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PART II

Chapter 7

Liability and Sanctions

7.1. Defined violations

A failure to fulfil duties related to declarations can fall within either of two broad categories. One concerns the duty to submit a declaration; the other concerns what information is provided in the declaration:

- Violations related to the duty to submit declarations:
  - ❖ failure to submit a declaration;
  - ❖ late submission of a declaration.
- Violations related to the information provided:
  - ❖ incomplete statement of required information;
  - ❖ inadvertently false statement;
  - ❖ intentionally false statement.

Most countries with reasonably developed declaration systems that are backed by legal sanctions (indeed, not all systems are) define offences in a way that covers all of the above. According to a study by The World Bank and the United Nations Office of Drugs and Crime, "60-90% of [74 sample] countries specify some form of sanction for filing violations. A sanction for failure to file is present in over 80% of countries with asset declarations, while false declarations are penalized in approximately 65-75% of systems" (Burdescu *et al.*, 2009, p. 38).

Eleven out of 20 countries examined in this report indicated that there were sanctions foreseen for all violations, including non-submission, late submission, incomplete statement and false statement. These are Albania, Azerbaijan, Belarus, Croatia, Estonia, Georgia, Kazakhstan, Latvia, Macedonia, Montenegro and Ukraine.

Where countries do differ is whether the above-mentioned offences are defined separately and relate specifically to asset declarations, or whether some of them are merged – *e.g.* in some systems there may be no differentiation between incomplete and false statements or inadvertently and intentionally false statements generally applicable to public officials.

A few countries, for example Bulgaria, impose sanctions for non-submission or late submission only. Bosnia and Herzegovina is a rare case in that its system, which is governed by the Law on Conflict of Interest in Government Institutions, does not provide for sanctions (there is another system governed by the Election Law and applying to elected officials). Nor are sanctions provided for in some other systems where the submission of declarations is voluntary, as for members of parliament and government ministers in Norway (The World Bank, 2010).

Definitions of failures regarding the administration of declarations are rare. Most countries would define as a violation unauthorised disclosure of confidential data. This is relevant in systems where all or a part of the information provided in declarations is confidential. On the other hand, a failure to disclose information that the public has the right to access can be defined as a violation. However, such violations would normally concern the handling of information in general rather than actions of public officials.

7.2. Character of sanctions

Different legal systems may provide varying types of legal responsibility. Therefore the classification below (criminal, administrative, disciplinary and civil) that is used in this chapter can only be seen as generally applying with qualifications, *e.g.* in some countries there may be no obvious differentiation between civil and administrative liability.

Criminal sanctions – Declarations of public officials are mostly perceived as a means to prevent individuals from engaging in corrupt or otherwise illegal activity. This is probably a reason why offences related to the filling in and submission of declarations are in themselves often not punishable under criminal law.

The United States is rather exceptional in that the law explicitly foresees a fine, imprisonment for not more than one year, or both for a person who knowingly and wilfully falsifies any information that that person is required to report, according to the Ethics in Government Act (a fine only is foreseen for a person who knowingly and wilfully fails to file or report any such information).[1]

However, according to an earlier study, criminal liability for violations related to the officials' declarations is also provided for in a few European countries. In Italy members of government can be criminally liable for non-submission of a declaration of interests and for providing false information. In Poland and the United Kingdom as well, criminal sanctions can be applied to some categories of public officials.[2]

Based on the findings of this study, it appears that the countries of Central and Eastern Europe and the former Soviet Union usually do not criminalise specific offences related to duties to fill in and submit public officials' declarations. However, a few countries such as Georgia stated that there is criminal liability for incomplete or false statements. Some other countries criminalise the intentional provision of any false information to the authorities, and technically such an offence would also cover submission of a public official's declaration. Closer scrutiny would be needed to see if such provisions are used against officials who submit false statements.

Administrative sanctions – This type of sanction is probably the most common. Sanctions can be included in the laws governing the declarations, or alternatively, administrative offences can be codified in a single piece of legislation. The most common administrative sanction is a fine.

Disciplinary sanctions – Disciplinary sanctions are typical for public officials who serve in the civil service (this would normally not include elected/political officials). Disciplinary violations are often codified in a single legislative act, *e.g.* a law on civil service. Of course, these may or may not cover infringements of duties related to declarations. Available sanctions can include a reprimand, reduction in pay, dismissal, etc. In case a centralised agency controls declarations, it can be authorised to propose disciplinary sanctions to be applied by the superior of the public official in question.

Civil liability – Civil liability is not common where the violation is the failure to submit a declaration or provision of incorrect data. In most cases, when a public official has failed to fulfil his/her duties regarding the filling in and/or submission of a declaration, it is not clear that such damage has been done to the public interest as to warrant compensation. In Latvia, civil procedure for damages can be initiated if a public official earns income in a way that is incompatible with their official position. However, the substance of the violation in such a case is not a breach of declaration requirements.

In the United States, the Attorney General may bring a civil action against an individual who knowingly and wilfully falsifies or who knowingly and wilfully fails to file or report any information that such individual is required to report pursuant to Section 102 of the Ethics in Government Act. The court in which such action is brought may assess against such individual a civil penalty in any amount not to exceed USD 50 000.

Dismissal/suspension, wage reduction, etc. – This category covers situations where the sanction is not a penalty imposed through any criminal or disciplinary procedure but rather operates as a direct consequence of a violation. Non-submission of a declaration is the most common breach that carries this kind of consequence. For example in France, in the event of non-submission of the personal declaration of assets, the elected official become ineligible to exercise duties for one year and the appointment of the civil servant is rendered void (Dufour, 2008). Dismissal is also among the available sanctions in the Russian Federation.[3]

Where there is a centralised controlling official/body, at least two implementation options are possible in principle. It could automatically suspend or dismiss an official who has failed to submit a declaration by a certain deadline (usually an extension following a warning). Often, however, the controlling official/body would order or propose the superior official/body of the person in question to suspend or dismiss him/her. An example of the latter mechanism is in Albania: there, suspension from duty for non-compliance is carried out by the institution where the public official holds his/her position. The High Inspectorate of Declaration and Audit only proposes the measure. A similar procedure is found in Kosovo. Such a mechanism is *prima facie* more prone to ineffectiveness in systems where the authority of the controlling official/body is questioned or the rule of law is weak.

It is impossible to review here all of the possible varieties of sanctions found in particular countries. In addition to those typical of many systems, some more rare kinds of provisions also exist. To mention but one example, in Lithuania public officials who have been found in violation of the provisions of the law "On the Adjustment of Public and Private Interests in the Public Service" cannot receive bonuses or be appointed to a higher position in a year's time from detection of the violation. If they have left the public service, they cannot join it again for three years from detection of the violation. Kosovo and Slovenia apply wage reduction as a direct consequence of non-compliance (rather than as just one of the range of available administrative or disciplinary sanctions).

Other/soft measures – In a few countries, there are no legal sanctions and no strictly defined legal consequences for violations, but rather soft measures to achieve compliance. Often this approach is used regarding elected officials in political posts where the use of other types of sanctions can be constitutionally impossible. Just as inspection of declarations is sometimes portrayed as the task of third parties such as the media and NGOs, so the sanction can be limited to whatever the public reaction is to knowledge about a violation. An example of such a sanction is a warning, public announcement, publication of the facts of violation, or apology from a wrongdoer.

For example, in Sweden it is announced at the plenary meeting (*kammarsammanträde*) if a member of parliament has failed to submit information to the register.[4] In the UK House of Commons, if the duty to declare interests has not been fulfilled, an apology to the House by means of a point of order is required (United Kingdom Government, 2009). In case of breach of the Rules of Conduct, a member of the German Bundestag can face a warning (in case of minor violation or negligence, *e.g.* a missed deadline for disclosure), publication of a notice about the violation, or an administrative fine.[5] Soft sanctions were mentioned as an option by Bulgaria, Croatia, Kosovo, Montenegro and Lithuania.

7.3. Practice of application

During the early stages of introduction of declarations for public officials, some countries experience widespread non-compliance with the duty to fill in and submit declarations and a great proportion of incorrectly filled forms. A couple of telling although by no means exclusive examples are Latvia and Kosovo. In 1997 when Latvian public officials' declarations were verified properly for the first time, it was found that 19 out of 100 members of parliament had omissions or errors in their declaration.[6] In Kosovo 2007 was the first year that senior public officials declared their assets. The implementation of declarations commenced with difficulty, because only 67.07% of senior public officials submitted them by the legally established deadline. Then a new deadline was set, by which 94.4% submitted. In 2007 the proportion of incorrectly filled forms was 49%;[7] in 2008 this figure decreased to 37.4%.

Over time, most countries achieve reasonably high rates of compliance. Of the countries examined in this report, none had an overall non-submission rate of 10% or more, and for most the rate was considerably lower.[8] Thus massive ignorance of the duty to submit declarations can be considered a phenomenon characteristic of the first years of running a declarations system.

Even then a further concern is how strictly public officials adhere to deadlines for submission and how accurate the submitted information is. Here a useful indicator is the proportion of covered officials who are subject to formal sanctions. To be sure, this indicator reflects not only the level of compliance and accuracy of submissions but also the activity of controlling institutions and availability of sanctions in the law. Thus the fact that very few sanctions are applied in a country does not necessarily mean that officials observe the rules strictly – instead it can be a sign of poor enforcement.

In some countries, the running of public officials' declaration systems is accompanied by a vast application of sanctions. Of the countries examined in this report, Estonia stands out in this regard. In 2007, 30 245 Estonian public officials submitted declarations. In the same period, 454 persons were sanctioned for non-submission, 1 209 for late submission, and 1 022 for other violations of declaration requirements.

Table 7.1. **Sanction dependency of declaration systems**

Year 2008 unless stated otherwise, selected countries

Country	How many should fill in the statement?	Sanctioned for non-submission	Sanctioned for late submission	Sanctioned for false statement	Sanctioned for other violations	Percentage sanctioned *vis-à-vis* all covered
Albania	App. 4 200	11	70	2	66	3.5
Bosnia and Herzegovina	App. 3 300[1]	32				0.97
Bulgaria	7 073	55				0.8
Estonia (2007)	App. 30 000	454	1 209	Missing data	1 022	9.0
Georgia (2007)	2 000	121[2]				6.0
Kazakhstan	App. 470 000	295				0.06
Kosovo (2009)	800	14[3]				1.75
Kyrgyzstan	App. 1 400	12[4]				0.9
Latvia	70 800		224	33	21	0.39
Macedonia	App. 3 000	33				1.1

1. Only within the system for elected officials governed by the Election Law.
2. This figure refers to non-submission, not sanctions applied.
3. This figure refers to non-submission, not sanctions applied.
4. This figure refers to non-submission; no sanctions were applied.

A high proportion of sanctioned officials indirectly indicates that the running of the system may involve very high costs. The table below summarises available data about the number of persons sanctioned for particular types of violations, expressed in absolute numbers and as a percentage of all officials who should fill in the statements (only countries where data were comparable and sufficient are listed). It is apparent that the sanction dependency of various systems varies widely.

Notes

1. The Ethics in Government Act, Section 104(a)(2).
2. "In Poland, local public officials can be sanctioned with up to three years in prison for false declaration of interests. In the UK, criminal sanctions are attached to non-disclosure of interest by members of the Scottish Parliament, the Welsh Assembly and the Northern Ireland Assembly. Such sanctions continue to apply for a transitional period to non-disclosure of pecuniary interests by members of local authorities and for failure to withdraw from the local authority's deliberations." – M.V. Mendieta (2008), "Conflict of Interest Policies and Practices in Nine EU Member States", *Corruption and Democracy*, Council of Europe Publishing, pp. 98-99.
3. The Federal Law "On Counteraction to Corruption" (Федеральный закон О противодействии коррупции), Section 8, Clause 8.
4. The Law on the Registration of the Undertakings and Economic Interests of the Members of Riksdag [*Lag (1996:810) om registrering av riksdagsledamöters åtaganden och ekonomiska intressen*].
5. Rules of Conduct for Members of the German Bundestag (*Verhaltensregeln für Mitglieder des Deutchen Bundestages*). Article 8.
6. The Public Prosecutor General's Office – A. Ivanovskis, public prosecutor of the Department for the Protection of the State and Individuals' Rights: Report on verification results about the correspondence of the activities of the members of the 6th Saeima of the Republic of Latvia with the requirements of the Corruption Prevention Law. (*LR Ģenerālprokuratūra. Ivanovskis, A., Personu un valsts tiesību aizsardzības departamenta prokurors. Pārskats par pārbaudes rezultātiem par LR 6. Saeimas deputātu rīcības atbilstību Korupcijas novērðanas likuma prasībām.*)
7. Annual Report of the Kosovo Anti-corruption Agency, 1 January-31 December 2007, pp. 15-16.
8. A few questionnaires were not sufficiently clear on this point.

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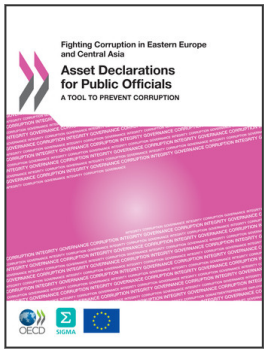

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