

(Smouldering) Criminogenic Nature of Conflict of Interests

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Conflict of interest is a multifarious and multidisciplinary topic, which has important legal implications in the last decade. Legal commandments that are regulating various obligations for identifying and avoiding conflicts of interest are accompanied by punitive regulation that is using threats with sanctions as an instrument for strengthening awareness on the importance of new legal institutes.

The discussion in the paper focuses primarily on this regulation and the question as to what in the structure of conflict of interest should be criminalized as misdemeanours or as criminal offences. After analysing relevant legal sources, the author estimates that the criminal law reaction (on principle) is adequate, because it is limited to cases where other circumstances join conflicts of interest in a way that only prominent forms of this conflict appear as criminal offences. However, with regards to regulation of minor offences, the author's opinion is diverse, because she believes that minor offences are oriented too much towards the formal issues instead of the material content of conflicts of interest, which is indirectly causing the absence of legal mechanisms for efficient remediation of consequences caused by acts committed as conflicts of interest. The preferred system is where incrimination reacts to consequences caused by conflicts of interest in the system where only formal breaches of law are punishable; but at the same time, she calls for the attention needed due to highly subjective nature of conflict of interests.

Key words: conflict of interests, appearance of conflict of interest, criminal offence, misdemeanour, proactive transparency, disclosure of interests

UDC: 343