


The Regime of Incompatibility and Conflicts of Interest in Romanian Public Administration

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Received: June 5, 2024

Revised: June 21, 2024

Accepted: July 5, 2024

Published: July 25, 2024

Abstract: The conflict of interest and incompatibilities regime are a constant concern in most countries, as its widespread existence creates a negative perception of transparency and quality of services and is often associated with corruption. Despite the efforts of governments to limit cases of conflict of interest and incompatibilities, there is an ongoing debate at all levels of society about the effectiveness of the measures adopted and the need to introduce new ones that will lead to wider awareness of the phenomenon and a reduction in the number of cases. The research aims to carry out a diachronic analysis of the regime of incompatibilities and conflict of interest at the level of different categories of personnel in public administration in Romania, in terms of legislative measures adopted, the number of cases that have occurred, as well as other measures ordered. The research methodology consists of an exploratory study based on a bibliometric analysis of the two concepts and a quantitative analysis based on data processed from the activity reports of the National Integrity Agency. Conflict of interest and incompatibilities are a constant concern in many countries, creating the perception of poor service quality and low transparency, often linked with corruption. The research aims to conduct a thorough analysis of the conflict of interest and incompatibilities regime within various categories of public administration personnel in Romania. This analysis will include an examination of legislative measures, the number of occurrences, and any additional measures taken over time.

Keywords: conflict of interest, incompatibilities, integrity, public administration, Romania.

Introduction

The conflict of interest and incompatibility theme holds great significance in today's society, directly impacting transparency, integrity, and the quality of services provided by the public sector. The concern over these issues reflects a growing desire to combat corruption and ensure the proper management of public resources. This research represents a crucial endeavor to understand and analyze the conflict of interest and incompatibilities phenomenon within the public administration of Romania. Through the proposed methodological approach, which combines bibliometric and quantitative data analysis, this research makes a significant contribution to identifying existing problems and proposing effective solutions to prevent and address these sensitive issues.

Integration is a key concept for proper functioning for both public and private organizations. As regards integrity in the exercise of public administration, in most countries of the world, citizens, businesses, and civil society have increasingly high

How to cite

Cazan, D.G., Simion, C.E., Harabagiu, A. (2024). The Regime of Incompatibility and Conflicts of Interest in Romanian Public Administration. *Journal of Knowledge Dynamics*, 1(1), p75-87.

<https://doi.org/10.56082/jkd.2024.1.75> ISSN ONLINE 3061-2640

expectations regarding integrity standards offered by authorities and public institutions at all levels – central, territorial, or local.

To support disinterested integrity and decision-making in public authorities and institutions, the states have adopted several legislative and administrative measures to limit the occurrence of conflicts of interest, incompatibilities, and other facts that may influence objectivity in decision-making. The conflict of interest and incompatibility regime is the subject of several research in the legal and administrative sphere, as it represents a problem faced by all states, having a major impact on the transparent functioning of both public organizations and private organizations.

The United Nations has identified conflict of interest as “an indicator, precursor and an outcome of corruption if left unchecked. There is a consensus that avoiding conflicts of interest is a critical element in fighting against corruption.” (OECD, 2007, p. 5 in Coșpănarau et al., 2015, p. 4).

Although the term, “conflict of interest” was used for the first time in a courtroom in 1949, from 1967 it has been used in a legal science journal. From the 1970s it has been introduced in both general and law dictionaries (Nia et al., 2022). Much later, in 1996, the International Code of Conduct for Public Officials addressed the issue of conflict of interest as an anti-corruption instrument, (Cardona, 2015, p.8).

From the legal doctrine point of view, conflict of interest is a response “to the increasingly frequent signals from civil society, international bodies and institutions in regards to the impact that committed acts in violation of ethical rules of this kind produce” (Lazar, p. 14).

Regarding the definition of these terms, there are no unanimously accepted definitions, each state having its alternative. Although the European Court of Human Rights has tried to give some definitions with general applicability, since 2014 the European Commission has criticized the lack of a unitary definition (Ionescu, 2017, p. 227).

Lato sensu we can define incompatibility as a legal prohibition for a person to hold simultaneously two positions or two attributes that are contradictory in character. According to some definitions, conflict of interest represents „the real situation of a person, in which that person is confronted with two divergent interests, one of a general nature and the other of a personal or private nature” (SCPC, 2004 in Cardona, 2015, p. 9), and the private interest can influence the independence, impartiality, and objectivity of the civil servant decision making (Cardona, 2015, p. 10).

According to some analyses made on the incident legislation in some Eastern European countries, it can be observed that the two concepts are treated differently by each country. In the Czech Republic, conflict of interest is defined as a risk that threatens the impartiality of decisions, incorporating within this definition both elements of incompatibility and conflict of interest, since decision-making is the essential characteristic of conflict of interest, impartiality is the essence of incompatibility.

In Hungary, conflict of interest is largely understood as incompatibility, while according to the legislation in force, conflict of interest is defined in more than 30 ways. In Poland, the incompatibility regime is regulated, but the conflict of interest is not. Polish legislation regulates incompatibilities concerning the positions that a civil servant may hold and also regulates the incompatibility of financial interests, which is part of the conflict of interest regime.

According to OECD (2005, p. 7), „conflicts of interest in the public sector are particularly important because if not properly recognized and controlled they can fundamentally undermine the integrity of officials, decisions, agencies, and governments”. In practice, conflict of interest arises when professional responsibilities differ from personal ones (Cain et al., 2005). Identifying and preventing conflict of interest is an integral part of preventing and combating corruption. Measures to prevent corruption are mandatory for both public and private sectors. In the public sector, conflict of interest can lead to subjugation of civil servants and resources in order to hid private interests (Coșpănarul et al., 2015, p. 2).

Conflict of interest may occur even when the person does not benefit from the situation, but it is sufficient that the circumstances compromise the impartial and objective exercise of his or her duties (European Commission, 2021, p.7). The regime of conflict of interest and incompatibilities still represents a major problem. On one hand, there is legislation with certain aspects of its interpretability, and on the other hand, the lack of information/education of all categories of staff in the public sector or other elements, both leading to the constant occurrence of situations of incompatibility or conflict of interest.

The purpose of this paper is to make an analysis of the conflict of interest and incompatibilities regime at the level of certain categories of personnel within the public administration in Romania.

Conflict of Interest and Incompatibilities in public administration in Romania

In Romania, ensuring integrity in the exercise of dignity and public functions and preventing institutional corruption is carried out by the National Integrity Agency - ANI (Law no. 176/2010, art. 8). This institution is independent, its main objective being represented by analyzing assets acquired during the exercise of a public function, incompatibilities and conflicts of interest. Within the process of Romania's accession to the European Union, one of the recommendations was to establish a mechanism to verify the declarations of assets. Therefore, on the 21st of May 2007, Law No 144/2007 on the establishment, organization, and functioning of ANI, amended and supplemented by Law No 176/2010 was adopted in the Romanian Parliament.

According to Article 1 of Law 176/2010, the declaration of assets and interests applies to 39 categories such as the president of the state, members of parliament, members of the government, civil servants and contractual staff, local elected officials, heads of intelligence services, candidates, etc. The regime of incompatibilities and conflict of interest is extensively dealt with in Law no. 161/2003, Title IV, Chapter 1. Conflict of interest and incompatibilities are dealt with separately for persons holding the office of members of the Government or other public positions of authority within the central and local public administration, local elected officials, civil servants, magistrates, and other categories. Several other acts also regulate conflicts of interest. Therefore, Law No. 184/2016 established a mechanism to prevent conflict of interest in the procedure of awarding public procurement contracts. Last but not least, the exercise of its powers is also impacted by other relevant laws in the administrative field such as the Administrative Code (approved by GEO no. 57/2019), Law no. 393/2004 on the status of local elected officials or Law no. 96/2006 on the status of deputies and senators (Stuparu, 2022, p. 99). According to the National Anti-Corruption Strategy (C.2.1. point V), conflict of interest is defined as the situation in which the person exercising a public function or dignity has a personal interest of a patrimonial nature that may influence the objectivity of the duties assigned to him/her according to the Constitution or other normative acts.

Conflict of interest can be criminal, regulated by the Criminal Code, when, as a result of the exercised duties of office, a patrimonial benefit has been obtained for oneself, spouse, or relative up to the second degree. A conflict of interest may also be administrative, which does not automatically imply the existence of corruption. Thus, conflict of interest can be either a corruption offense or a service offense.

To avoid confusion between the two concepts - incompatibility and conflict of interest - we must bear in mind that if the existence of a conflict of interest implies taking a decision that influences a personal interest, to be in a state of incompatibility, a person in the categories established by law does not have to take any decision, being sufficient the fact that he or she simultaneously exercises several functions whose accumulation is prohibited.

To properly apply the legislation in this field, ANI has developed a series of Guides (Guide for the completion of declarations of assets and declarations of interests, Guide on incompatibilities and conflicts of interest, Guide for the person designated with the implementation of the provisions relating to declarations of assets and declarations of interests) that support both the people who are obliged to submit declarations and the persons responsible at institutional level for the application of the legal provisions on the two types of declarations.

Declarations of assets and interests shall be submitted, by the persons who have this obligation, within 30 days from the appointed or election date to an office, or from the date of commencement of the activity, annually, until 15 June, and within 30 days from the date of termination of office or activity (Law no. 176/2010, art. 4). From 2022, according to ANI's Order no. 96/2021, all declarations of assets and interests are submitted electronically, through E-DAI, an application managed by ANI. The implementation of such a system is part of the digitization process at the level of public administration in Romania, presenting several advantages, such as saving financial resources, and time, and quick access to information.

According to the provisions of Article 25 of Law no. 176/2010 in regard to the applicable sanctions to the person for whom the existence of a conflict of interest or incompatibility has been found, he/she is deprived of the right to exercise a function of the category he/she held and for which the violation of the law has been found. In addition to the administrative sanction, other sanctions may be applied for conflict of interest, ranging from fines to imprisonment, depending on the nature of the offense. The violation of the legislation in force regarding the incompatibilities and conflict of interest regime can have multiple causes: legislation, lack of training, knowingly breaking the law, etc.

From the analysis of ANI activity reports, completed by a bibliometric analysis, carried out in the VOSviewer application, we aim to identify the causes and factors that lead to the existence of these situations, which harm integrity in the exercise of public functions in public administration in Romania.

The research methodology

Research Questions/ Aims of the research

1. What is the evolution of the conflict of interest and incompatibility number of cases among certain categories of personnel in the public sector?

2. Which category of personnel from the public sector is the most vulnerable in terms of conflict of interests and incompatibilities cases?

The general objective of the research

The main aim of the research is to examine the trend of conflicts of interest and incompatibility case numbers within specific categories of personnel in the public sector, therefore, identifying the category most susceptible to these issues.

Specific objectives of the research:

1. To identify trends and analyze the evolution of the case numbers of conflicts of interest and incompatibilities among various categories of personnel in the public sector over a specific time frame.
2. To determine the category of personnel in the public sector that exhibits the highest vulnerability to cases of conflicts of interest and incompatibilities, to efficiently intervene in the prevention and management of these sensitive situations in public administration.

Research methods

This study represents an exploratory research based on: (a) bibliometric analysis of the concepts "conflict of interests", and "incompatibilities" in the Romanian public administration and (b) quantitative analysis of the obtained data from activity reports of the National Integrity Agency, to identify the categories of staff in the Romanian public administration predisposed to conflict of interests and incompatibilities

The bibliometric analysis was carried out using VOSviewer. The quantitative analysis was carried out based on data extracted between 2013 and 2021, from the National Integrity Agency of Romania activity reports.

The year 2022 could not be included in the analysis due to the lack of information, as the 2022 activity report of A.N.I. is not being published at the present time. Only data referring to uncontested ANI evaluation reports and those for which there are final court decisions were processed. The data obtained from the activity reports of the National Integrity Agency were processed using SPSS 26.0 software.

Findings

The data was obtained from the Web of Science (WoS) Core Collection on May 06, 2023. The Web of Science (WoS) Core Collection was chosen for identifying relevant sources because it "is the world's leading scientific citation search and analytical information platform. It is used as both a research tool supporting a broad array of scientific tasks across diverse knowledge domains as well as a dataset for large-scale data-ingestion" (Li et al., 2018, p. 1). The performing method was advanced search by using the keyword "*conflict of interest*". The default values provided by WoS were used on all the rest of the search settings, besides selecting English as a writing language. Taking into consideration the aforementioned aspects, the use field tag was "*All fields*", there was no excluded document type and no temporal limitation.

The concept "*conflict of interest*" was predominantly searched in the "*All fields*" areas with 141.993 results, revealing that the first publications in the WoS were in 1975. According

to the Web of Science data analysis, the term “conflict of interest” appears more frequently than “incompatibility”. The importance of these two terms is obvious regarding social, economic, and politic contexts because the conflict of interest may affect objectivity, impartiality, or loyalty towards another interest or third party. Most of the time, conflict of interest is associated with corruption and power abuse. Specialty studies and Governments have concentrated on implementing policies and strict rules to prevent and manage conflicts of interest, incompatibilities and to promote a culture of integrity and responsibility.

These default values provided by WoS are synthesized in Table no.1.

Table 1 – Main concept frequencies on Web of Science

Research labels	Publication year on WoS	Total number of publications to date on WoS
conflict of interest	1975	19
	2017	10.922
	2018	10.763
	2019	10.065
	2020	10.061
	2021	10.463
	2022	8.692
conflict of interest and Romania	1995	1
	2018	58
	2019	41
	2020	44
	2021	31
	2022	26
incompatibility and Romania	1978	1
	2015	22
	2016	15
	2018	12
	2019	14
	2020	10
	2021	9
	2022	11

Source: authors, own data processing, 2023

To the aim of this work, performing a search on Web of Science (WoS) Core Collection on May 2023, by using the keywords “conflict of interest” in the public administration category, there were identified 587 publications. The article is the most recurring document type. The proceedings paper was found in the second position.

Furthermore, the WoS records have been exported (plain text file, including author, title, source, abstract, and cited references) in order to be used to perform the literature review. In this sense, it was used the bibliometric software VOSviewer (Visualization of Similarities) (Van Eck & Waltman, 2014) and the Biblioshiny application. The previously mentioned bibliographic data were analyzed to create a map based on the co-occurrence of keywords. The main setting in VOSviewer was for the keywords to meet threshold co-occurrence 5.

Specifically, a stronger meaningful connection exists between conflict of interest and governance, policy, politics, management, performance, and ethics. Also, conflict of interest connects with trust, knowledge, regulation, values, local government integrity, or the opposite one corruption.

The existence of incompatibility and conflict of interests have a series of implications and negative effects, both on people in these situations and on citizens, by decreasing trust in the state's institutions and the objectivity of the adopted measures and decisions.

At the same time, adequate knowledge and understanding of the two concepts and the way they can influence governance and politics are essential for making decisions that aim to promote transparent and accountable decision-making and to ensure a fair, transparent, and prosperous society

Therefore, a deep understanding of the connection between conflict of interest and good governance, policy, management, and ethics is crucial for promoting a culture of transparency and accountability. The link between conflict of interest and trust, knowledge, regulations, and the values upheld by public institutions directly impacts their integrity and credibility. Incompatibilities and conflicts of interest can undermine citizens' trust in state institutions and compromise the objectivity of decisions and measures taken. By enhancing the ability to manage these sensitive issues and promoting transparent and ethical governance, society can progress towards an environment where responsibility and integrity are fundamental in the decision-making process and in serving the public interest.

Searching "*conflict of interest*" and "*Romania*" combined, we found, in the public administration category, a corpus of 7 materials. They address the issue of conflict of interest about the concept of integrity in the public sector referring to the need to assure stability and clarity to public integrity legislation (Curt, 2018), public procurement (Farca, 2018), and Romania's compliance with the requirements of the European Commission's Cooperation and Verification Mechanism (Curt, 2013).

There are few studies regarding conflicts of interest and incompatibilities in Romania. Therefore, it has been established the need to research the above-mentioned issue, taking into consideration the categories of personnel in the public administration. It is important to conduct a thorough analysis to identify the categories of personnel within the public administration where the highest number of conflicts of interest and incompatibilities occur. Through this detailed research, risk factors and contexts in which these ethical issues are more prevalent can be identified. This enables the development of specific strategies and solutions to prevent and manage this phenomenon within the relevant categories of personnel. By deeply analyzing these aspects, vulnerabilities can be identified, and appropriate measures can be proposed to strengthen integrity and promote an ethical culture within the public administration in Romania. A comprehensive and balanced approach is essential to ensure transparent, responsible governance focused on the public interest.

Therefore, this paper analyzes the data extracted between 2013 to 2021 from the activity reports of the National Integrity Agency of Romania. The extracted and processed data refers to the conflict of interests and incompatibilities for various categories of public administration personnel (officials from central authorities, local elected officials, persons with management positions within public authorities, civil servants, magistrates, civil servants with special status, other categories provided by Law no. 176/2010). The main indicators of the analysis were: the category of public administration staff, the time frame

(year), the number of conflicts of interest identified, the number of incompatibilities identified (taking into consideration only the number of conflicts of interest and incompatibilities identified following uncontested evaluation reports and following the final decisions of the courts).

The data analysis shows that between 2013 and 2021, among all categories of personnel in the public administration, a number of 2691 cases of conflicts of interest and a number of 7907 cases of incompatibility were identified, as shown in the following tables

Table 3 – Number of conflict-of-interest cases for each category of public sector personnel in Romania, in every year from 2013-2021 period

Category	2021	2020	2019	2018	2017	2016	2015	2014	2013
Central authority dignitaries	58	57	56	46	38	30	19	12	3
Local elected officials	418	369	333	272	215	137	87	52	27
Personnel with management positions within public authorities	37	34	31	26	21	14	12	5	2
Civil servants with special status	2	2	2	2	1	1	1	0	0
Civil servants	51	48	43	40	30	19	14	12	2
Magistrates	1	1	1	1	1	1	1	1	1
Other categories provided by Law no. 176/2010	1	0	0	0	0	0	0	0	0

Source: authors, own data processing, 2023

Table 4 – Number of incompatibilities cases for each category of public sector personnel in Romania, in every year from 2013-2021 period

Category	2021	2020	2019	2018	2017	2016	2015	2014	2013
Central authority dignitaries	49	46	45	42	40	30	23	19	12
Local elected officials	1057	945	858	714	593	451	351	283	188
Personnel with management positions within public authorities	137	121	108	86	75	56	36	19	10
Civil servants with special status	17	15	15	14	12	10	8	6	3
Civil servants	220	193	169	151	135	121	108	98	82
Magistrates	6	6	5	5	5	4	3	1	1
Other categories provided by Law no. 176/2010	17	16	15	14	14	10	7	5	2

Source: authors, own data processing, 2023

Therefore, according to the analyzed data, the largest number of conflict-of-interest cases established by final decisions of the courts is among local elected officials, followed by the category of civil servants. A similar situation is maintained in the case of incompatibilities, with local elected officials being the category with the greatest number of incompatibility cases, followed by civil servants and by people with management positions within the public authorities' category. The concentration of the majority of cases of conflict of

interest and incompatibilities among local elected officials and public servants can significantly impact citizens' perception of transparency and integrity within the local and central public administration. Furthermore, the prevalence of these cases among the mentioned categories could undermine the decision-making process and the effective implementation of public policies, raising suspicions regarding the objectivity and independence of decisions made by these key figures in public administration.

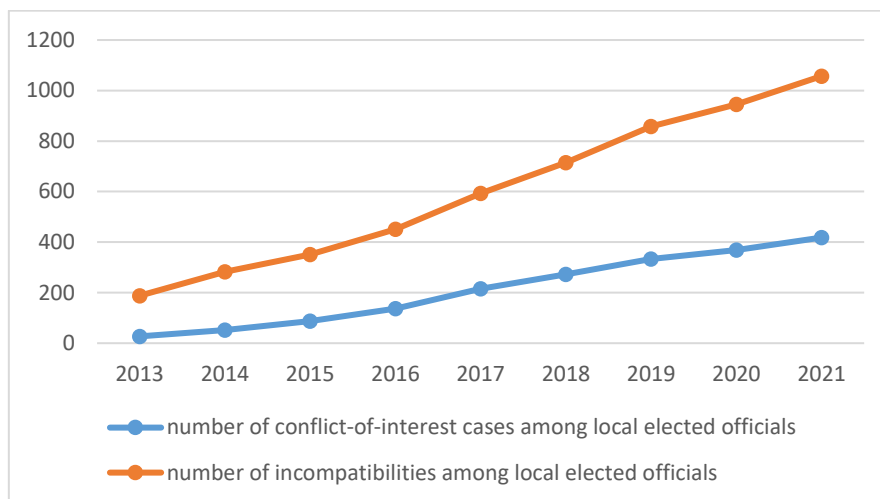


Figure 2 – Evolution of the number of conflict-of-interest cases among local elected officials and evolution of the number of incompatibilities among local elected officials

Figure no. 2 indicates a fluctuation in the number of cases of conflicts of interest and incompatibilities among elected officials. According to the analyzed data, between 2013 and 2017 there was a significant increase in the number of cases regarding conflict of interest among local elected officials, followed by a slight decrease in 2018 and 2020.

However, 2021 indicates an increase of approximately 11% in the number of cases of conflicts of interest among local elected officials. Regarding the number of cases of incompatibility, the biggest increase was in 2018. The existence of a large number of elected local officials in a state of incompatibility or conflict of interests, compared to the other analyzed categories, can be explained by a lack of knowledge of the legal framework regarding integrity and transparency in public positions, lack of training/information regarding incompatibility, conflict of interests, unjustified wealth, etc., ignoring legal provisions and involvement in various situations generating incompatibility or conflict of interests.

More than that, the findings are relevant for the upfront challenges when enforcing legal provisions and ensuring adherence to integrity standards among elected officials. The prevalence of incompatibility and conflict of interest cases points to the urgent need for enhanced education, training programs, and more robust mechanisms for monitoring and preventing such ethical breaches in public positions. Addressing these gaps is essential to uphold the principles of transparency, integrity, and accountability in public governance.

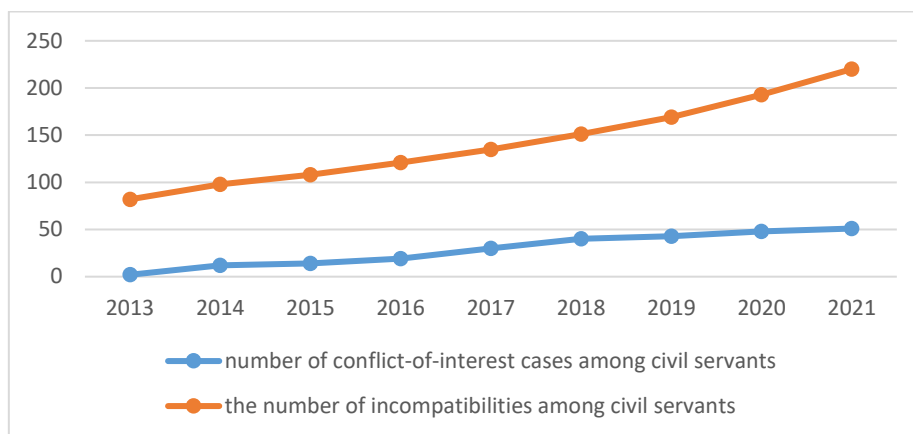


Figure 3 – Evolution of the number of conflict-of-interest cases among civil servants & evolution of the number of incompatibilities among civil servants

Figure no. 3 highlights the decreasing trend in the number of conflict of interest and incompatibilities cases among public officials.

This can be explained by the fact that constant efforts have been made to improve the legislation in force, to adopt and implement it at all levels of all organizations of the National Anti-Corruption Strategy. More than that, strengthening control and supervision mechanisms, as well as promotion of ethical conduct and high standards of behavior have prevented and reduced the number of conflicts of interest and incompatibilities.

The research emphasizes that local elected officials are in the public administration category predisposed to conflict of interests and incompatibility cases. Among the possible causes of these situations, it is mentioned unharmonized legislation and, lack of training programs.

Conclusions

The conflict of interest and incompatibilities regime is a sensitive subject, with very little coverage in the literature, due to the applicable legislation to different categories of staff, legislative changes, case law, and lack of theoretical studies. The evolution in times of conflict of interest and incompatibilities is positive, but there are vulnerable categories, such as local elected officials, where the number of cases is at a high level. Among the main causes that lead to violations of the law, we can list:

1. Lack of professional training programs for local elected officials and other categories. From the analysis of the main training providers for public administration, it can be observed that there are no programs in the field of conflict of interest and incompatibility prevention. Such a program would contribute to the development of skills in the application of relevant legislation, which could lead to a decrease in number of cases.
2. Lack of conflict of interest and incompatibility topics in the bibliography for examinations/competitions for access to public office or contractual staff in the administration, regardless of hierarchical level.
3. Applicable legislation in the field - contradictory court decisions in similar cases due to non-harmonized legislation.

Moreover, according to Law no. 184/2016, the digitization of asset and interests' declarations process through the E-DAI platform, the development of the Prevent system, for persons with public duties, can contribute to the efficiency of the National Integrity

Agency's activity. The study of the regime of incompatibilities and conflict of interest can be extended to the level of each category of the Romanian public administration (local elected officials, civil servants, etc.), but also by conducting comparative analyses with the legislation applicable in other EU Member States.

Through continuous efforts to harmonize legislation, enhance transparency, and promote integrity in public administration, the phenomenon of conflicts of interest and incompatibilities can be addressed. Developing and implementing specialized training programs for elected officials and administrative staff, as well as integrating subjects related to conflicts of interest and incompatibilities in assessments for accessing public positions or contractual roles, represent essential steps in preventing ethical misconduct. Simultaneously, strengthening international cooperation and best practices exchanges can bring significant benefits in developing effective strategies in order to combat these sensitive issues. By continuing research, supporting the development of best practices, and maintaining a consistent focus on promoting ethics and integrity in the public sector.

***Acknowledgments:** This paper is developed based on the presentation at The 4th International Conference Global Ethics- Key of Sustainability GEKoS, Bucharest, Romania, 26th May 2023.*

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