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**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**

**(VENICE COMMISSION)**

# OPINION

# ON THE LAW ON CONFLICT OF INTEREST IN GOVERNMENTAL INSTITUTIONS

# OF BOSNIA AND HERZEGOVINA

**Adopted by the Venice Commission at its 75th Plenary Session (Venice, 13-14 June 2008)**

**On the basis of comments by Mr Oliver KASK (Member, Estonia) Mr Kaarlo TUORI (Member, Finland)**

## *I. Introduction*

*1. On 28 November 2007 the President of the Central Election Commission and the OSCE Mission to Bosnia and Herzegovina requested an expert assessment by the Venice Commission of the law on conflict of interest in governmental institutions of Bosnia and Herzegovina (CDL(2008)010).*

*2. Messrs Kaarlo Tuori and Oliver Kask acted as Rapporteurs.*

*3. On 24 and 25 April 2008, Mr Tuori, accompanied by Ms Granata-Menghini, Head of the Constitutional Co-operation Division, traveled to Sarajevo and met with representatives of the Central Election Commission of Bosnia and Herzegovina, the Interagency Working Group on Amendments to the Law on Conflict of Interest, the OSCE Mission to Bosnia and Herzegovina and the Office of the High Representative.*

*4. The present opinion was adopted by the Commission at its 75th Plenary Session (Venice, 13-14 June 2008).*

## II. Background

5. The Law on Conflict of Interest in Governmental Institutions of Bosnia and Herzegovina (LCoI) was imposed by the High Representative in 2002, then adopted by the Parliamentary Assembly of BiH in 2002 in the same text, corrected in 2003 and amended in 2004. The implementation of the law was entrusted to the Central Election Commission (CEC).

6. Pursuant to Article 1(1), the law is applicable to elected officials, executive officeholders and advisors in the institutions of government of Bosnia and Herzegovina, and not also to officials in local governments or Entities.

7. According to Article 22(1), the Entities and Brcko District were to enact within sixty days following the entry into force of the LCoI their own laws, "*which may not contravene the LCoI*" (Article 22(3)).

8. Article 22(2) LCoI in its English version provided that ""2.Until such time as the laws are enacted in the area of conflict of interest at the level of the Entities and Brcko District, this Law shall apply." However, the official version adopted in local languages by parliament read: "*Until such time that Entity and Brcko District enact their own laws in the area of conflict of interest, the Entities and Brcko District shall apply the provisions of this law*."

9. Brcko District enacted its own law on conflict of interest on 13 December 2002. The implementation of this law was also entrusted to the CEC.

10. On 13 May 2003, the CEC issued its "Instruction on Implementation of the Law on Conflict of Interests in Governmental Institutions of Bosnia and Herzegovina" (herein after "the instructions").

11. These instructions also contained a provision (para. 8) concerning the implementation of LCoI at the level of the Entities. It read as follows:

> *"In addition to its application to the governmental institutions at the state level, as provided under Article 22 paragraph 2 of the Law on Conflict of Interest in Governmental Institutions of Bosnia and Herzegovina, the provisions set out in this Law shall also apply at the level of both entities, until such time as the relevant laws in the domain of conflict of interest are adopted at the entity level.*

*In this sense, the provisions of the Laws on Conflict of Interest shall in particular apply to the following positions at the level of the entities:*

*Elected officials:*
*- members and delegates of the Parliament of the Federation of Bosnia and Herzegovina,*
*- President and Vice President of Republika Srpska*
*- members of the National Assembly of Republika Srpska,*
*- delegates of the Council of Peoples of Republika Srpska,*
*- members of the Cantonal Assemblies,*
*- councilors of the Municipal Councils*
*Executive Officeholders:*
*- President and Vice-Presidents of the Federation of Bosnia and Herzegovina,*
*- members of the BiH Federation Government, including the Prime Minister, Deputy Prime Ministers and ministers,*
*- member of the RS Government, including the President of the Government, Vice-Presidents and ministers,*
*- member of the Cantonal Government, including the President of the Government and ministers,*
*- Head of Municipality, Deputy Head of Municipality and all those officials in the municipal administrative authority who are not employees or civil servants pursuant to the civil service law in the institutions of Bosnia and Herzegovina, the civil service law in the institutions of Federation of Bosnia and Herzegovina and the civil service law in the institutions of Republika Srpska.*
*Advisors:*
*- Advisors shall include the advisors to the aforesaid elected officials and executive officeholders as is set out by the Law on Civil Service in Institutions of Bosnia and Herzegovina, the civil service law in the institutions of Federation of Bosnia and Herzegovina and the civil service law in the institutions of Republika Srpska."*

12. In 2006, a working group led by the BiH Ministry of Justice prepared a draft law on new amendments. However, this draft law was never submitted to the parliamentary procedure.

13. In July 2007, the Council of Ministers of the BiH formed an Inter-Agency Working Group (IAWG) for the preparation of amendments to the LCoI. This Group was formed by representatives of State parliament, State government and the Central Election Commission.

14. On 10 April 2008, the draft amendments proposed by the IAWG were adopted in first reading by the House of representatives of BiH. In June 2008, however, they were rejected.

15. A case raising the issue of whether the LCoI is applicable at entity level is pending before the Constitutional Court.

16. On 17 January 2008, the CEC suspended the application of the Instructions pending the Constitutional Court's decision[1].

## III. General considerations on Conflict of Interest Policies

17. Conflicts of interest are a growing public concern in all countries. An adequate management of conflict of interests is essential in order to guarantee that public service functions are performed effectively, legally, impartially, objectively and in a transparent manner, and in order to avoid corruption.

[1] Published in the BiH Official Gazette no. 09/08.

18. More and better rules on Conflicts of Interest for Holders of Public Office should – at least in theory – lead to more trust, greater accountability, more integrity and less unethical behaviour/corruption. New rules should also provide a tool for identifying and resolving potential conflicts of interest, and also:

- Increase public confidence in the government.
- Demonstrate the high level of integrity of the vast majority of Government officials
- Deter conflicts of interest from arising because official activities would be subject to public scrutiny
- Deter persons whose personal finances would not bear up to public scrutiny from entering public service, and
- Better enable the public to judge the performance of public officials in the light of their outside financial interests.[2]

19. The object of an effective conflict of interest policy could be, in principle, the prohibition of all private-capacity interests on the part of public officials (and not merely financial interests). However, the risk of a too drastic conflict of interest policy is that it may conflict with other rights, or be unworkable, or counter-productive in practice or may deter some people from seeking public office altogether. Therefore, a modern Conflict of Interest policy should seek to strike a balance, by identifying risks to the integrity of public organisations and public officials, prohibiting unacceptable forms of conflict, managing conflict situations appropriately, making public organisations and individual officials aware of the incidence of such conflicts, ensuring effective procedures are deployed for the identification, disclosure, management and promotion of the appropriate resolution of conflict of interest situations.[3]

## IV. Analysis of the law

### A. The definition of "conflict of interest"

20. Article 1(5) LCoI defines a conflict of interest as follows :

> *"A conflict of interest is created if there is a private interest that affects or may affect the legality, transparency, objectivity and impartiality as to the exercise of the public duty."*

21. Recommendation (No. R(2000)10) of the Committee of Ministers of the Council of Europe "on Codes of Conduct for Public Officials"[4] contains the following definition (Article 13 of the Code of Conduct):

> *"1. Conflict of interest arises from a situation in which the 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.*

22. The "Guidelines for Managing Conflict of Interest in the Public Service" drafted by the Council of the Organisation for Economic Co-operation and Development provide the following definition of "conflict of interest":

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[2] Regulating Conflicts of Interest for Holders of Public Office in the European Union, p. 32, (http://ec.europa.eu/dgs/policy_advisers/publications/docs/hpo_professional_ethics_en.pdf).

[3] Annex to the Recommendation of the Council on OECD Guidelines for Managing Conflict of interest in the Public Service, § 7.

[4] Article 13. According to paragraph 4 of Article 1 of the Code of conduct, however, "the provisions of [the ] Code do not apply to publicly elected representatives, members of government and holders of judicial office."

*"A 'conflict of interest' involves a conflict between the public duty and private interests of a public official, in which the public official has private-capacity interests which could improperly influence the performance of their official duties and responsibilities."*

23. The definition given in the LCoI is thus wider than the OECD one, in that it covers not only *actual* conflicts of interest, but also *potential* ones. The CoE definition covers in addition *apparent* conflicts of interest.

24. The principle of independence of officials set out in Article 2(3) aims to avoid incompatibilities in general. The Commission suggests to regulate in more precise manner the obligation of officials to withdraw from the deliberation of the issue and to inform the CEC on a possible incompatibility.

B. Incompatibilities

25. The Commission underlines that there exists a clear distinction between general incompatibilities on the one hand, and specific situations of conflict of interest on the other hand. The general incompatibility of members of government is connected to issues such as general confidence in the political system. In several European countries, it spelled out at the constitutional level (not in the Constitution of Bosnia and Herzegovina). Specific situations of conflict of interests are instead normally addressed in ordinary legislation, be it in organic or other laws on incompatibility, or else by administrative law provisions on legal incompetence in concrete matters.

26. The LCoI provides for both general incompatibilities and case-by-case conflict situations. However, the distinction between the two is sometimes blurred.

27. Article 4 LCoI sets out four kinds of general incompatibilities. One of them is problematic. Paragraph 4 provides, insofar as relevant, that *"the involvement of close relatives of elected officials, executive officeholders and advisors in […* serving in management boards, steering boards, supervisory boards, executive boards or acting in a capacity of an authorised person of a public enterprise; serving in management boards, steering boards, supervisory boards, directorates or duty of a Director of an Agency of Privatisation*] also creates situations of conflict of interest for the official, officeholder or advisor*.

28. This provision was introduced in response to a specific need prevailing in BiH at the time of the adoption of the LCoI. However, this incompatibility is far too broad, also on account of the relatively small size of the population of Bosnia and Herzegovina. It would be more appropriate to deal with close relatives under specific situations of conflict of interest, that is, on a case-by-case basis and only insofar as there exists an actual or potential conflict of interest.

29. The Commission notes in this respect that Recommendation R(2000)10 provides a narrower definition:

*2. The public official's private interest includes 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. It includes also any liability, whether financial or civil, relating thereto.(…)"*

C. "Pantouflage"

30. The Commission notes that, while Article 5 LCoI provides for limitations of movement of public officials to public enterprises and privatisations agencies for six months after they leave office, there is no provision aiming at prohibiting the improper migration by public officials from the public to the private sector ("pantouflage").

31. Provisions on pantouflage are foreseen on Article 16.1.b of the Law on Civil Servants at State Level, but they are not applicable to "elected officials, executive officeholders and advisors", who are thus currently exempt from any limitation.

32. The Commission recalls the importance of preventing pantouflage: "In addition to the fundamental goal of promoting public trust, the most common goals of a system to address the movement of public officials from public service to the private sector are: (1) ensure that specific information gained while in public service is not misused (2) ensure that the exercise of authority by a public official is not influenced by personal gain, including by the hope or expectation of future employment; and, (3) ensure that the access and contacts of current as well as former public officials are not used for the unwarranted benefits of the officials or of others. In some degree, almost any individual who carries out a public function, whether he or she is elected, appointed, or hired under contract, whether serving full-time or part-time, whether paid or unpaid, should be accountable to some standards designed to help meet these goals."[5]

33. Actual or potential conflicts of interest created by the prospect of employment in the private sector may be more of a problem in case of public officials who do not have a civil service status, as it might well not be rare for them to leave the public service to take up employment in the private sector once their election/appointment term comes to an end.

34. In the Commission's opinion, the LCoI should therefore contain provisions limiting the movement of elected officials, executive officeholders and advisors to the private sector.

D. Gifts

35. Article 10 LCoI allows elected officials, executive officeholders and advisors to keep certain gifts without a duty to report them. However, there are two distinct definitions of the term "gift" (in Article 3(1)(i) and Article 10 LCoI) and they are different and partly complementary. Point 2 of the Instructions provides further clarifications as to the meaning of "money" ("*the elected official, executive office holder and advisor must not accept money, cheque or other securities regardless of their amount*"). As a result, there are, for example, contradictory indications as to the monetary value of the gifts that can be accepted. These definitions should be harmonized and merged in Article 3.[6]

E. Retroactive cancellation of decisions

36. According to Article 7(3), "*if an elected official, executive officeholder or advisor violates this article, the vote of decision of the official or officeholder shall be deemed null and void*."

37. In this respect, the Commission refers to the OECD guidelines, according to which "the retroactive cancellation of affected decisions and tainted contracts" can represent an "effective complementary form of redress for breached conflict of interest policy".

[5] Eighth General Activity Report of GRECO (2007), Including a section on Revolving Doors / Pantouflage, Adopted by GRECO at its 36th Plenary Meeting (Strasbourg, 11-15 February 2008), § 6. See also Article 26 of the Code of Conduct for Public Officials appended to Rec R(2000)10. Provisions on gifts must also comply with Article 15 of the UN Convention against Corruption, which BiH ratified in 2006.

[6] Second Round Evaluation Report on Bosnia and Herzegovina, adopted by GRECO at its 31st plenary meeting, Strasbourg, 8 December 2006 (Greco Eval II Rep (2005) 8E, paragraph 76). http://www.coe.int/t/dg1/greco/evaluations/round2/GrecoEval2(2005)8_BiH_EN.pdf

38. The Commission notes however that, although the provision might be appropriate to guarantee the lawfulness of decisions, it has negative impacts on legal certainty. The level of violation is not considered and persons to whom the decision is addressed do not know about the violation. It would be appropriate to leave the nullification to be decided by courts on a case-by-case basis.

F. Declarations of assets

39. Article 12 provides a duty of disclosure for elected officials, executive office holders and advisors. They have to "file regular financial reports".

40. The Commission notes that the LCoI does not provide for an effective review mechanism allowing for a proper verification (e.g. through random checks of financial reports as well as adequate coordination and cross-check of information with other authorities, for example, tax bodies, public prosecutors, etc) of the financial reports submitted. In this respect, the CEC currently appears to be given a merely depositary task rather than a fully-fletched supervisory function.

41. In addition, the Commission notes that GRECO considered that, from the point of view of a preventive policy in the fight against corruption, the CEC could use the financial declarations in a proactive way, to help advise officials on how to avoid potential conflicts of interest with their specific interests or activities or incompatibilities.[7]

42. The Commission considers in conclusion that the law should provide for mechanisms allowing financial declarations to be effectively reviewed for both repressive and preventive purposes.

43. The capacity of the Central Election Commission to check the assets/interests' declarations (and to use them in a proactive way) must be ensured both in terms of adequate authority and in terms of resources.[8]

G. Publication of statements and reports

44. The provisions on disclosure foresee in many cases publication of statements and reports (Articles 13(3), 14(4), 15(3) and 16(2). It could be suggested to provide in more detail the way those documents should be made public. In Article 13(3) it is left open to the enterprise and governmental authority, in other cases the documents may be copied and accessed in the authority. In some cases such possibilities are not enough to avoid conflict of interests by disclosure.

H. Implementation

45. Implementation of the LCoI is entrusted in the Central Election Commission. This may appear as an unusual choice, as regulation of conflicts of interest is not, as such, an electoral matter.

[7] See also Greco Eval II Rep (2005) 8E, paragraph 77.

[8] According to the information provided in April 2008, 7 members were sitting on the CEC, disposing of a staff of 70 civil servants. The CEC is a permanent body and supervises the implementation of four laws: the LCoI, the electoral legislation, the law on financing of political parties and the law on the Council of Ministers.

46. The Commission does not find that the choice of a State as to what organ is responsible for implementing provisions on conflict of interest can be criticised, on condition that: a) the implementing body be independent, b) that it dispose of the necessary capacity and skills and c) that an appeal to court against its decisions be possible. These conditions have been met insofar as the Central Election Commission of Bosnia and Herzegovina is concerned.

47. Once a choice is made, the local tradition starts developing, and skills and experience start to be accumulated. In the Commission's view, these elements are worth taking into account and drastic changes as to the implementing body should be avoided or considered very carefully.

48. According to Article 17(1)(b) and (c), the CEC prescribes forms for the purpose of applying the provisions of the law and rules on forms, the implementation rules of handling the procedure and furnishing of decisions and compiling of reports. The exact meaning of this provision is unclear. The "forms" which have to be filled out by officials and regulations are of crucial importance, as their content determines the effectiveness of enforcement and control mechanisms. Common formats should be developed to present financial information of officials in a coherent and comparable manner, which facilitates and enables a proper verification of financial reports.

49. In order to give an opinion on the effectiveness of the regulation, it would be necessary to examine the regulations and forms adopted by the CEC.

### I. Duty to co-operate with CEC

50. Pursuant to Article 18(3), all authorities, institutions and courts of Bosnia and Herzegovina on all levels are obliged to provide the CEC with legal and other official assistance as requested. This is necessary and important, also in relation to the control mechanisms to be developed (see para. 35 above) It remains unclear whether the term "institutions" encompasses also private institutions, e.g. banks or companies taking part in public procurements. The meaning of assistance could be interpreted as not covering the duty to give person related data e.g. on transactions. It could be suggested thus to clarify the provision by a more detailed regulation providing also the terms in which such assistance has to be given.

### J. Sanctions

51. Article 20 LCoI provides for the system of sanctions. In addition to fines, an ineligibility to stand for any directly or indirectly elected office for a period of four years is foreseen as an automatic consequence of a breach of the provisions on incompatibilities, participation in public enterprises and privatization agencies, personal service contracts or officials exercising other tasks.

52. The Commission notes that Recommendation R(10)2000 provides[9]:

> *3. Since the public official is usually the only person who knows whether he or she is in that situation, the public official has a personal responsibility to:*
> *- be alert to any actual or potential conflict of interest;*
> *- take steps to avoid such conflict;*

[9] Although this Recommendation is not applicable to publicly elected representatives, members of government and holders of judicial office, the Commission has previously found that "in the light of the explanatory memorandum (of the Code of Conduct), and of common sense too, the circumstance that the application of the code of conduct is limited to public officials does not exclude that these standards may be applicable, mutatis mutandis, to publicly elected representatives and members of government" (CDL-AD(2005)017, para. 231).

*- disclose to his or her supervisor any such conflict as soon as he or she becomes aware of it;*
*- comply with any final decision to withdraw from the situation or to divest himself or herself of the advantage causing the conflict.*

*4. Whenever required to do so, the public official should declare whether or not he or she has a conflict of interest.*

*5. Any conflict of interest declared by a candidate to the public service or to a new post in the public service should be resolved before appointment".*

53. The Commission also refers to the OECD Guidelines, which contain the following non-exhaustive list of "strategies for positive resolution or management of a continuing or pervasive conflict":

"*Divestment or liquidation of the interest by the public official.*
*Recusal of the public official from involvement in an affected decision-making process.*
*Restriction of access by the affected public official to particular information.*
*Transfer of the public official to duty in a non-conflicting function.*
*Re-arrangement of the public official's duties and responsibilities.*
*Assignment of the conflicting interest in a genuinely 'blind trust' arrangement.*
*Resignation of the public official from the conflicting private-capacity function, and/or*
*Resignation of the public official from their public office.*"

54. The Commission considers that an effective management of conflicts of interest should aim at preventing conflict of interest rather than merely punishing it.

55. In addition, as it has underlined above, too strict a conflict of interest policy may conflict with other rights, or be unworkable, or counter-productive in practice or may deter some people from seeking public office altogether.

56. A four-year ban from running for elections is of itself an extremely serious sanction. Article 20 LCoI does not make it dependent on the seriousness or modalities of the breach committed by the public official in question. In addition, the Commission notes that it is applicable also in cases of breach of the incompatibility related to "close relatives"(see para. 28 above), which the Commission finds to be too broad. The imposition of the ban automatically derives from the finding of a breach of the LCoI, and as such cannot be reviewed.

57. The Commission understands that this sanction was introduced in response to the specific circumstances prevailing in BiH at the time of the adoption of LCoI. Nevertheless, there is a clear risk that the sanction be disproportionate, and impinge on the fundamental right to be elected, which is guaranteed by Article 3 of Protocol No. 1 to the European Convention on Human Rights.

58. In the Commission's opinion, it would be appropriate to revise this system of imposition of sanctions, making it dependent on the seriousness of the breach. A scale of sanctions should be introduced including for example the obligation to regularize the situation within a given time (possibly coupled with a fine) in cases of simple failure to register a relevant interest as required. Most severe sanctions such as a political ban should be reserved for the most serious breaches, such as the refusal by an official to resolve an actual conflict of which he or she is aware.

59. The Commission considers in any event that a system of sanctions should be enforceable. In this respect, it notes that Article 20 LCoI does not specifically foresee the loss of the position of the official who is struck by the four-year ban, whereas such loss is logically implied by the ban. The CEC does not currently have the power to enforce the loss of position, which undermines the credibility of its sanctioning authority.

## V. The application of the LCoI at the level of the entities

60. The LCoI is designed to be applicable to the authorities of the State only. The Entities and Brcko District were to adopt their own legislation, which only Brcko district has done so far. The LCoI has been applied in the Entities too by virtue of Article 8 of the instructions of the CEC until January 2008, when the CEC suspended the said provision. As from January, therefore, no rules on conflict of interests for elected officials, executive officeholders and advisors are in force at the level of the entities. The Republika Srpska is currently preparing a law, which was adopted in first reading on 16 April 2008.

61. The Commission notes that the conflict of interest does not fall under the competence of the State, either under Article 3 (1) of the BiH Constitution or under the Annexes 5-8 to it. It is rather a matter which requires an agreement by the Entities, as provided in Art. 3(5) of the BiH Constitution.

62. Accordingly, the relevant competence can only be voluntarily transferred to the State by the Entities.

63. At the time of the visit of the Commission's delegation to Bosnia and Herzegovina, on 24-25 April 2008, there did not appear to be the political will for such transfer. Two other options were being discussed, and the Commission was asked to look into both.

64. The first option is that both Entities adopt their own laws on CoI and entrust the enforcement of the laws to the Central Election Commission, similarly to the what happens under the institute of the *Organleihe*. This solution has already been chosen by the Brcko District.

65. The second option is that the Entities adopt their own laws but entrust the implementation to authorities at the entity level. [10]

66. The Commission underlines in the first place that it is extremely important that the content of the Entities' laws on CoI be consistent and harmonized with the State LCoI. The regulation of conflicts of interest in Bosnia and Herzegovina must be uniform throughout the country, as there are no divergent local circumstances to justify divergent solutions.

67. As regards the enforcement of the entity laws, there are strong arguments in favour of entrusting it to the Central Election Commission:

- Consistency : the same body would be responsible for all decisions (this argument is even stronger is one were to think that Municipal Election Commissions could have a competence);

[10] According to Article 2.21 of the Election Law of Bosnia and Herzegovina of 28 September 2001, "Entity Election Commissions shall be created by Entity law in accordance with this law. Their competencies shall be determined by the Election Commission of Bosnia and Herzegovina in accordance with this law." An Entity Election Commission exists in Republika Srpska, although it has not been given any competence so far. No such commission exists in the Federation of Bosnia and Herzegovina, where instead Municipal Election Commissions exist.

- Competence : the CEC and its staff have developed significant expertise in this complex field
- Efficiency: the CEC already disposes of trained staff and necessary tools. CEC is the body responsible to certify the candidates for elections at all levels. In particular, it already disposes of the databases necessary to verify the suitability with electoral legislation of candidates to run in election.
- Cost-savings : the CEC appears to have the capacity to deal with CoI in the entities too (which is has done for four years, until January 2008), and this would avoid setting up an Election Commission in the Federation of Bosnia and Herzegovina and a specialized department within the Republika Srpska Election Commission.

68. Should the implementation of entity legislation on CoI be kept at the entity level, in order to ensure consistency it could be envisaged that an appeal to the CEC against decisions by the Entity Election Commissions be introduced (should the municipal election commissions be competent, their decisions should first be appealed to the Federation Election Commission).

69. Were the CEC to supervise the implementation of the entity laws on CoI, which is recommended, it would of course be necessary that not only the substantial provisions of the entity laws, but also those about the procedures and time-frames of the controlling mechanisms mirror those of the State LCoI, otherwise it might become unnecessarily difficult for the CEC to supervise the implementation of three laws through three different procedures.

70. Whatever option may be chosen as to the implementation supervision body, in the Commission's view it is essential, for the sake of consistency, that judicial review of all decisions on conflict of interest either by the Central Election Commission or by the Entity Election Commissions (if they are given competence and if no appeal to the Central Election Commission is foreseen against their decisions) be possible and be entrusted to the same court, that is the Court of BiH, similarly to what happens in electoral matters.[11]

## VI. Conclusions

71. The Commission has examined the Law on Conflict of Interest in governmental institutions of Bosnia and Herzegovina and is of the view that it presents certain shortcomings:

- The current general incompatibility relating to the involvement of close relatives of elected officials, executive officeholders and advisors in certain public functions should rather be considered as a case-by-case incompatibility.

- Provisions aiming at prohibiting the improper movement of elected officials, executive officeholders and advisors to the private sector ("pantouflage") should be introduced.

- The definitions of "gifts" should be harmonized and merged.

- Retroactive cancellation of affected decisions and tainted contracts should not be automatic.

- Common formats should be developed to present financial information of officials in a coherent and comparable manner.

- The duty to co-operate with the Central Election Commission should be spelled out more clearly.

[11] See Article 15 of the Law on Court of Bosnia and Herzegovina and Article 6.12 of the Election Law of Bosnia and Herzegovina.

- Adequate mechanisms allowing financial declarations to be effectively reviewed for both repressive and preventive purposes should be introduced in the LCoI.

- The current system of imposition of sanctions should be revised and made dependent on the seriousness of the breach. A scale of sanctions should be introduced including for example the obligation to regularize the situation within a given time (possibly coupled with a fine) in cases of simple failure to register a relevant interest as required.

72. The regulation of the conflict of interest in Bosnia and Herzegovina also raises issues of constitutional nature, related to the state competence for conflict of interest at entity level.

73. The Commission is of the view that, in the absence of a voluntary transfer of competence from the entities to the State, the latter cannot exercise jurisdiction over the elected officials, executive officeholders and advisors of the Entities.

74. Entities should ensure that their legislation on CoI is consistent and mirrors the law on conflict of interest at the State level, and are consistent with each other insofar as possible, in terms of both substantial provisions and procedural ones.

75. It would be preferable that the entities entrust the implementation of their legislation on conflict of interest to the Central Election Commission.

76. Should the entities entrust the implementation of their legislation on conflict of interest to the respective Entity Election Commission (and, in the Federation of Bosnia and Herzegovina, possibly to the Municipal Election Commissions as well), it would be appropriate to provide that the decisions taken at the entity level may be appealed to the Central Election Commission.

77. Appeals against all decisions on conflict of interest, either by the Central Election Commission or by the Entity Election Commissions (if they are given competence and if no appeal to the Central Election Commission is foreseen against their decisions) should be heard by the Court of Bosnia and Herzegovina.

78. The Commission has been informed of the intention of the parliament of Bosnia and Herzegovina to prepare a new law codifying all rules on conflict of interest. The Commission is ready to assist the authorities of Bosnia and Herzegovina in this task.