the members of parliament, in 2007 such arguments were eloquently formulated by the Federal Constitutional Court of Germany, in the case when some members of the Bundestag challenged the obligation to publicly declare information about their private activities and income. This court reasoned that: "*The act of voting in elections, requires not only freedom from coercion and unnecessary pressure, but also that voters have access to information that may be relevant to their decision. [...] Parliamentary democracy is based on the trust of the people; belief without transparency, which allows one to follow what is happening in politics, is not possible [...] The voter must know who he chooses. [...] The connections of interest and economic dependencies of the members are obviously of considerable interest to the public. Such knowledge is important not only for the voting decision. It also ensures the ability of the German Parliament and its members, despite their covert influence of having interests, to represent the people as a whole and the confidence of citizens in this ability and, ultimately, in parliamentary democracy. [...] Members of parliament also have a legitimate interest in knowing what interests their colleagues owe in order to assess where their arguments require particularly vigilant examination*"²².

Decision of the Council of Ministers no. 334, dated 23.6.2000 "On the establishment of the Commission for the Control of the Declaration of Assets of the Personnel of the Customs Administration". Order of the Council of Ministers no.198, dated 17.8 2000 "On the appointment of the members of the commission for control of the declaration of assets of the staff of the customs administration".

²¹ Based on the conclusions presented and in the accompanying report of the new draft law on declaration and control of assets.

²² BVerfG, 2 be 1/06 vom 4.7.2007, Absatz-Nr. 271, 274, 278, www.bundesverfassungsgericht.de/

While the systems of many other countries do not contain any differentiation between political and professional officials or higher and lower level officials, all of them are required to submit assets declarations. This is particularly the case of countries in transition, which use uniform declaring systems at all levels of state authority and uniformly cover all or most levels of public officials. In some states, although very rarely, intermediate systems are found between the two approaches, applying two different types of declarations one (usually broader) to senior political officials and another (usually simple) to professional, the lower level officials.²³

There are several reasons why the declaration system should be limited to senior political officials, for whom more information should be sought and impose a higher level of declaration than other categories of officials:

First, the higher risk of conflict of interest, private organizations with influence in political life are more interested in engaging officials of political level, higher than medium, therefore there is a higher probability of a conflict of interest²⁴. In addition, they are exposed to a higher risk of corruption because high-ranking political offices usually create greater opportunities for illicit profits.²⁵

Second, the nature of political decisions differs from that of administrative decisions and actions. In the former there is usually a much wider field of potential benefits and discretion. Therefore, their proper evaluation can be carried out if all the important interests of a political decision-making are known. Moreover, for officials that are subject to popular elections, it is important that voters have the widest possible information about candidates.

In these categories, there is a relatively smaller weight requirements to protect privacy. It is acknowledged that the public interest outweighs the right to privacy of high-ranking political officials compared to middle-level, low-level officials.

As for the system of controlling the conflicts of interest, it should be noted that even when the middle and lower levels of civil servants do not submit the same declarations as political officials, there should be a control mechanism for them. This may be a form of notification and authorization system where civil servants are required to notify their superiors of potential or actual conflict of interest upon initiation and / or on an ad hoc basis²⁶.

[entscheidungen/es/20070704_2bve000106.html](https://www.entscheidungen.es/20070704_2bve000106.html).

²³ Яременко, С. “Декларирование доходов публичными служащими в Украине”, presentation at the seminar “Asset Declarations for Public Officials as a Tool against Corruption” in Belgrade, Serbia, 15-16 October 2009.

²⁴ Gaugler, M. (2006), Bundestagsabgeordnete zwischen Mandat und Aufsichtsrat, VDM, Saarbrücken, fq. 108. Cited from C. Demmke, M. Bovens, T. Henökl, K. van Lierop, T. Moilanen, G. Pikker and A. Salminen (2007), “Regulating Conflicts of Interest for Holders of Public Office in the European Union: A Comparative Study of the Rules and Standards of Professional Ethics for the Holders of Public Office in the EU-27 and EU Institutions”, European Institute of Public Administration in co-operation with the Utrecht School of Governance, the University of Helsinki and the University of Vaasa.

²⁵ Fighting Corruption in Eastern Europe and Central Asia, Asset Declarations for Public Officials a tool to prevent corruption, OECD (2011), p.61

²⁶ Alves, P. D., “Key Aspects of Asset Declarations in Portugal”, presentation at the seminar “Asset Declarations for Public Officials as a Tool against Corruption” in Belgrade, Serbia, 15-16 October 2009.

Variations of this system are found, for example, in Germany, Denmark, Norway and Sweden. In Germany, according to the Law on Administrative Procedure, if there are grounds for violating the impartiality of a representative of the authority, or such reasons are claimed by a party, the representative of the authority must inform the head of that authority (or an authorized person) and abstain from participating in the case.²⁷ As for external professions, with the exception of specific exceptions, they are allowed subject to the authorization of the superiors. The official shall provide the necessary information to obtain the authorization, in particular the type and extent of the profession and the remuneration and monetary benefits.²⁸

The approach of Norway and Denmark seems somewhat more flexible. In Norway, a civil servant decides for himself / herself whether he / she is disqualified. If a party to an administrative procedure so requests and this can be done without significant waste of time, or if the civil servant, finds that there are reasons for not taking part in the procedure, he / she will decide the matter for the resolution of his / her closest superior.²⁹

The implementation of notification and authorization systems depends on a well-internalized sense of public sector ethics throughout the public administration. Such decentralized systems that rely on a strong ethical culture in the civil service and in responsible directors of public institutions are not common in transition economies, where the focus is on centralized control over public administration, often through the agency-building efforts (sometimes called integrity islands).

There is a sub-variation of the above model, the system, according to which, is allowed the discretionary element in determining the exact scope of the officials who should submit the declarations. This feature recognizes that the heads of public agencies are able to determine which officials are subject to the risks that command the filing of a declaration. Thus, in Estonia, in addition to a fixed list of officials, the heads of institutions can determine which officials should submit statements. Similarly, in Ireland, except for a predefined list – the obligations are provided also for the persons who hold or occupy certain employment positions in a public body, as defined by regulations made by the Minister of Finance and / or a person who holds, occupies or takes another task or position that may be described by the Minister of Finance. While in Albania, by its own decision and on the proposal of the Inspector General, the Assembly shall impose asset declaration obligation to persons holding other functions that are not envisaged in the law.³⁰

Although in principle are the officials in vulnerable positions who should be subject to the obligation to declare, it is difficult to identify any example of a state where the scope of covered officials is determined according to a clear risk assessment criteria. Nevertheless, some countries, such as Germany, use systems to monitor red flags in the conduct of public officials and identify positions exposed to risk.

In Albania, the purpose of the law on assets declarations is provided in Article 1

²⁷ The Administrative Procedure Law (Verwaltungsverfahrensgesetz), Section 21, Clause 1.

²⁸ Federal Officials Law (Bundesbeamtengesetz), Section 99, Clauses 1, 5

²⁹ The Administrative Procedure Law [Lov om behandlingsmåten i forvaltningssaker (forvaltningsloven)], Section 8.

³⁰ Article 3 point 3 of the Law no.9049, dated 10.4.2003 "On the declaration and audit of assets, financial obligations of elected persons and certain public officials", as amended.

which stipulates that its aim is *“to determine the rules for the declaration and control of property, the legitimacy of the sources of its creation, financial obligations for elected officials, public servants, their families and persons related to them”*.

The law, among the types of declarations, has provided the declaration of private interests before taking office³¹, which has been considered and evaluated as a preventive measure for persons newly included in the ranks of public administration. It should be noted that the declaration of private interests represents an important legal mechanism for preventing corruption, as well as a means of detection and sanction. The transparency on the assets of public officials is considered an important instrument aimed at increasing the role of the public in the fight against corruption. According to the Albanian law on the declaration of assets, the data declared by the declaring subjects are allowed to be published, according to the law on the right to information and protection of personal data.³²

Currently the declarations of private interests of officials and their related persons (subjects of declaration of assets) are accessible to the public on the basis of a preliminary request made to the High Inspectorate of Declaration and Audit of Assets and Conflict of Interests (HIDAACI). The issue of public access to personal data declared by the officials, has become the subject of trial before the Constitutional Court, which by Decision no. 16, dated 11.11.2004, among other things stated that: *“.. the public has a legal interest, through transparency, to be informed in more detail not only on the work and activity, but also on the income, wealth and resources of elected persons or officials. Hence, the balance found is assessed as fair and grounded .. It is the duty of the High Inspectorate of Declaration and Control of Assets that in accordance with law no. 8503 “On the right to information on official documents” and based on the legislation in force in general, including law no. 8517 “On data protection” to determine the conditions, criteria, procedures and deadlines for providing information on the declarations of assets of individuals, subjects of this law”*³³.

In this context, an important change made to the law, within the legal initiatives taken for the judicial reform, related to the possibility to complete and file the declarations of private interests electronically, and their publication on the HIDAACI's website.³⁴

³¹ Article 5/1 of the Law no. 9049, dated 10.4.2003 *“On the declaration and audit of assets, financial obligations of elected persons and certain public officials”*, as amended provides that All subjects that have the obligation to declare, according to this Law, must declare before beginning the duty: a) All accumulated assets, financial liabilities and other interests set out in Article 4 of this Law, including the sources of their creation; b) Engagements in private activities for profit or any kind of activity that generates revenue, which exist at the date of commencement of duty, including any kind of income created by these commitments or activities, from January 1 to the date of beginning of duty of the declaring year”.

³² Ibid Article 34.

³³ Decision no. 16, dated 11.11.2004 of the Constitutional Court.

³⁴ Article 34 as amended by the law no. 42/2017, dated 6.4.2017, provides that: *“Private interest declarations shall be official documents and shall be published in the official webpage of the High Inspectorate, with confidential, personal data edited in compliance with the effective legislation on the right to information and personal data protection”*.

3. The verification of the legitimacy of assets and sources of their creation

One of the most important processes, after the declaration, is the audit of the completeness and accuracy of the declarations, a process that passes first in the preliminary control, arithmetic and logical control.³⁵ The results of this audit may lead to the full in-depth audit or the initiation of an administrative investigation. This investigation is conducted in accordance with the provisions of the Code of Administrative Procedure and must comply with the requirements of a preliminary analysis of the data collected or submitted by the declarant.

The majority of the declaration systems for public officials cover such a large number of individuals that the verification and audit of all the declarations become an unrealistic goal. Therefore a selection must be made.³⁶ Regarding the selection criteria, there are several options in different states.

The audit based on the officials' function i.e. verification of all statements submitted by officials holding certain positions. Often these are high-ranking officials and their number are relatively small. A clear advantage is the special focus on high ranking officials, although this approach may miss the risks associated with the officials, who are officially considered to be at the lowest level, but may perform high-risk tasks. Countries reporting the use of this option are Albania³⁷, Bosnia and Herzegovina, Croatia, Estonia, Kosovo, Lithuania, Montenegro and Slovenia. Another method is the random selection, verification. A predetermined percentage, or absolute number of statements, is usually verified. This approach distributes the probability of verification evenly among covered officials and can in principle have a discouraging effect unless the chances of being selected for verification are very low. Meanwhile, it is clear that coincidence is insensitive to the risks associated with particular officials and this was one of the factors that led to the abolishment of this method in Albania³⁸. Risk-based audit is a selection principle where the declarations to be audited are determined through risk analysis. The number of declarations to be verified may vary depending on the circumstances or be set as a predetermined proportion or absolute

³⁵ Article 25/1 of the Law no. 9049, dated 10.4.2003 "On the declaration and audit of assets, financial obligations of elected persons and certain public officials", as amended.

³⁶ Fighting Corruption in Eastern Europe and Central Asia, Asset Declarations for Public Officials a tool to prevent corruption, OECD (2011), p 53.

³⁷ Article 25/1 of the Law no. 9049, dated 10.4.2003 "On the declaration and audit of assets, financial obligations of elected persons and certain public officials", as amended. Based on the scheme provide by this Article the full audit for example for the President of the Republic, members of Parliament, Prime Minister, Deputy Prime Minister, Minister, Deputy Minister, is performed every 2 years.

³⁸ The amendments and changes made to the Law no. 9049, dated 10.4.2003 "On the declaration and audit of assets, financial obligations of elected persons and certain public officials" by the Law no. 45/2014, dated 24.4.2014. These amendments aimed at abolishing the mechanism of controlling the declaring subjects by lot, by establishing a function-based control scheme, whereby all officials, who have the obligation to declare, will be subject to full control every 7 years (currently every 5 years), and provided for the obligation of the declaring subjects, completing a declaration for the first time (Declaration before commencement of office) not to hold and declare an amount of cash, outside the banking system, over the amount of 1.5 (one comma five) million ALL. These subjects, based on the changes to the legal framework, shall deposit any amount above 1.5 million ALL within the banking system before submitting the declaration of private interests to HIDAACI.

number. If the risk assessment is adequate, the system may very well be targeted, although it should be taken into consideration that proper assessment represents a significant administrative burden.

Verification based on the risks identified in the information disclosed, e.g. indications of the large increase in assets, significant differences between declared assets and legitimate sources of income, or key interests related to out-of-office activities. This approach is similar to the previous one, except that the risks are derived only from the content of the declarations. This can be a way to run a risk-based verification system, without overloading it with a comprehensive risk assessment for each official position (i.e. Macedonia, Slovenia and Tajikistan)³⁹.

The audit based on indications of suspected violations / unexplained assets, e.g. upon notification / request of an authorized public body. Here the declarations fulfill the role of "sleep evidence" for situations where irregularities such as unsuccessful lifestyles are detected in other ways. The use of this criterion may well be justified, but if the declarations are not verified otherwise, there is a risk of collecting heaps of declarations with unusable information. The officials may tend to feel that completing the declaration does not involve any liability in practice, as long as they are not otherwise caught in any particular breach⁴⁰.

The audit when receiving a complaint from the citizens - this approach is similar to the previous one. Systems that allow the initiation of a verification procedure based on a complaint may differ in relation to the standard of how well the complaint is grounded, whether the violation should be identified in the complaint, and the type of violation that requires action. For example, in Romania such notices indicate the evidence and information on which they are based, as well as the sources where they may be requested. Plus notices must be dated and signed - i.e. apparently they cannot be anonymous (complaint that do not meet the mentioned requirements should be rejected⁴¹) (National Integrity Agency, 2009).

Regarding the legislative framework in force in Albania, on the declaration and audit of assets, financial obligations of elected persons and certain public officials clearly provides the range of public officials that bear the obligation to declare their private interest at HIDAACI, starting from the President of the Republic of Albania and further down the public administration hierarchy to the officials of tax and customs authorities.⁴²

Upon submission of the declarations of private interests by the officials, the process of verification for their authenticity and accuracy begins, a process that passes initially

³⁹ Fighting Corruption in Eastern Europe and Central Asia, Asset Declarations for Public Officials a tool to prevent corruption, OECD (2011), p 77.

⁴⁰ Fighting Corruption in Eastern Europe and Central Asia, Asset Declarations for Public Officials a tool to prevent corruption, OECD (2011). In the questionnaires, some countries indicated the use of this option: Belarus, Kosovo, Kyrgyzstan, Latvia, Montenegro and Tajikistan. Bosnia and Herzegovina, Estonia, Kazakhstan, Macedonia, Lithuania, Romania and Slovenia.

⁴¹ National Integrity Agency (2009), "Verification of Asset Declarations and Imposing Sanctions", presentation at the seminar "Asset Declarations for Public Officials as a Tool against Corruption" in Belgrade, Serbia, 15-16 October.

⁴² Article 3 of the law no. 9049, dated 10.4.2003 "On the declaration and audit of assets, financial obligations of elected persons and certain public officials", as amended.

in preliminary control and arithmetic and logical control. The results of this audit may lead towards the full audit or the initiation of an administrative investigation. This investigation is conducted in accordance with the provisions of the Code of Administrative Procedure⁴³ and must comply with the requirements of a preliminary analysis of the data collected or submitted by the subject.

According to Article 25, first paragraph of the Law no. 9049, dated 10.04.2003 "*On the declaration and audit of assets, financial obligations of elected persons and certain public officials*", as amended, all declarations are subject to arithmetic and logical control. Such a requirement of the law is based on the assessment of risks that may be contained in the accuracy of the declaration, as well as on the importance of this procedure in detecting cases of concealment or false declaration of assets and private interests. The complete audit to verify the authenticity and accuracy of the data contained in the declaration of assets and private interests shall be carried out based on the functions of the officials such as every 2 years, 3 years, 4 years or 5 years as provided by article 25/1 first paragraph. The full control of the declaration has a direct object, the control of the veracity of the data of the declaration, through the evaluation and verification of the justifying documents submitted by the subject, compared to the additional information collected during the control from the entire state and public apparatus and public and private legal persons. In cases when it turns out that the declared assets of the official are not justified by the income obtained, as well as when there are cases of concealment of assets, or false declarations of assets or declared income, the HIDAACI has the competences to refer the case to the respective state agencies such as the prosecution organ for further proceedings.

Conclusions

The adoption and implementation of the mechanism of the declaration of the private interests in various countries have demonstrated to be a necessary instrument for the effective fight against corruption among high ranking officials. In this regards, any legal framework regulating the system of asset declaration shall be based on some core principles, identified by the Transparency International⁴⁴, such as: The asset declarations, being an individual's financial statement, should include the asset disclosure requirement, from real estate and movable property, valuables, asset liabilities, financial liabilities, such as loans or mortgages, to all sources of income from employment to investment. The declaration should include gifts and sponsorship agreements and any potential conflicts of interest, such as participation in non-governmental organizations; The leadership of the three branches of government – executive, legislative and judiciary – and senior career civil servants should be required to file asset declarations before and after taking office as well as periodically; The administration of asset declarations should be entrusted to an institution with monitoring, control and sanctioning powers for entities that do not comply with the

⁴³ Article 25 and 25/1 of the law no. 9049, dated 10.4.2003 "*On the declaration and audit of assets, financial obligations of elected persons and certain public officials*", as amended.

⁴⁴ "Asset Declarations in Mena countries, Illicit enrichment and conflicts of interest of public officials", published at <https://www.transparency.org/en/publications/asset-declarations-in-mena-countries-2015>.

legal obligation.

Thus, as for the above, in a thoroughly evaluation of the system of declaration of private interests in Albania, can be reached to the conclusion that the system established in 1995 and reformed in 2003, is in line with international standards and reflects the main requirements of the United Nations Convention against Corruption in this regard. The relevant changes that were made in 2012, 2014 and recently in 2017, 2018 to the Law no. 9049, dated 10.4.2003 "*On the declaration and audit of assets, financial obligations of elected persons and certain public officials*", along with the provision of Article 257 / a of the Criminal Code have strengthen the independent and accountably of the institutions in identifying and administrative investigating the cases of concealment or false declaration of assets.

Nevertheless, as for the future, the main challenges remain not only the preservation and strengthening the independence and institutional integrity in the fight against corruption, but above all the improvement and strengthening the current system for submitting, administering and controlling the declaration forms, in order to increase the efficiency and quality of work of the High Inspectorate, by completing the establishment and operation of the electronic system of declarations of private interest. In addition, the verification, control of officials' assets and measures to prevent abuses and illegal benefits due to public office, are not and should not be treated as isolated and under the responsibility of a single institution. The products of corruption or abuse of the public office aim to enter the country's legal, financial system through different and sophisticated means and forms. Hence there is always a need for strengthening the coordination between law enforcement institutions and financial intelligence agencies in order to achieve concrete results in this regard.

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