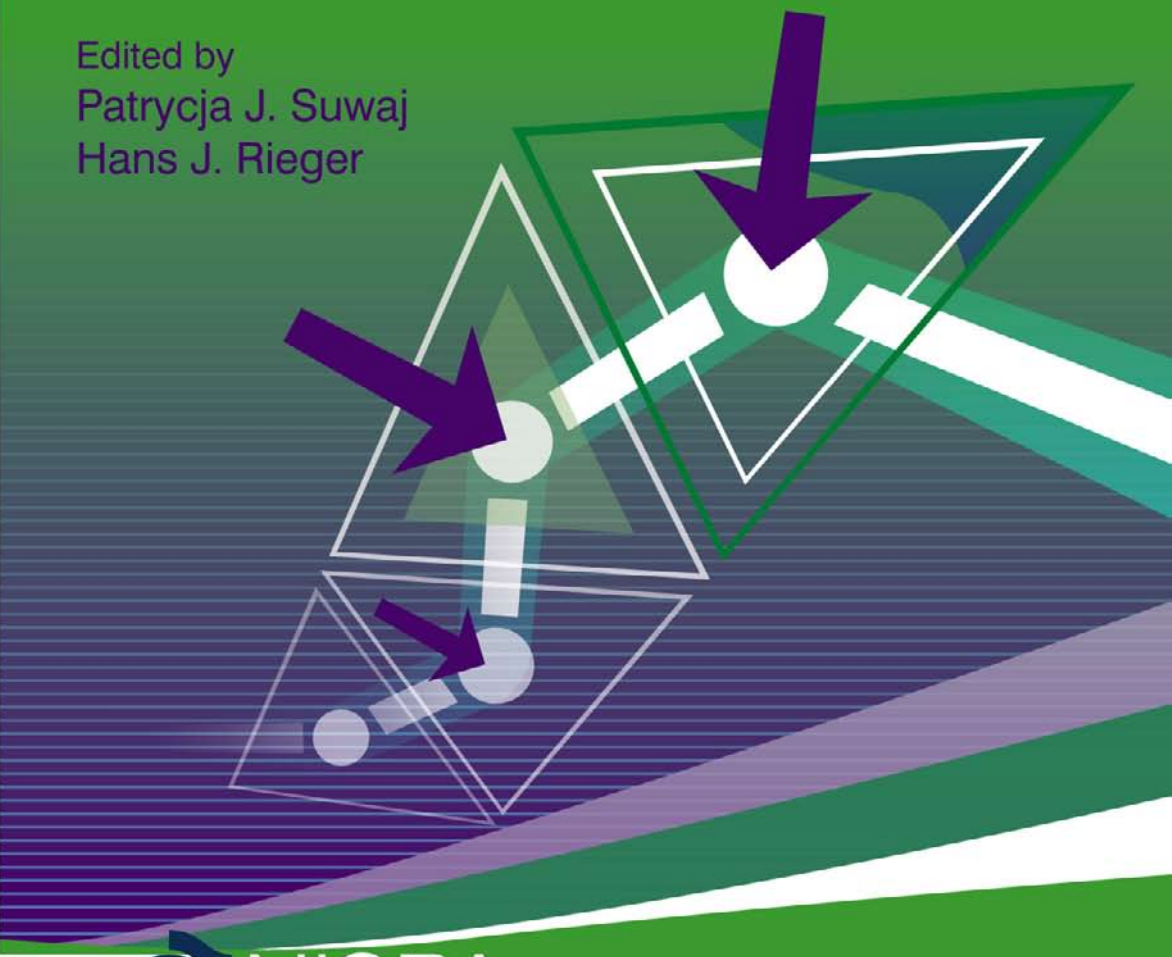
PUBLIC INTEGRITY: THEORIES AND PRACTICAL INSTRUMENTS

Edited by
Patrycja J. Suwaj
Hans J. Rieger



NISPAcee
THE NETWORK OF INSTITUTES AND SCHOOLS OF PUBLIC ADMINISTRATION IN CENTRAL AND EASTERN EUROPE

Public Integrity
Theories and Practical Instruments

NISPAcee
The Network of Institutes and Schools of Public Administration
in Central and Eastern Europe

PUBLIC INTEGRITY
THEORIES AND PRACTICAL INSTRUMENTS

Edited by
Patrycja J. Suwaj, Hans J. Rieger

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The Network of Institutes and Schools of Public Administration
in Central and Eastern Europe

Public Integrity
Theories and Practical Instruments

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Preface

Integrity defines the perceived consistency of actions, values, methods, measures and principles. A value system's abstraction depth and range of applicable interaction are also significant factors in determining integrity, due to their congruence with empirical observation. A value system may evolve over time, while retaining integrity, if those who espouse the values account for and resolve inconsistencies.

Integrity may be seen as the quality of having a sense of honesty and truthfulness in regard to the motivations for one's actions. Integrity is a fundamental precondition for governments seeking to provide a trustworthy and effective framework of the economic and social life for their citizens. The cost of corruption and other malpractices to governments is increasingly well-known and documented. It is now recognised that countering them and promoting public integrity are critical for sustained economic development. Integrity could be named as one of the ethical values and principles in public administration (A. Androniceanu, Section I). It can be interpreted to cover a broad range of bureaucratic behaviour, but it is also used to refer to administrative or public service ethics, to principles and standards of the right conduct for public servants.

In many countries, corruption – the exploitation of public office for private benefits – and other malpractices in public administration has become part of political-administrative everyday life. Bribery, autocratic distribution of offices, embezzlement, nepotism, cronism, etc., have caused damage to the economy, politics and society. This has prompted many countries to put a greater emphasis on preventing, controlling and what is most important, managing different pathologies. Whether in politics, administration or economy, one thing is certain: corruption is spreading like cancer. However, although the phenomenon of corruption is the most visible, there are also other forms of unethical behaviour, which cannot remain invisible. That is why in this volume, we steer the reader's attention not only to the corruption phenomenon, but also on other forms, which can lead to corrupt behaviour.

The fight against corruption, as well as preventing wrongdoing in public administration is a separate field in politics and a major issue in the conduct of administrative affairs. Today the issue of ethics in public administration, ethical governance, public integrity, conflict of interest and corruption play a different role in science and politics. Scandals in democracies, supposedly free of corruption, are the reason why the assumed causal relation between a market economy and democracy on the one hand, and the integrity of civil servants, citizens and enterprises on the other, is called into question. Corruption can survive for a surprisingly long time even in developed democracies and open markets and it can even develop anew. The phenomenon of corruption in western democracies has developed only recently.

That is why this issue has inevitably gained importance in international circles over the last few years. The European Union has also recognised that corruption

causes severe damage and it has declared a comprehensive campaign against it. However, the fight against corruption seems to be like Hercules's fight against the dreadful Hydra. As soon as one head is cut off, two new ones grow in its place. Public officials and civil servants are being bribed, managers misdirect enormous amounts into their own pockets, and politicians are being "oxygenated" – the insiders' euphemism for bribery.

In the wake of the radical changes in Central and Eastern Europe, a new field with new and separate challenges has developed. It has transpired that societies in transition, which had developed from the formerly socialistic block, were hit especially hard by corruption and corruption-related problems. The reason for this is that corruption was deeply rooted in the socialistic system of the planned economy in the form of extensive black markets, which guaranteed access to scarce economic goods or made it possible to avoid authoritarian bureaucratic regulations.

The new trend in promoting integrity in the public sector is placing emphasis not only on efficiency, but also on transparency and accountability. The lack of transparency inherent to this sector is intensified by principles such as official secrecy. In places where citizens are hindered by red tape, intermediaries will soon use this niche and charge citizens for their real or supposed influence on the wheels of bureaucracy. In places where the public administration has become less transparent, even for its own administrative bodies, citizens often fight a losing battle. The conditions of accessing information alone often exert a very regulative influence. This determines the behaviour of office bearers as well as their clients. That is why many states have inverted the legal position to basically grant citizens access to all information, while the state has to separately set necessary restrictions.

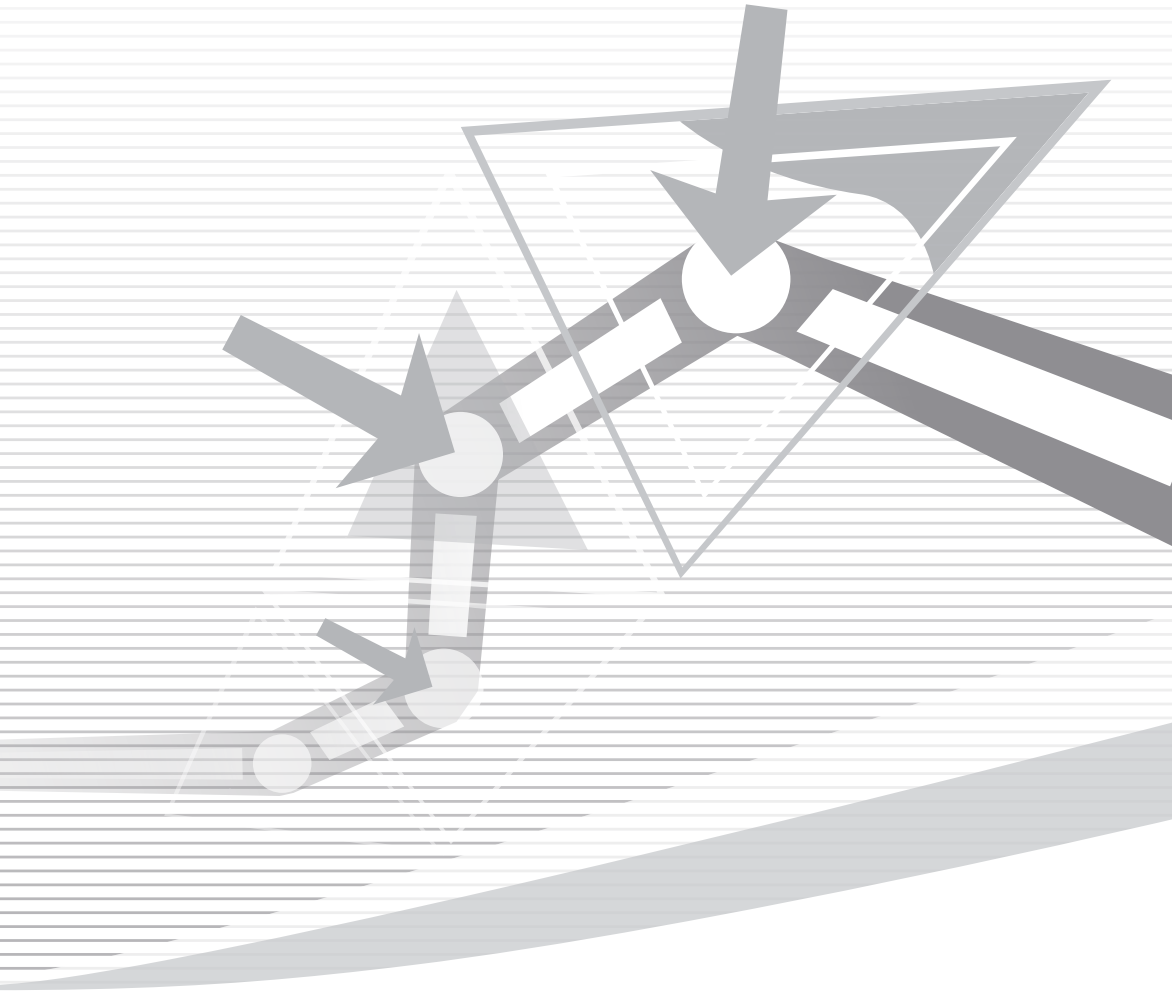
However, repressive means alone cannot solve the problem of this aberration. It has become apparent that a fine-tuned preventive strategy in building public integrity is necessary, which puts special emphasis on instructing and sensitising executives and employees alike.

For that reason, in this book, different theories, mechanisms and instruments supporting public integrity have been put forward. Our intention was to collect different approaches to public integrity, so the authors are of different backgrounds. The idea of this book appeared thanks to NISPAcee, during our work within the Working Group on Integrity, created in 2005. We hope that our collective work and findings will lead to a better understanding of the concept, ideas, mechanisms and instruments supporting public integrity.

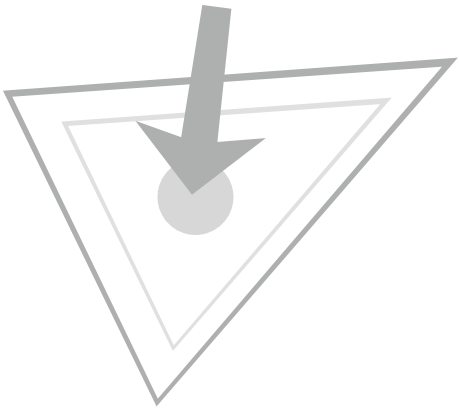
H. J. Rieger, P. J. Suwaj

PART ONE

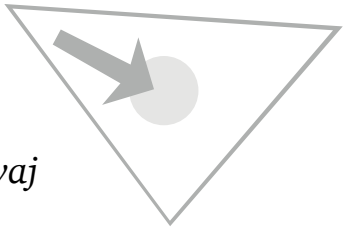
Theories



SECTION I



An Overview on Ethics and the Basic Concepts in Different European Countries



Armenia Androniceanu

Patrycja Joanna Suwaj

Introduction

A. Androniceanu

Ethics is a core around which are found concepts such as integrity, the fight against corruption, ethical values, corruption, anti-corruption, codes, ethical decision-making and relations, leadership and management of ethics. Some of these issues are explained and several practical examples from the Central and Eastern European countries are presented, based on empirical surveys developed by the researchers. What is actually truly ethical behaviour? The answer is beyond the reality presented, whether positive or negative. Several examples highlight the ethical dimension of the activities of public institutions and some best practices' solutions or recommendations for more improvements in this area are offered. The perception of different states on ethics in administration and to the political level differs depending on several factors, such as history, traditions, type of public administration system, the stage of the economy, institutional networking, public pressure and the state of investments.

Can we imagine a pyramid in which key concepts are to be distributed at different hierarchical levels for each state? Moreover, different moments in time may correspond to several pyramids of evolution. There are more angles of perception on the importance of key concepts in each country. For states with a mature economy, political systems and social balance, notions such as integrity in decision-making, responsibility in the elaboration and implementation of public policies, ethics of large representatives, the middle class, but also citizens, are ways to perceive real social life. For others, the main purpose of discussing notions can be interpreted entirely differently. A modern public administration will have easy communication media, an active participation of citizens and of all stakeholders of public services in the decision-making process, a co-operation based on ethics, responsibilities, the awareness and orientation towards achieving new objectives. Understanding and operation of these concepts can produce major improvements in the quality of public administration, political relations, media association and finally to the citizen's life, through transparency, treat corruption as a phenomenon and limits its negative effects on professionalising public management.

The content of the following chapters is based on the theoretical and practical researches developed by the author and also by other scholars from different countries from Europe and elsewhere.

Chapter 1
Ethics

A. Androniceanu

Introduction

The field of ethics, also called moral philosophy, involves systematising, defending, and recommending concepts of right and wrong behaviour. Philosophers today usually divide ethical theories into three general subject areas: metaethics, normative ethics, and applied ethics. *Metaethics* investigates where our ethical principles come from, and what they mean. Are they merely social inventions? Do they involve more than expressions of our individual emotions? Metaethical answers to these questions focus on the issues of universal truths, the will of God, the role of reason in ethical judgments, and the meaning of ethical terms themselves. *Normative ethics* takes on a more practical task, which is to arrive at moral standards that regulate right and wrong conduct. This may involve articulating the good habits that we should acquire, the duties that we should follow, or the consequences of our behaviour on others. Finally, *applied ethics* involves examining specific controversial issues, such as abortion, infanticide, animal rights, environmental concerns, homosexuality, capital punishment and nuclear war.

Ethics from theoretical and practical perspectives

The meaning of "ethics" is hard to pinpoint and the views many people have about ethics are shaky. The word "ethics" is derived from the Greek word ethos (character), and from the Latin word "mores" (customs). Together, they combine to define how individuals choose to interact with one another. In philosophy, ethics defines what is good for the individual and for society and establishes the nature of duties that people owe themselves and one another. Many discussions about 'ethics' begin with a flourish, only to grind to a halt as people encounter disagreement about the answer to a fairly fundamental question, "What is ethics all about?"

The disagreement flows from the fact that most people only have a partial understanding of the basic questions that are addressed in the field of ethics. The most commonly held views include a mixture of the following:

- ethics is the same as morality
- ethics is about rules for behaviour ('soft laws' if you like)
- ethics is to do with theory (part of the useless species of things dreamed up in ivory towers)

While each view is severely limited, it is easy to see how it can be held, as most people tend to see only part of the overall picture. Those wanting to capture the broader perspective may be best assisted by returning to what is regarded to be the founding question in ethics.

Few will be surprised to learn that the basic question of ethics has an ancient pedigree. Indeed, it can be traced back to a Greek philosopher who lived and taught in Athens during the fifth century BC. Socrates asked: "What ought one to do?"

It should be obvious that this is an immensely practical question confronting us whenever we have a choice or decision to make. It is also a question that is extremely difficult to avoid. Indeed, the only sure way to escape this question is to be a creature of unthinking habit which goes about life doing things "because everyone does it" or because "that's just the way we do things around here" or because "it seemed like a good idea at the time".

People who are dissatisfied with this approach; people who wish to make their lives their own will recognise that Socrates' question ultimately requires each of us to give an account of how our choices and decisions contribute to what we would defend as a 'worthwhile' life. And that is how we come to address issues of good and evil, right and wrong.

If ethics is about practical, rather than purely theoretical matters, it should also be understood that it encompasses a general conversation about how people should live a 'good' life. This helps to explain the difference between ethics and morality. The distinction can be demonstrated by using the analogy of a conversation. If one imagines that the field of ethics is a conversation that has arisen in order to answer the question, "What ought one to do?", then moralities (and they are various) are voices in that conversation.

Each voice belongs to a tradition or theory that offers a framework within which the question might be contemplated and answered. So there is a Christian voice, a Jewish voice, an Islamic voice, Buddhist voice, Hindu voice, Confucian voice and so on. Each voice has something distinctive to say – although they may all have certain things in common.

There are, in addition to the moralities that flow from the world's religions, the voices that represent the various attempts to found moral systems on the thinking of

secular philosophers. No ethical theory or morality (from the West) has found a way to answer Socrates' question in a way that totally avoids the countless ethical dilemmas that seem to be a persistent feature of what might be called the 'ethical landscape'

One simple example may suffice as an indication of the type of dilemma that might be encountered. Most people would agree (possibly for quite different reasons) that people ought to tell the truth. These same people will hold that one ought to avoid causing harm. But what happens when telling the truth will cause another person harm? Each principle seems to be valid on its own account, but when combined with other values, an irreconcilable tension may arise. This is not a trivial point. It reminds us that the ethical landscape is painted in shades of grey and not black and white. Sometimes we need to accept the limits to certainty when trying to decide how best to proceed. Sometimes our range of choice is reduced to picking the least bad alternative. Sometimes we may have nothing more than a well-informed conscience to guide us through the maze of ethical decision-making.

Though the law often embodies ethical principals, law and ethics are far from co-extensive. Many acts that would be widely condemned as unethical are not prohibited by law — lying or betraying the confidence of a friend, for example. And the contrary is true as well. In as much as the law does, it is not simply codifying ethical norms.

Most professions have highly detailed and enforceable codes for their respective memberships. In some cases these are spoken of as "professional ethics," or in the case of law, "legal ethics." For example, the American Medical Association has the Principles of Medical Ethics and the American Bar Association has the Model Rules of Professional Conduct. Other professions with codes include dentistry, social work, education, government service, engineering, journalism, real estate, advertising, architecture, banking, insurance, and human resources management. Some of these codes have been incorporated into the public law. All are likely to have some effect on judgments about professional conduct in litigation. Generally, failure to comply with a code of professional ethics may result in expulsion from the profession or some lesser sanction.

On the other hand, many people tend to equate ethics with their feelings. But being ethical is clearly not a matter of following one's feelings. A person following his or her feelings may recoil from doing what is right. In fact, feelings frequently deviate from what is ethical. Being ethical is also not the same as following the law. The law often incorporates ethical standards to which most citizens subscribe. But laws, like feelings, can deviate from what is ethical. Being ethical is also not the same as following the law. The law often incorporates ethical standards to which most citizens subscribe. But laws, like feelings, can deviate from what is ethical.

Moreover, if being ethical was doing "whatever society accepts," then to find out what is ethical, one would have to find out what society accepts. Further, the lack of social consensus on many issues makes it impossible to equate ethics with

whatever society accepts. Some people accept abortion but many others do not. If being ethical was doing whatever society accepts, one would have to find an agreement on issues which does not, in fact, exist.

What, then, is ethics? Ethics is two things. Firstly, ethics refer to well based standards of right and wrong that prescribe what humans ought to do, usually in terms of rights, obligations, benefits to society, fairness, or specific virtues. Ethics, for example, refer to those standards that impose reasonable obligations to refrain from rape, stealing, murder, assault, slander, and fraud. Ethical standards also include those that join virtues of honesty, compassion, and loyalty. And, ethical standards include standards relating to rights, such as the right to life, the right to freedom from injury, and the right to privacy. Such standards are adequate standards of ethics because they are supported by consistent and well-founded reasons.

Secondly, ethics refer to the study and development of one's ethical standards. As mentioned above, feelings, laws, and social norms can deviate from what is ethical. So it is necessary to constantly examine one's standards to ensure that they are reasonable and well-founded. Ethics also mean, then, the continuous effort of studying our own moral beliefs and our moral conduct, and striving to ensure that we, and the institutions we help to shape, live up to standards that are reasonable and solidly-based.

In public administration, public servants have to have an ethical behaviour, although they have limited resources and they are confronted with dynamic citizens' expectations. What about ethics and its complementary words? The term "ethics" was "derived from the Greek word <<ethos>> meaning character or custom. This definition is German to effective leadership in organisations in that it connotes an organisation code conveying moral integrity and consistent values in service to the public" (Androniceanu, Abaluta, 2007). For the majority of public institutions, integrity is one of the most appreciated values of ethical behaviour. On the other hand, to maintain high standards and values means having a low level of corruption, whether it is in the private sector, but especially in the public field. The Organisation for Economic Co-operation and Development (OECD) has named the ethical infrastructure as a "sum of tools and processes for regulating against undesirable behaviour and/or providing incentives to encourage good conduct of public officials" (OECD, 2005). The organisation defined eight key components of an ethics infrastructure. Among them, the political commitment, effective legal framework, the professional socialisation mechanisms or an active civil society able to act as a watchdog over the actions of officials contribute to the development of an ethical behaviour and fight against unethical actions. Leaders also have an important role to implement ethics in an organisation, as having representative behaviour and ethics professionalism.

For example, the model of public administration in Slovenia showed a lack of accountability of public servants and policymakers, even if they discovered

that the responsibility for them is the most important value of ethical behaviour (Zajc, 2006).

The negative feedback of citizens and the lack of transparency in acts that use public money led to some system problems, with many implications in social life and other negative effects. From the research made, there are some recommendations in order to improve the meaning of ethics, especially for public servants, for example to establish an integrity national system, to set up special training on this subject and to find solutions to increase citizens' participation in governance (Mark 2003).

The Estonian model of ethics has a recent story. Even if the Public Service (PS) Code of Ethics was adopted in the Estonian Parliament in 1999, the implementation demonstrated that the development of Human Resources Management for organisations might be less important than creating common ethos/values, in order to accept professional ethical values. In the implementation process, The Estonian Code of Ethics was confronted with many obstacles, such as the people's perception about it, like a law or something imposed, not as an expression of their public service ethos. On the other hand, this Code has many similarities with those of the EU and the OECD, without any specific values. In Estonia, the professionalism of public servants depends on ethical leadership, the political decisions and the administrative culture. As a public servants' feedback in statistical studies showed, there are a few measures of how to raise integrity in public service in the importance order, such as:

- the leadership role with 61 %
- improve the political culture 54 %
- improvement of the administrative culture 43 %
- a transparent HRM policy 34 % or
- a higher salary 33 %.

Others examples which concern ethics – raising ethical awareness in society 29 %, supervision in PS ethics 21 %, or the existence of codes of ethics in organisations 15 % have a less active role in this country, which actually underline the stage of implementing ethics in ordinary life (Palidauskaite, Pevkur, Reinholde, 2007).

Conclusion

Ethics is so complex and a very comprehensive concept which represents the framework for many other distinctive elements. In the next chapters of this section we present some key basic concepts for a better understanding of what ethics means and how the basic concepts are reflected in theory and also in real life from public organisations from different countries.

Chapter 2
Ethical Values

A. Androniceanu

Introduction

Ethical values must be considered essential for any public organisation. Such values do not require any external justification, but are rather of intrinsic importance for human resources. They comprise the public organisation's irrevocable and fundamental values, guiding all actions and behaviour. These values underpin the environment of mutual trust created within a public organisation and with respect to all stakeholders. Public servants shall be guided in their work and their professional conduct by a balanced framework of public service values: democratic, professional, ethical and people values. This chapter will be oriented to the content of these ethical values, analysed by different authors, but it also contains the results of some empirical surveys already developed in a few countries.

Basic ethical values

There are different approaches referring to public values in public organisations. These families of values are not distinct, but overlap. They are perspectives from which to observe the universe of Public Service values. The most important categories of public values inside the public organisations are presented below: democratic values, professional values, ethical values, people values.

Democratic Values**:** *Helping politicians, under law, to serve the public interest.*

- Public servants shall give honest and impartial advice and make all information relevant to a decision available to politicians.
- Public servants shall loyally implement political decisions, lawfully taken.
- Public servants shall support both individual and collective political accountability and provide information on the results of their work.

Professional Values: *Serving with competence, excellence, efficiency, objectivity and impartiality.*

- Public servants must work within the laws and maintain the tradition of the political neutrality of the Public Service.
- Public servants shall endeavour to ensure the proper, effective and efficient use of public money.
- In the Public Service, how ends are achieved should be as important as the achievements themselves.
- Public servants should constantly renew their commitment to serve citizens by continually improving the quality of service, by adapting to changing needs through innovation, and by improving the efficiency and effectiveness of government programmes and services offered in both official languages.
- Public servants should also strive to ensure that the value of transparency in government is upheld, while respecting their duties of confidentiality under the law.

Trust: *Acting at all times in such a way as to uphold the public trust.*

- Public servants shall perform their duties and arrange their private affairs so that public confidence and trust in the integrity, objectivity and impartiality of government are conserved and enhanced.
- Public servants shall act at all times in a manner that will bear the closest public scrutiny; an obligation that is not fully discharged by simply acting within the law.
- Public servants, in fulfilling their official duties and responsibilities, shall make decisions in the public interest.
- If a conflict should arise between the private interests and the official duties of a public servant, the conflict shall be resolved in favour of the public interest.

People Values: *Demonstrating respect, fairness and courtesy in their dealings with both citizens and fellow public servants.*

- Respect for human dignity and the value of every person should always inspire the exercise of authority and responsibility.
- People values should reinforce the wider range of Public Service values. Those who are treated with fairness and civility will be motivated to display these values in their own conduct.
- Public Service organisations should be led through participation, openness and communication and with respect for diversity.
- Appointment decisions in the Public Service shall be based on merit.

- Public Service values should play a key role in recruitment, evaluation and promotion.

As we can see, one of the main categories of public values is ethical values, which is composed of several values. After looking at the same subject in many public organisations from different countries, it is possible to group and present below the main elements of the ethical values' framework for the public sector.

1. Integrity

The behaviour of civil servants must be irreproachable, based on principles of rectitude and honesty. They will foster a strict coherence between their public organisation practices and respect for the values. Civil servants are conscientious with regard to their words, actions, intent, and relationships and the impact of their behaviour on others.

2. Transparency

This implies the disclosure of appropriate information giving a true portrayal of civil servants' actions; information that is accurate and verifiable and both internal and external communications will be clear and timely.

3. Responsibility

It means assuming responsibilities and acting accordingly. All the means at the disposal of the civil servants will be focused on achieving this objective.

4. Safety

Measures are in place to ensure optimal public services and safety conditions in the workplace. Public organisations demand a high level of safety in their processes, facilities and services, paying special attention to the protection of the civil servants, citizens, subcontractors, customers and the local surroundings.

5. Human dignity

Public organisations respect the human dignity of all individuals with courtesy and sensitivity.

7. Honesty and trustworthiness

Civil servants use resources, personnel and assets for furthering the mission of the public organisation only and not for personal gain.

8. Consistency and harmony of interests

Civil servants avoid conflicts of interest and the appearance of conflicts.

9. Justice and fairness

Civil servants treat everyone equally, justly, and fairly.

10. Authenticity or true self-identification

Civil servants identify their personal views and actions as citizens from those expressed or undertaken as institutional representatives.

11. Freedom of expression

Civil servants freely express themselves and recognise the freedom of others to do the same.

12. Professionalism

Civil servants are professional in the discharge of their duties and promote personal and student development.

In the Romanian Government, some statistical studies from 2006 showed that the most important values which influence ethical behaviour were – rules and procedures and political self-interest with 30 % each, individual friendship with 15 % and personal morality with 10 %. A small interest of 5 % each was for team spirit, social responsibility or for the law and professional codes of conduct. From this study it can be seen the state of the leadership in this country, with no participation of middle management in terms of decision-making in public administration, without sharing and team spirit and all of these were a possible result of corruption. In this picture, even although the Code of Ethics was approved more than 4 years ago, political leaders and public managers have been more motivated to follow the legal framework and the job description than to make an effort to integrate ethics into their daily activities. People asked appreciated that if they apply the law, it automatically means that they will take ethical decisions. One of the greatest challenges confronting any leader in this twenty-first century is "bridging the gap between strategy and getting people to execute" (Androniceanu, Abaluta). But some government representatives are not good leaders, so they might not be able to make others put into practice the strategy. Sometimes it is because of the rest of the team, the environment or the lack of communication.

Conclusion

Although different national studies show that public servants are more dedicated and there are higher demands in the public sector than in the private sector, on the public value's scale the most important are competency, honesty and lawfulness, known in literature as old values.

Chapter 3
Principles

A. Androniceanu

Introduction

This chapter consists of general principles. General principles, as opposed to ethical standards, are an aspiration by nature. Their intent is to guide and inspire civil servants toward the very highest ethical ideals of the profession. General principles, in contrast to ethical standards, do not represent obligations and should not form the basis for imposing sanctions. Relying upon general principles for either of these reasons distorts both their meaning and purpose. Public service is a public trust. The highest obligation of every individual in government is to fulfil that trust. Each person who undertakes the public's trust makes two paramount commitments: to serve the public interest and to perform with integrity. These are the commitments implicit in all public service. In addition to faithful adherence to the ethical principles enjoined upon all honest and decent people, public employees have a duty to discern, understand, and meet the needs of their fellow citizens.

Principles of the ethics

After looking at several approaches, we can conclude that the main ethics principles are the following:

1. Respect for the law and the system of government

That means that a public official should uphold the laws of the state and carry out official public sector decisions and policies faithfully and impartially. The civil servant does not detract from a public official's duty to act independently of government if the official's independence is required by legislation or government policy, or is a customary feature of the official's work.

2. Respect for people

This means that a public official should treat members of the public and other public officials honestly and fairly and with proper regard for their rights and obligations. A public official should act responsibly in performing official duties.

3. Integrity

In recognition that public office involves a public trust, a public official should seek to maintain and enhance public confidence in the integrity of public administration and to advance the common good of the community the official serves. Civil servants behave in a trustworthy manner. Civil servants are continually aware of the profession's mission, values, ethical principles, and ethical standards and practise in a manner consistent with them. Human resources from public organisations act honestly and responsibly and promote ethical practices on the part of the organisations with which they are affiliated. Civil servants should not improperly use their official powers or position, or allow them to be improperly used; and should ensure that any conflict that may arise between the official's personal interests and official duties is resolved in favour of the public interest and should disclose any fraud, corruption and misadministration of which the official becomes aware.

4. Diligence

In performing his or her official duties, a public official should exercise proper diligence, care and attention and seek to achieve high standards of public administration.

5. Economy and efficiency

In performing his or her official duties, a public official should ensure that public resources are not wasted, abused, or used improperly or extravagantly.

Conclusion

In conclusion, ethical principles can only provide guidance. There are a myriad of situations that will never lend themselves to an easy formula, and the principles can only be used to trigger our conscience or guide our decisions. (As stated earlier, they are also useful for ethics education). It is important to note that principles of personal ethics are the first checkpoint in any situation, often overriding those at the professional and global levels. Depending on the degree of responsibility of decision is very important to consider the principles that should be seen in a universal context, in a certain period of time and as a human moving process.

Chapter 4
Factors

A. Androniceanu

Introduction

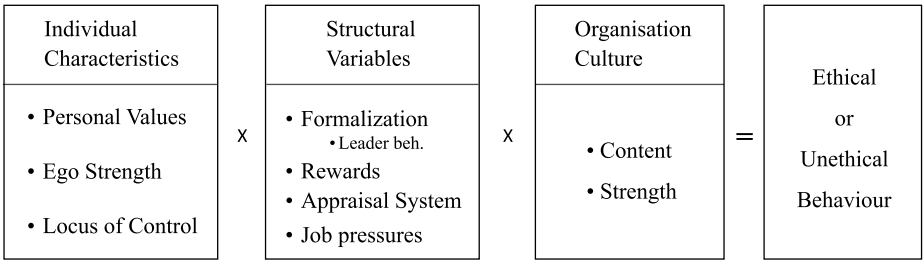
There are several factors with a strong influence on the ethical behaviour of human resources. The most important factors are: cultural, economical, political and legal. Civil servants should understand culture and its function in human behaviour and society, recognising the strengths that exist in all cultures.

Factors for influencing ethical behaviour

Human resources from public organisations should have a knowledge base of their clients' cultures and be able to demonstrate competence in the provision of services that are sensitive to clients' cultures and to differences among people and cultural groups. Civil servants should be educated in and seek to understand the nature of social diversity and oppression with respect to race, ethnicity, national origin, colour, sex, sexual orientation, gender identity or expression, age, marital status, political belief, religion, immigration status, and mental or physical disability. As we can see in Figure 1 we have presented the most important factors with a strong influence on ethical or unethical human resources behaviour.

Based on our research and analysis etc. we identify several variables with an important impact on human resources behaviour, such as: skills, environmental constraints, norms, standards, self–efficacy and emotion. The conclusions of some psychologists arrived at the following conclusion: If a person has not yet formed a strong intention to perform a given ethical behaviour, the goal of an intervention should be to strengthen that person's intention to perform ethically. If the person has formed a strong intention but is not acting upon it, "the intervention should probably be focused upon improving the skills and/or removing or helping one overcome environmental constraints."

Figure 1
Ethical Behaviour Factors



In order to achieve ethical behavioural change, particularly as part of tackling complex policy problems, a basic understanding is required of key determinants of behaviour. How people behave is determined by many factors and is deeply embedded, as we mentioned above, in social situations, institutional contexts and cultural norms.

As the experts in psychology demonstrated through their research, the social cognitive theory focuses on skill and competency and emphasises the importance of enhancing an ethical person's behavioural capability and self-confidence. Self-efficacy is a key concept in the theory and refers to a person's confidence in their ability to take action and to persist with that action, such as persisting with lifestyle changes for any environmental reasons. Self-efficacy can be increased in a variety of ways, including:

1. setting small incremental goals—when someone achieves a small goal such as exercising for 10 minutes every day for a week, their self-efficacy increases and the next, more challenging goal seems more achievable and their persistence is greater;
2. reinforcement – reward the achievement of incremental goals with feedback praise and/or a tangible motivating reward;
3. monitoring – feedback from self-monitoring or record-keeping can reduce anxiety about a person's ability to achieve an ethical behavioural change, thereby increasing self-efficacy.

Another important idea to be considered is that of the role of relationships in the process of changing ethical behaviour of human resources. Behavioural change is often better affected by focusing not just on individuals, but also on their relationships with those around them. People will generally be far more influenced by the views of family, peers and trusted well-known people than by advice from government, as the psychologists' research demonstrated. A broader culture that encourages initiative, but recognizes the need for learning, would support such a

management style and assist in modifying behavioural change measures in the light of what works and what doesn't. Such a learning culture, which is characterised by a willingness to think and work in new and innovative ways, also requires flexible and creative implementation.

The empirical researches already developed at the central level of the Romanian government also demonstrated other perspectives of influencing ethical behaviour of people working inside public organisations. Based on Androniceanu's survey, the ethical climate of an organisation is the shared set of understanding about what correct behaviour is and how ethical issues will be handled. This climate sets the tone for decision-making at all levels and under all circumstances. Some of the factors presented below may be emphasised in different ethical climates of public organisations. They are the following: personal self-interest; public interest; operating efficiency; individual friendships; team interests; social responsibility; personal morality; rules and standard procedures and laws and professional codes.

Standards for what constitutes ethical behaviour lie in a "grey zone" where clear-cut right-versus-wrong answers may not always exist. As a result, sometimes unethical behaviour is forced on public organisations by the environment, but in many cases, Romanian public organisations' ethical behaviour is strongly influenced by the values promoted by public managers and politicians through their personal example. It has been demonstrated by our survey that there are several differences concerning the core premises of ethical behaviour and values considered by the administrative and the political level of the government centre.

The effective management of ethical issues requires that public organisations ensure that their public managers, politicians and civil servants know which are the ethical values and how to deal with ethical issues in their everyday work lives.

Public administration ethics is a complex problem rooted in the general ethical standards of a particular social entity, family background, and education etc. of public servants and interconnected with employment conditions, material and social status of the public service and with the moral climate of a particular local government service. The response must reflect this knowledge.

The following problems of public service adversely affecting local government missions and tasks can be listed as follows:

i) factors connected with public servants status:

- unsatisfactory material conditions and social security;
- inadequate legal guarantees of status and employment conditions of public servants, allowing excessive use of discretionary powers in decisions relating to personnel matters;

- in some cases, excessive political interference with personnel management decision-making ('the other side' of public staff accountability to elected representatives);
- inadequate public support, low rating of public servants' social status;

ii) factors connected with the organisation of public services:

- not clearly defined competences and duties;
- low level of public and personnel management, neglecting respective senior officials' duties, especially in the exercise of their supervisory responsibilities;
- conflict of competence between local and central government in cases of delegated competencies exercised by the staff nominated and managed principally by local government, but partly supervised by state authorities (when e.g. approval of a nomination is required or control over the execution of a relevant part of certain tasks is exercised)
- inadequate professional assistance at the disposal of local authorities and public servants concerning special problems (e.g. corruption) with the treatment of which local authorities –at least in some forms and intensity – are not familiar.

Unsatisfactory interpersonal relations in service units and poor knowledge of the situation of staff by superiors and personnel managers – beyond the necessary respect of privacy – manifest themselves, in some cases, when serious employment or personal problems are disclosed as late as when a situation becomes critical. [The Steering Committee for Local and Regional Democracy (CDLR)].

Conclusion

Factors mentioned in this chapter are important, not only for analysis, but also for preventing their influence upon public officials' behaviour. If we know the factors, the intensity of their influence and also the type of influence, we can act towards reducing the negative influences and also encourage their positive impact in the public official's behaviour. These kinds of monitoring actions must become part of the ethics management process and could be guided in order to prevent their negative impact on developing the ethical capacity of public organisations.

Chapter 5
Integrity

A. Androniceanu

Introduction

Integrity is a fundamental pre-condition for governments seeking to provide a trustworthy and effective framework of both the economic and social life of their citizens. The cost of corruption to governments is increasingly well-known and documented. It is now recognised that countering corruption and promoting public integrity are critical for sustained economic development. Integrity could be cited as one of the ethical values and principles in public administration. Public service has its own values and principles and the most important of them is integrity. It can be interpreted to cover a broad range of bureaucratic behaviour, but it is used also to refer to administrative or public service ethics, to principles and standards of the right conduct for public servants.

Integrity as one of the key ethical principles and values

Integrity and ethical conduct are important for good governance in both the public and private sectors. It is difficult to improve integrity in the public sector unless steps are also being taken to address private sector behaviour, and vice versa. Integrity needs to be supported by ethical behaviour in all major public and private institutions.

Integrity in public organisations is a result of several internal measures. Looking at the practices of different administrations we can select some key initiatives which became a successful reality in the public sector, as follows:

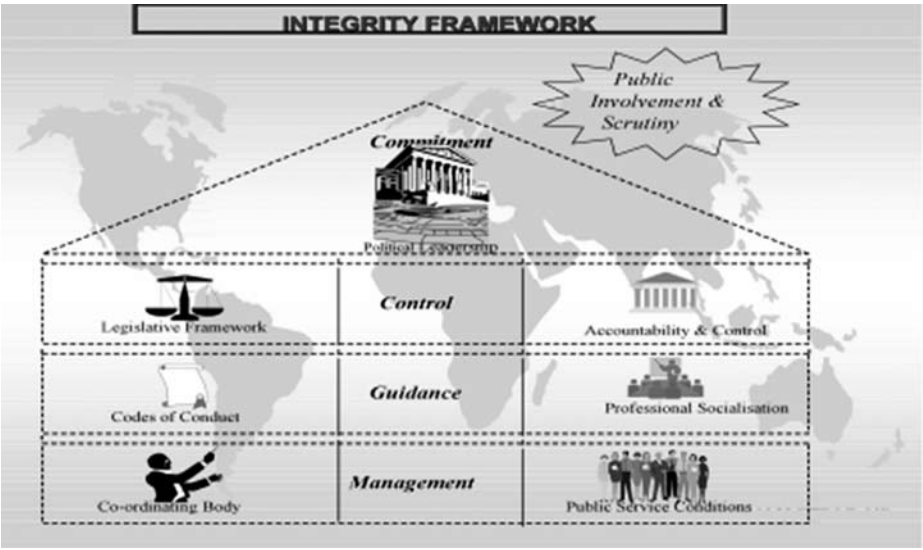
- establish open, transparent, efficient and fair employment systems for public officials that ensure the highest levels of competence and integrity, foster the impartiality of the civil service, safeguard equitable and adequate compensation

and encourage hiring and promotion practices that avoid patronage, nepotism and favouritism;

- adopt public management measures and regulations that affirmatively promote and uphold the highest levels of professionalism and integrity through the promotion of codes of conduct and the provision of corresponding education, training and supervision of officials in order for them to understand and apply these codes; and
- establish systems which provide for the appropriate oversight of discretionary decision-making; systems which govern conflicts of interest and provide for disclosure and/or monitoring of personal assets and liabilities; systems which ensure that contacts between government officials and business services users are free from undue and improper influence, and that enable officials to report such misconduct without endangering their safety or professional status.

A combination of laws, institutions and management mechanisms is necessary to prevent corruption and promote integrity in the public services. A clear framework for integrity has already been defined by the OECD, as we see in Figure 2.

Figure 2
Integrity Framework



Adapted by the OECD's Public Governance and Territorial Development Directorate

An OECD survey in 1997 identified eight important ethical measures (the "ethics infrastructure"):

1. Political commitment to integrity.
2. Effective legal framework.
3. Efficient accountability mechanisms.
4. Workable codes of conduct.
5. Professional socialisation of staff.
6. Supportive public service conditions.
7. An ethics coordinating body.
8. An active society.

Organisations campaigning for higher standards in public life, such as Transparency International (TI), have stressed the importance of civil society, as well as the usual focus on key institutions of the public sector – parliament, judiciary, public service, independent investigatory and appeals bodies, the police, etc. Corruption cannot be tackled, according to TI, unless there is an ethical approach promoted by community groups, the media, professions and research institutes.

From the perspective of integrity, corruption, however, is not a cause but a consequence: as much the result of systemic failure as individual dishonesty. Preventing corruption is as complex as the phenomenon of corruption itself and a combination of interrelated mechanisms, including sound ethics management systems, specific prevention techniques and effective law and law enforcement are needed for success. It is therefore invaluable, in taking action against corruption, to have an understanding of the relevant legal, civil service and management systems employed by a range of countries to counter corruption.

Certain principles and standards of ethical behaviour (e.g. honesty, promise keeping) are of such enduring importance in all walks of life that they can be described as ethical values. These ethical values can be used to resolve conflicts between such public services as responsiveness and efficiency; they can also be applied to clashes between public service values on the one hand, and social values such as liberty and equality on the other. Governments and international agencies draw their attention to developing and maintaining high standards and values, ethics and conduct in public administration as a means of combating corruption. All these factors are essential components of the ethical infrastructure of public life.

With the arrival of the twenty-first century, organisations face a variety of changes and challenges that will have a profound impact on organisational dynamics and performance. The long-standing tradition of ethical behaviour is based on principles of honesty, integrity and trustworthiness. As is demonstrated by our empirical research, people look at their leader and say, 'should I follow this person?' One very important attribute is integrity. When the leader loses legitimacy, the entire basis of an effective body comes down – fairness, equality and long lasting val-

ues. The proper governmental culture will collapse, and that is something no public manager or politician can afford.

If a government is known to have corrupt structures with a bad image and the non-ethical behaviour of their politicians and public managers, politicians may be able to escape the hand of the law, but no great talent will work for them, no-one would wish to co-operate with such a government and in the longer run, citizens and the business environment do not want to be associated with such structures. Once a government or the public management representatives are regarded as corrupt, their level of legitimacy declines.

The corollary is that, in a system when one government subverts the law, it becomes that much harder for other public organisations to operate cleanly. This is why ethical behaviour and ethical leadership are a necessity. Only if public managers and politicians set clear, unequivocal policies and controls stipulating zero tolerance, can public management ensure good practices in the central public administration. (Androniceanu, Abaluta, 2007).

In Serbia and Montenegro, 2003 was the starting point for taking into account some initiatives in the field of ethics and integrity, because these two countries had become full members of the Council of Europe. In the same year, the translation of the European model code of conduct for local and regional elected representatives of the Congress of Local and Regional Authorities of Europe (CLRAE) was dispatched to all local governments with a recommendation for it to be considered and adopted by local assemblies. Since this initiative resulted in only four (out of 167) local governments reacting and adopting the texts in local assemblies, it became clear that wider success could only be expected if the text of the code was adapted to the local environment and if proper ownership of the text by its addressees was achieved. The SCTM began a wide campaign to raise awareness of the necessity of establishing a set of ethical rules for the local level, in the course of which, model codes were drafted and finally adopted by the association's General Assembly in December 2004. During the process, a cross-sectoral working group consisting of representatives of local governments, central government ministries and international and expert organisations drafted a model code, mainly on the basis of the Council of Europe's recommendations. The model was then widely consulted by partners of the SCTM and presented during a series of 30 public debates organised in regional centres and attended by local politicians, the media and citizens. Collected comments were incorporated into the final text of the Model presented to the SCTM General Assembly for adoption. Two model codes were recommended for adoption to local assemblies – Model ethical code of conduct for local government officials and Model code of conduct for employees in administrations and public services in towns and municipalities (Jerinić, 2006).

Conclusion

There has been increasing attention to issues of integrity and ethics in recent years, partly arising from scandals in both the private and public sector. International organisations which have been traditionally mainly concerned with economic growth and economic efficiency have now realised that sound legal and ethical frameworks are needed to ensure accountability. In OECD countries there has been a clear shift in focus from the standard emphasis on economic efficiency (1970s and 1980s) to the more recent rediscovery of public values such as integrity, ethics, responsiveness and client service.

Chapter 6
Integrity Management

A. Androniceanu

Introduction

Integrity is the cornerstone of good governance. It enhances the quality of policy decisions and helps to maintain trust in government. A competent and impartial public administration is a necessary condition for the appropriate performance of its duties. The public must have confidence in the way the authorities' discharge their duties, in accordance with the rule of law and the democratic frameworks. For this reason, the reliability of the public administration can be guaranteed only when guiding principles that govern working for the administration are both explicit and known to all those involved. Managing integrity in any organisation is an important part of an effective operation. Ensuring that an organisation's personnel operate in the interests of the organisation and not for their own private gain, is crucial for establishing an effective system of internal controls and resource management.

The main dimensions of integrity management

As most of the experts considered, ethics infrastructure is at the heart of the integrity framework. It identifies legal, institutional and procedural frameworks that help define and implement values, principles and standards of conduct for the public service. They form consistent mechanisms for control, guidance and management.

The integrity framework is a systemic and comprehensive approach based on decades of research and data analysis. The framework helps policymakers and managers depart from a fragmented mosaic vision of integrity management to a dynamic approach supporting policy implementation in public organisations. It also provides the grounds for collecting data on organisations. The integrity framework is supported by a practical checklist which is a diagnostic tool for policymakers and managers.

Also, the integrity framework is supported by the assessment framework. This assessment methodology provides policymakers and managers with a road map for developing and implementing assessments of integrity and corruption prevention measures.

Integrity management involves the establishment of a system that:

- identifies the opportunities for engaging in different actions;
- develops and implements effective strategies to mitigate those opportunities;
- strengthens internal controls through the detection and prevention of corrupt acts.

Within the Public Sector of institutionally weak governments, each department often has some common, and a number of unique, opportunities that allow its staff to engage in corrupt practices. These lapses of integrity involve the failure to resolve a conflict of interest between a public servant's official and private interests. Other areas of vulnerability include the misappropriation of funds and resources and bribes paid to obtain services or influence decision-making. As the researchers' studies demonstrated, the nature of corruption that occurs within the public sector has a number of different causes which, while less common in developed countries, are not solely unique to transition and developing states.

To facilitate the implementation of policy assessment by public organisations, the framework for the assessment report provides an inventory of methods and solutions for crafting a well-designed assessment project. The Assessment Framework also includes practical checklists, as well as a variety of other tools for policy options.

As Peter Krekel mentioned, at the international level, various conventions, rules and declarations in the field of integrity (most of which are on the fight against fraud and corruption) which were established by the OECD, the Council of Europe etc., already exist and have formally been adopted by EU member states. Member states of these organisations accepted quite a number of detailed obligations for reforming their ethical framework at home.

In this light it is evident that the EIPA studies on ethics and integrity which were carried out under the Irish and Dutch presidency, conclude that when it comes to unethical behaviour in public services as a whole, there is (except with regard to police and judiciary functions and the protection of the Financial interests of the EU) still surprisingly little regulatory activity at the EU level, though it is recognised that the EU has never made any legally or non-legally binding decisions for public officials in the general field of ethics because the EU has no clear competence in these matters.

Nevertheless the EIPA study brings to our notice that in its Communication to the Council, the European Parliament and the European Economic and Social Com-

mittee, (COM(2003) 317 final), the Commission not only invites EU Member States to introduce various measures to facilitate the detection, investigation, prosecution and adjudication of corruption cases, such as common standards for collection of evidence or protection for whistleblowers, victims and witnesses of corruption, but also recommends that Member States might engage, for example, through the EU-PAN network, in a comprehensive dialogue within the EU on common administrative integrity standards in public administrations and policies across the EU.

The Document 'Main Features of an Ethics Framework' contains common elements and points out the enhancing factors for ethical behaviour and may help the public administration to generate awareness of ethics and integrity in the public service, may facilitate further discussions on ethics and integrity in the EU Member States and may serve as a framework document and/or general guideline for the implementation or development of ethics and integrity in the public sector. It may provide an important tool in fostering an appropriate culture within public administrations.

Conclusion

An ideal integrity management would focus on the prevention of damage to integrity in a manner that offers scope for individual responsibilities and requires civil servants to arrive at carefully considered decisions on specific integrity issues within society and administration. For this reason, the integrity policy also places great emphasis on cultural issues.

Chapter 7
Code of Conduct / Code of Ethics

A. Androniceanu

Introduction

Codes of ethics or conduct can be an important guide to making decisions on complicated ethical issues, and can provide the basis for an environment where citizens are aware of the basic standards of behaviour to be expected from public sector employees. Some codes of ethics are often social issues. Some set out general principles about an organisation's beliefs on matters such as quality, employees or the environment. Others set out the procedures to be used in specific ethical situations – such as conflicts of interest or the acceptance of gifts, and delineate the procedures to determine whether a violation of the code of ethics occurred and, if so, what remedies should be imposed. This chapter contains some important aspects related to these kinds of instruments with special influence upon the ethical behaviour of public officials.

Codes such as a base for increasing the quality of civil servants' behaviour

Codes of conduct specify actions in the workplace and "codes of ethics are general guides to decisions about those actions," explains Craig Nordlund, Associate General Counsel and Secretary at Hewlett Packard. He suggests that codes of conduct contain examples of appropriate behaviour have to be meaningful. A code of conduct is a set of rules outlining the responsibilities of or proper practices for an individual or organisation.

The purpose of a code of conduct is to provide standards of conduct for human resources, consistent with the ethics obligations.

The effectiveness of such codes of ethics depends on the extent to which management supports them with sanctions and rewards. Violations of a private organi-

sation's code of ethics usually can subject the violator to the organisation's remedies (in an employment context, this can mean termination of employment; in a membership context, this can mean expulsion). Of course, certain acts that constitute a violation of a code of ethics may also violate a law or regulation and can be punished by the appropriate governmental organ.

Public officials or civil servants represent the state in its interface with the private sector and civil society. The centrality of their position to the effective functioning of the state implies that public officials at all levels can take actions and make decisions which can have significant effects on the lives of ordinary citizens. In this role, public officials are expected to perform their functions lawfully, honestly and fairly. In particular, public officials are expected not to abuse the powers or resources available to them, and to avoid conflicts between their personal interest and official duties.

Expectations as to the way civil servants should fulfil their duties – with responsibility, probity, equity and legality – are shared across cultures and administrative traditions.

Most of the more mature civil services have established written, formal codes of behavioural standards to record these expectations. They can set out in broad terms those high-level values and principles that define the professional role of the civil service – such as impartiality, integrity, fairness and responsibility – or they can focus on the application of such principles in practice. They can apply to the entire public sector of a country or be tailored to reflect the ethics challenges of specific public agencies only, and may set out procedures and sanctions to be applied in cases of non-compliance. Codes that support public sector statutes and criminal laws can add to the national legal framework.

Independent of their status, scope and style, codes of conduct for public administrations can play an important role in an anti-corruption programme. Essentially preventive in nature, codes of conduct have the potential to avert corruption and administrative misconduct before they occur. Good codes will not only clearly identify standards of behaviour, including consequences to apply in case of any breach, but also lay out a framework for removing or making transparent potential conflicts of interest, thereby reducing the number and scope of opportunities for public officials to enrich themselves at the expense of their public office. At the same time, codes of conduct provide a powerful statement of intent, directed both within and outside the public service, that unethical behaviour will not be tolerated.

In recognition of the ethics obligations for public officials, codes of conduct are to apply to public officials in performing their official functions. A code of conduct must relate to a particular public sector entity, and applies to all public officials of the entity. However, a code of conduct may make different provisions, consistent with the ethics obligations, for different types of public officials.

A code of conduct for a public sector entity may contain anything the responsible authority for the entity considers necessary or useful for achieving the purpose of a code of conduct. In particular, a code may provide obligations which public officials must comply with.

A code of conduct also may contain:

- information explaining the purpose of the ethics obligations generally or a particular ethics obligation;
- the conduct obligations generally or a particular conduct obligation;
- information explaining the object intended to be achieved by the application of the ethics obligations generally or a particular ethics obligation;
- the conduct obligations generally or a particular conduct obligation;
- the guidelines about the application of an ethics or conduct obligation;
- the examples of the operation of an ethics or conduct obligation;
- the explanatory notes about an ethics or conduct obligation;
- references to Acts applying to public officials in performing their public functions.

In this context, some specialists mention a code of morals, which is another key concept related with ethics, but there is a clear distinction between these correlated concepts. Moral codes are often complex definitions of right and wrong that are based upon a well-defined value system. Although some people might think that a moral code is simple, rarely is there anything simple about one's values, ethics, etc. or, for that matter, the judgment of those of others. The difficulty lies in the fact that morals are often part of a religion and more often than not about culture codes. Sometimes, moral codes give way to legal codes which couple penalties or corrective actions with particular practices. Note that while many legal codes are merely built on a foundation of religious and/or cultural moral codes, at times they are one and the same.

One of the most famous consultants on ethics, Carter McNamara, considers the following guidelines when developing codes of conduct:

1. **Identify key behaviour needed to adhere to the ethical values proclaimed in your code of ethics**

   Including ethical values derived from a review of key laws and regulations, ethical behaviours needed in your service area, behaviours to address current issues in your workplace, and behaviours needed to reach strategic goals.

2. **Include wording that indicates all employees are expected to conform to the behaviour specified in the code of conduct.**

   Add wording that indicates where employees can go if they have any questions.

3. **Obtain a review by key members of the organisation.**

   Be sure your legal department reviews the drafted code of conduct.

4. **Announce and distribute the new code of conduct**

   (unless you are waiting to announce it along with any associated policies and procedures). Ensure each employee has a copy and post codes in each employee's bay or office.

5. **Do not include preferred behaviours for every possible ethical dilemma that might arise.**

6. **Examples of topics typically addressed by codes of conduct include:**

   preferred style of dress, avoiding illegal drugs, following instructions of superiors, being reliable and prompt, maintaining confidentiality, not accepting personal gifts from stakeholders as a result of a company role, avoiding racial or sexual discrimination, avoiding conflict of interest, complying with laws and regulations, not using the organisation's property for personal use, not discriminating against race or age or sexual orientation, and reporting illegal or questionable activity.

In the Romanian Government, some statistical studies from 2006 show that the most important values which influenced ethical behaviour were rules and procedures and political self-interest with 30 % each, individual friendship with 15 % and personal morality with 10 %. A small interest of 5 % each was for team spirit, social responsibility or for law and professional codes of conduct. From this study, we can see the state of the leadership in this country, with no participation of middle management in terms of decision-making in public administration, without sharing and team spirit and all of these were a possible result of corruption. In this picture, even the Code of Ethics was approved more than 4 years ago; political leaders and public managers have been more motivated to follow the legal framework and the job description than to make an effort to integrate the ethical values in their daily activities. People asked appreciated that if they apply the law it automatically means that they will take ethical decisions. One of the greatest challenges confronting any leader in this twenty-first century is "bridging the gap between strategy and getting people to execute" (Androniceanu, Abaluta, 2007).

In a few countries there are so-called Codes of Ethics, but the impact of them on civil servants and politicians are very different. Explaining the main cause of this situation, scientists concluded that, in some countries, such as Romania and Bulgaria, for example, the Code of Ethics was known more by the top management in public organisations, which in fact was a communication problem. In addition to that, there is a huge mobility between the public and private sector, mostly because

of the youth. In 2004, 28 % of public servants were younger than 30 and 54 % were younger than 40. For some people, the public sector is seen as a "jumping-board" for entering the private sector. In 2004, 14 % of public servants left their positions and 17 % were new recruits (Riigikantselei, 2005). Searching for another explanation as to why the Code of Ethics is not implemented and acquired in people's behaviour the impossibility of the country and local organisations to apply the general and specific principles and values mentioned before can be seen, in a very decentralised state. Creating and preserving certain cultures will take time and Estonia, Slovakia and other Eastern countries will have to take a few more steps to implement the entire ethics infrastructure. As a daily challenge for public, private and NGO sectors, ethics is a starting point to democracy and is "a standard of conduct".

EU Member States have formulated a number of recommendations for adoption and implementation of codes of conduct and ethics for public officials, obligations for public officials to report any suspicions, analyses of risks and improvements in administrative, financial and procurement procedures to reduce risks, transparency in decision-making, enhanced management of personnel (including career planning, training, mobility and salaries), audit and control systems, setting up of systems of disciplinary sanctions, provisions for the financial disclosure of assets of public officials, and the creation of self-monitoring mechanisms within institutions at risk. Codes of conduct or guidelines and corruption prevention plans should be elaborated by those who are subsequently responsible for their implementation. This process, if carried out in a participatory manner, will also have a training effect.

Conclusion

Ethical Codes or codes of conduct are often not part of any more general theory of ethics, but accepted as pragmatic necessities. They are distinct from moral codes that may apply to the culture, education, and religion of a whole society. Public managers must consider them in their decision-making process and encourage human resources to consider these codes like a special guide in their daily activities inside and outside public organisations.

Chapter 8
Conflict of Interest

A. Androniceanu, P. J. Suwaj

Introduction

From both a general point of view and a legal perspective, one could define a conflict of interest as a situation where an individual's pursuit of private interest is – due to his or her position as defined by legal order – in (actual or potential) conflict with another interest (public) for which he or she has entitlement (and 'power'), but also an 'obligation' to discharge (Guzetta, 2008). The conflict of interest presented in this chapter and analysed in this book takes place entirely in the mind and refers exclusively to the official's impaired capacity for judgement (Stark, 2000).

Apart from the definition presented above, this chapter principally uses as a conceptual reference the OECD's generic definition of conflict of interest. That definition reads as follows: "A conflict of interest involves a conflict between the public duty and the private interest of a public official, in which the public official's private-capacity interest could improperly influence the performance of his/her official duties and responsibilities"[1].

Understanding the conflict of interest

In the content of Sigma's paper, already published in 2006, M. Villoria-Mendieta considers — within the broad concept of conflict of interest — not only the situation where *in fact* there is an unacceptable conflict between a public official's interests as a private citizen and his/her duty as a public official, but also those situations where there is an *apparent* conflict of interest or a *potential* conflict of interest. This distinction is also used by other scientists (Davis, 2001; Suwaj, 2009) and present in different OECD documents (e.g. Managing Conflict of Interest).

1 Open Society Institute/EU Accession Monitoring Program: "Monitoring the EU Accession Process: Corruption and Anti-corruption, Policy". Budapest, 2002.

An apparent conflict of interest refers to a situation where there is a personal interest that might reasonably be considered by others to influence the public official's duties, even though, in fact, there is no such undue influence or there may not be such influence. The potential for doubt as to the official's integrity and/or the integrity of the official's organisation makes it obligatory to consider an apparent conflict of interest as a situation that should be avoided.

The potential conflict of interest may exist where an official has private-capacity interests that could cause a conflict of interest to arise *at some time in the future*. An example is the case of a public official whose spouse would be appointed in the coming weeks as executive director or CEO of a company concerned by a recent decision made by the official, and the public official is aware of the spouse's appointment. The basic definition used here therefore assumes that a reasonable person, knowing all of the relevant facts, would conclude that the official's private-capacity interest could improperly influence his/her conduct or decision-making.

It should also be understood that **conflict of interest is not the same as corruption**.

Sometimes there is conflict of interest where there is no corruption and vice versa. For example, a public official involved in making a decision in which he/she has a private-capacity interest may act fairly and according to the law, and consequently there is no corruption involved. Another public official could take a bribe (corruption) for making a decision he/she would have made anyway, without any conflict of interest being involved in his/her action.

Conflict of interest is not also mere bias. Bias is a determinable deflection of judgment and whether conscious or unconscious, is relatively easy to correct. Conflict of interest, as Davis argues, has a tendency towards bias. Correcting for a tendency is harder than correcting for a bias (Davis, 2001).

Contrary to corruption, conflict of interest is not a negative phenomenon itself. Having a conflict of interest is not like being a thief. The assumption that having a conflict of interest is always wrong is a mistake from the very beginning. Conflict of interest generally exists and can objectively exist. What has to be pointed out is that if managed properly, it would not necessarily provoke any negative consequences.

However, it is also true that most of the time corruption appears where a prior private interest improperly influenced the performance of the public duties and different mechanisms to prevent and manage a conflict of interest situation were not introduced or did not work properly.

This is the reason why it would be wise to consider conflict of interest prevention as part of a broader policy to prevent and combat corruption. Situated in this context, conflict of interest policies are an important instrument for building public sector integrity and for defending and promoting democracy.

Conflict of interest policies are also part of the detection and investigation of corruption, because certain instruments of these policies — such as the declaration of income or the declaration of family assets — can help a great deal in the detection of corrupt practices. They are, finally, part of the punishment instruments because in some countries, conflict of interest is considered a crime and other countries have foreseen various sanctions for breaching the laws and regulations on conflict of interest. Specific legal solutions preventing, detecting and prosecuting conflict of interest and corruption will be discussed in Section III.

If we look at the European states we can identify different ways of considering conflict of interests. All of the "new" EU members have formally adopted a broad strategy to prevent and combat corruption, and their programmes on conflict of interest are part of these broad strategies. However, the "old" EU members do not have these broad strategies — only Germany has a federal agreement against corruption. As a consequence, conflict of interest policies do not form part of a broader policy in these countries.

The reason why New Member States implemented more strict anti-corruption and conflict of interest policies and legal regulations may come from the expectations and requirements that New Member States faced making efforts to join the EU (Suwaj, 2005). According to the OSI Report (2002), the absence of a comprehensive framework and knowledge concerning the causes and nature of corruption in CEE countries meant that the Commission demanded anti-corruption policies from candidate States that it was unable to enforce on "old" member States[2]. These factors have combined to make the integration of anti-corruption goals into the accession framework difficult. Thus, a number of countries with persistent and serious problems of corruption were admitted to a European Union which lacked an adequate framework for dealing with these problems even in "old" member States.

The UK approach is different from the other approaches because conflict of interest is treated as an aspect of ethical standards in the public sector. Although there is no single regulation governing conflict of interest across the public service, there are "Seven Principles" of public life that have been endorsed by successive governments and have now become the benchmark by which standards in public life are assessed. Transparency and personal accountability are the key issues in the British system. The main standards in UK public life are:

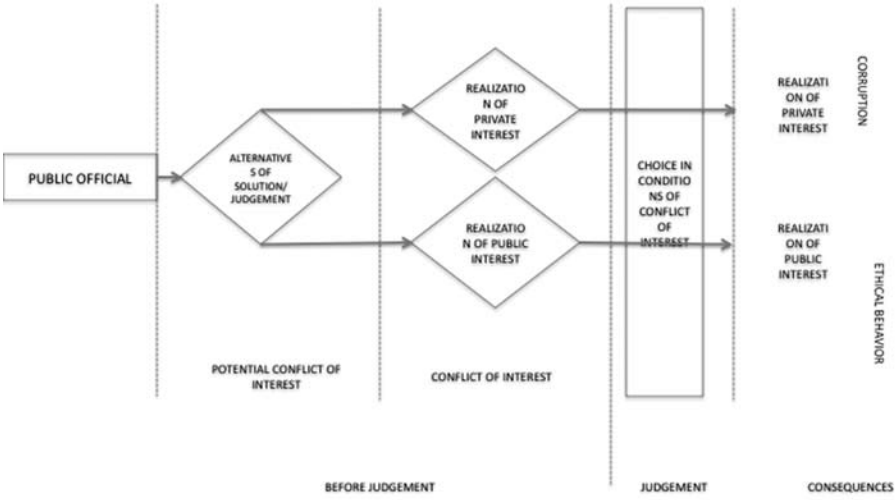
- *Selflessness* – Holders of public office should take decisions solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family, or their friends.

2 A clear example of the difference in the Commission's leverage vis-à-vis member States and candidates States is provided by the Council of Europe Criminal Law Convention on Corruption. The Commission has consistently pushed candidate States to sign and ratify the Convention. As a result, as of June 2002 eight of the ten candidate States had ratified the Convention, compared to only three out of fifteen member States, giving rise to a justified perception that candidate countries are being held to different standards from those that are currently within the EU.

- *Integrity* – Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might influence them in the performance of their official duties.
- *Objectivity* – In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.
- *Accountability* – Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.
- *Openness* – Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only where the wider public interest clearly demands.
- *Honesty* – Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.
- *Leadership* – Holders of public office should promote and support these principles by leadership and example.

As was already pointed out, conflict of interest itself is not a negative phenomenon. What has to be mentioned is that acting under conditions of conflict of interest should be recognised as malpractice and could lead to corruption.

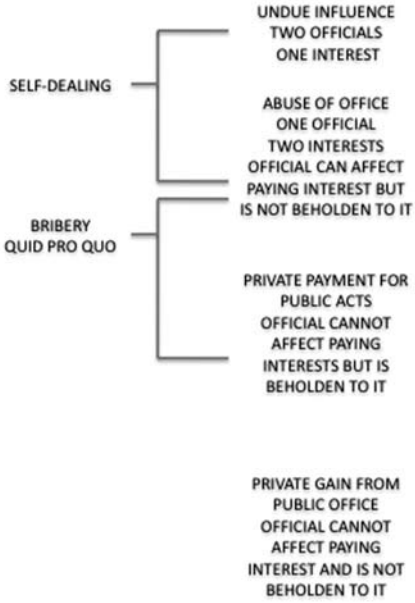
Figure 3
Conflict of Interest Scheme



Based on: M. Tymiński, P. Koryś, 2008, p. 53

Interesting ideas concerning conflict of interest were presented by Andrew Stark, who proposed his topography of conflict (Stark, 2000). As he observed, conflict of interest (a relatively subtle form of transgression) is replacing bribery, kickbacks, office-buying, and other gross forms of corruption. But in fact – and this counts as one of the more striking developments in the last decades of public discourse over ethics in public administration – the concerns have moved beyond not only bribery, but conflict of interest itself, where conflict of interest is understood as the prototypical "self-dealing" transgression wherein an officeholder straightforwardly has the capacity, in his or her official role, to affect a personal interest. Instead, as Stark points out, we are just as likely to be concerned with one of four distinct but related situations beyond both bribery and self-dealing, or else with various hybrids between them (Stark, 2000: 36).

Figure 4
The Topography of Conflict



Based on A. Stark, 2000, p. 40

There is no simple answer to the question of what should be done with conflict of interest. Many legal regulations, as well as professional codes of ethics or codes of conduct, provide some guidance on how to deal with conflicts of interest. Many also say no more than "avoid all conflict of interests". Such a flat prohibition leads to misunderstanding of the concept of conflict of interest. Assuming that all conflict of

interest can, as a practical matter, be avoided is a mistake (Davis, 2001). The second mistake about conflict of interest, which has already been mentioned, is that having a conflict of interest is always wrong. Apart from trying to avoid those conflicts that should be avoided, there are three categories of possible reaction: one is escape (e.g. through redefining the underlying relationship and establishing procedures so that all litigation involving officials interest – family, assets – which pass through the office, bypass him or through an official's divestment of the interest creating the conflict); the second is to disclose the conflict to those relying on an official's judgement (which prevents deception and gives those relying on an official's judgement the opportunity to give informed consent to the conflict of interest, to replace the official instead of continuing to rely on him or her, or to adjust reliance in some less radical way. But, as Davis suggests, unlike escape, disclosure as such does not end the conflict of interest; it merely avoids betrayal of trust, opening the way for other reactions (Davis, 2001: 13). Managing is a third category of reaction to conflict of interest. Though managing is often the resolution reached after disclosure, it need not be. When disclosure is improper or impossible, managing may still be a legitimate option.

What should be done about a conflict of interest depends on all the circumstances, among them: law, other regulations of a "soft" nature, common knowledge, relations in the office, etc. Some conflicts should be avoided; others escaped or disclosed; the remainder simply managed. Managing is a partial realignment of interests, not sufficient to eliminate the conflict of interest but enough to make it seem likely benefits will more than repay the costs (Davis, 2001: 14).

Conclusion

As a conclusion, conflict of interest represents a very special and complex concept of ethics, if we look at it from the practical perspective. Reaction to conflicts of interest may take different shapes, depending on a particular situation. Managing the conflict of interest is one form of response, but generally, conflicts of interest are easier to manage when they are potential than when they are actual.

Although conflict of interest and corruption are notionally different, it seems appropriate that the policies dealing with conflict of interest are part of a broader strategy or policy to prevent and combat corruption. Related with the new EU countries, this practice may have been influenced by EU institutions, especially the Commission, during the accession negotiation process, and this raises the question as to whether the demand for the establishment of a comprehensive anti-corruption strategy is more a technocratic ideal than a political reality in consolidated democracies.

Whatever the case may be, the policies and strategies to prevent and combat corruption are very important for improving the quality of a democracy, and even

for the defence of the democracy against populism, apathy and disillusionment. Consequently, conflict of interest policies are also important for improving and consolidating the European democracies.

Chapter 9
Corruption

A. Androniceanu

Introduction

Following different perceptions related to the concept of "corruption", there are different opinions on this notion. The majority of authors consider that one single definition, generically valid, cannot be given to this phenomenon. Corruption is a widespread phenomenon and is contrary to the practice of democracy, erodes the rule of law, hampers economic growth, discourages domestic and foreign investment, and damages the trust of citizens in their governments.

Corruption is a very special and complex effect of not considering ethics management as an ongoing process

The term "corruption" is used as a shorthand reference for a large range of illicit or illegal activities. Although there is no universal or comprehensive definition as to what constitutes corrupt behaviour, the most prominent definitions share a common emphasis on the abuse of public power or position for personal advantage. *The Oxford Unabridged Dictionary* defines corruption as "perversion or destruction of integrity in the discharge of public duties by bribery or favour." The *Merriam Webster's Collegiate Dictionary* defines it as "inducement to wrong by improper or unlawful means (as bribery)." The succinct definition utilised by the World Bank is "the abuse of public office for private gain." This definition is similar to that employed by Transparency International (TI), the leading NGO in the global anti-corruption effort: "Corruption involves behaviour on the part of officials in the public sector, whether politicians or civil servants by which they improperly and unlawfully enrich themselves, or those close to them, by the misuse of the public power entrusted to them".

The Oxford dictionary defines corruption as a "dishonest or fraudulent conduct by those in power, typically involving bribery". It also defines it as "the action of

making someone or something morally depraved or the state of being so". Political scientist, Alejandro Estevez, explains that although there are many definitions, in his opinion corruption is an action through which "an individual takes advantage of a collective order to obtain private benefits". "Corruption isn't a naive problem, but it's organised and stable. Certain conditions make it possible, such as the lack of transparency in many countries. There's an inversely proportional relationship between the levels of transparency and corruption."

Corruption is defined as an exercise of official powers against the public interest or the abuse of public office for private gains. Public sector corruption is a symptom of failed governance. Here, we define "governance" as the norms, traditions and institutions by which power and authority in a country is exercised – including the institutions of participation and accountability in governance and mechanisms of citizens' voice and exit and norms and networks of civic engagement; the constitutional-legal framework and the nature of accountability relationships among citizens and governments; the process by which governments are selected, monitored, held accountable and renewed or replaced; and the legitimacy, credibility and efficacy of the institutions that govern political, economic, cultural and social interactions among citizens themselves and their governments.

More narrow definitions of corruption are often necessary to address particular types of illicit behaviour. In the area of procurement fraud, for example, the World Bank defines corrupt practice as "the offering, giving, receiving, or soliciting of any thing of value to influence the action of a public official in the procurement process or in contract execution." Fraudulent practice is defined as "a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of the Borrower, and includes collusive practices among bidders … designed to establish bid prices at artificial, non-competitive levels and to deprive the Borrower of the benefits of free and open competition."

As Abed, George T. and Sanjeev Gupta underlined, it is often useful to differentiate between grand corruption, which typically involves senior officials, major decisions or contracts, and the exchange of large sums of money; and petty corruption, which involves low-level officials, the provision of routine services and goods, and small sums of money. It is also useful to differentiate between systemic corruption, which permeates an entire government or ministry, and individual corruption, which is more isolated and sporadic.

The causes and effects of corruption, and how to combat corruption, are issues that are increasingly on the national and international agendas of politicians and other policymakers. For example, the World Bank has relatively recently come around to the view that economic development is closely linked to corruption reduction (World Bank 1997). By contrast, the *concept* of corruption has not received much attention. Existing conceptual work on corruption consists of little more than the presentation of brief definitions of corruption as a preliminary to extended ac-

counts of the causes and effects of corruption and the ways to combat it. Moreover, most of these definitions of corruption are unsatisfactory in fairly obvious ways.

In the light of the diverse range of corrupt actions and the generic nature of the concept of corruption, it is unlikely that any precise and detailed definition of institutional corruption is possible. Nor is it likely that the field of corrupt actions can be neatly circumscribed by recourse to a set of self-evident criteria. Rather we should content ourselves with the somewhat vague and highly generic definition of institutional corruption provided above and then proceed in a relatively informal and piecemeal manner to try to identify a range of moral and/or legal offences that are known to contribute, under certain conditions, to the undermining of morally legitimate institutions. Such offences obviously include bribery, nepotism, and some — but not all — cases of fraud. But under certain circumstances they might also include breaches of confidentiality that compromise investigations, the making of false statements that undermines court proceedings or selection committee processes, selective enforcement of laws or rules by those in authority, and so on and so forth.

Economic corruption is an important form of corruption; however, it is not the only form of corruption. There are non-economic forms of corruption, including many types of police corruption, judicial corruption, political corruption, academic corruption, and so on. Indeed, there are at least as many forms of corruption as there are human institutions that might become corrupted. Further, economic gain is not the only motivation for corruption. There are a variety of different kinds of attractions that motivate corruption. These include status, power, addiction to drugs or gambling, and sexual gratification, as well as economic gain.

There are also different forms of corruption, such as personal corruption and institutional corruption.

However, attempts to identify corruption with specific legal/moral offences are unlikely to succeed. Perhaps the most plausible candidate is bribery; bribery is regarded by some as the quintessential form of corruption (Noonan 1984 and Pritchard 1998). But what of nepotism? Surely it is also a paradigmatic form of corruption, and one that is conceptually distinct from bribery. The person who accepts a bribe is understood as being required to provide a benefit to the briber, otherwise it is not a bribe; but the person who is the beneficiary of an act of nepotism is not necessarily understood as being required to return the favour.

In fact, corruption is exemplified by a very wide and diverse array of phenomena of which bribery is only one kind, and nepotism another. Paradigm cases of corruption include the following. The commissioner of taxation channels public monies into his personal bank account, thereby corrupting the public financial system. A political party secures a majority vote by arranging for ballot boxes to be stuffed with false voting papers, thereby corrupting the electoral process. A police officer fabricates evidence in order to secure convictions, thereby corrupting the judicial

process. A number of doctors close ranks and refuse to testify against a colleague whom they know has been negligent in relation to an unsuccessful surgical operation leading to loss of life; institutional accountability procedures are thereby undermined. A sports trainer provides the athletes he trains with banned substances in order to enhance their performance, thereby subverting the institutional rules laid down to ensure fair competition. It is self-evident that none of these corrupt actions are instances of bribery.

As it happens, there is at least one further salient strategy for demarcating the boundaries of corrupt acts. Implicit in much of the literature on corruption is the view that corruption is essentially a legal offence and essentially, a legal offence in the economic sphere. Accordingly, one might seek to identify corruption with economic crimes, such as bribery, fraud, and insider trading. To some extent, this kind of view reflects the dominance of economically focused material in the corpus of academic literature on corruption. It also reflects the preponderance of proposed economic solutions to the problem of corruption. After all, if corruption is essentially an economic phenomenon, is it not plausible that the remedies for corruption will be economic ones?

But many acts of corruption are not unlawful. That paradigm of corruption, bribery, is a case in point. Prior to 1977 it was not unlawful for US companies to offer bribes to secure foreign contracts; indeed, elsewhere such bribery was not unlawful until much later. So corruption is not necessarily unlawful. This is because corruption is not, at the bottom, simply a matter of law – rather it is fundamentally a matter of morality.

The wide diversity of corrupt actions has at least two further implications. First, it implies that acts of institutional corruption as a class display a correspondingly large set of moral deficiencies. Certainly, most corrupt actions will be morally wrong and morally wrong at least in part because they undermine morally legitimate institutions. However, since there are many and diverse offences at the core of corrupt actions, there will also be many and diverse moral deficiencies associated with different forms of corruption. Some acts of corruption will be morally deficient by virtue of involving deception, others by virtue of infringing a moral right to property, still others by virtue of infringing a principle of impartiality, and so on.

Second, the wide diversity of corrupt actions implies that there may well need to be a correspondingly wide and diverse range of anti-corruption measures to combat corruption in its different forms, and indeed in its possibly very different contexts.

In the Romanian language, for example, the term is known with a sense of 'obliquity from the morality, as an act of infringement of the social limits'. [V. Breban, 1992]. The term of corruption drifts from the Latin "corruptio-onis", which means obliquity from the morality, honesty, but also immorality and debauchery. Accord-

ing to other authors, the root of the word "corruption" descends from the Latin verb "rumpere", nominating, therefore, a fracture, a fissure, a crime.

The break can consist of the violation of a moral rule or a social code of conduct, or of an administrative settlement, but, each time, the one inclined to such violations follows the procurement for him, his family, his friends or social groups, for an advantage to its direct reward (S. Cernea, 1996).

Internationally, the problem of the notion of corruption is interdisciplinary treated. J. A. Gardiner appreciated that the phenomenon of corruption cannot be given one single definition, because corruption is a national and international problem with multiple forms of manifestation, having various departures. (I. Tilea, 2006).

In their researches, the theoreticians on this area formulated various definitions, sometimes different enough from one another, from the ones with an evasive, ambiguously and crossover content, to the ones with a large sphere of capaciousness which outclasses the area of what can represent the phenomenon researched.

Sociologically speaking, corruption is considerate as a stand of normative and moral unbalance of those societies found in crisis, because it disturbs gravely the development of social relations at the institutional and interpersonal level, causing the diminution of the prestige and authority of public and private institutions as well as of instances specialised in control and social prevention, due to the implication in different businesses of certain persons with appointments depending on a decision from politics, legislative and executive authority, administration and justice.

As a social phenomenon, corruption can be considered as an expression of an exercise of putridity, of spiritual degradation, which, through its amplitude, intensity and forms of manifestation represents a true barometer of the state of legality and normality in a society.

Corruption is conventionally considered to be the particular behaviour of searching welfare by someone who represents the state and the public authority. It represents the misuse of public funds by the public authorities, for their personal gain. The encyclopaedias and the work definition used by the World Bank, Transparency International and others, shows that corruption represents *the abuse of public power for particular benefit.* In general, juridically speaking, the sphere of the term of corruption is more limited, through facts of corruption being designated as merely certain illegal actions under criminal law, heartily related by the bias of one or more person by an official, conversely for obtaining certain advantages.

In some systems of criminal law, the analysed notion is larger in the sphere of corruption included in both facts mentioned above, and other unlawful facts concerning the abusive and unauthorised use of power (political, administrative, judiciary), but also facts concerning the advantages of procurement. In this case are included the Spanish, Portuguese, German and other penal codes. The corruption

expansion tallied with the diminution of production, as well as with the accentuation of poverty and social inequality in the zones found at this stage of evolution in society. The impoverished are the main victims of the scourge.

In those countries, especially in transition countries where the phenomenon is well installed, corruption is affecting the driving force created by the system of reform. More and more new firms are linked to the underground economy. From an analysis of the studies concerning the level of the corruption in the countries it was found there were major differences between countries, both concerning administrative corruption and also institutional.

In another study carried out in 2004 by the Institute GFK in countries from Central and Eastern Europe, it was found that in Romania and Slovakia there is a high percentage of people who believe that a bribe is a natural part of life. "The level of corruption in the Central and Eastern Europe countries is highlighted also by the World Bank Report, Anti-corruption in Transition – contribution to the policy debate, which assures a comparison in this respect between the main geographic regions" (Tilea, 2006).

The challenge which faces countries in transition is to increase commitment on the path to reduce corruption, although this will not be an easy task. The phenomenon "State Capture" creates problems in these countries and the measures against corruption proved to be inefficient and hard to implement. The premises of these countries problems have their origins in the past, in their historic inheritance, but also in the economic structure. During the transition period, the corruption problem became a very serious one and the rate of corruption increased. In some countries in transition the measures taken favoured the reform and in others none at all.

Following the research results on corruption in different states of Eastern Europe, we can see some important conclusions. For example, Hungary was considered to be one of the least corrupted former communist states by different international indicators. The index concerning the perception of corruption (PCI) of Transparency International placed Hungary 31 out of 179 countries in 2007 with a score of 5.3. This places Hungary as the regional leader in fighting against corruption amongst all the former communist states from Central and Eastern Europe, being surpassed only by Slovenia (6.6) and Estonia (6.5). Otherwise, the level of corruption is at a relatively stable level in Hungary as can be seen from the chart below. The various government-initiated anti-corruption programmes in Hungary are partially the result of international pressure. The most influential source of pressure is the European Union (EU). Whilst seeking EU membership, Hungarian governments participated in several anti-corruption actions initiated by the EU (Transparency International, 2007).

In Bulgaria, there is great pressure on the corruption phenomenon. During 2006 and 2008, the government approved a special strategy containing several provisions, but corruption continues to be a very serious problem.

A frequently quoted argument of what causes corruption is formulated by Robert Klitgaard who states that "Corruption is equal to monopoly plus discretion minus accountability" (R. Klitgaard, 1988). In other words, corruption requires dictates that someone has the monopoly on decision-making, plus the necessary discretion to do what he finds best, i.e. to act in his own interests, and at the same time, he is accountable to no-one, i.e. acts in his own interests instead of the public interest and is not subject to any penalties. Two Danish researchers explain the corruption concept. Karin Hilmer Pedersen & Lars Johannsen consider that the definition of corruption includes three aspects. First, the definition of the actors involved in corruption; second a characterisation of the relationship between the actors, and third a conceptualisation of the relationship between a corrupt action and the political and administrative system.

A commonly used definition by the World Bank and Transparency International equates corruption with the "misuse of public power for private gain". In this definition, corruption has an illicit relationship between the public and the private spheres.

Corruption is thereby distinct by its direct power relation in which the actors knowingly engage and it is different from indirect power relations, authority and manipulation, in which B changes his behaviour because he recognises that A's request is reasonable in terms of his own values, i.e. being legitimate (K. H. Pedersen, L. Johannsen, 2005).

There is also a special definition of corruption identified in Germany. As Hans Joachim Rieger mentioned: The following definition of corruption was identified in Germany:

- Is the misuse of any public office, political mandate or function in trade and industry;
- gives advantage to another person;
- is carried out with the intent to gain some benefit for an official or for another person;
- is detrimental or causes damage to the public (in the case of a public or political figure) or for a company (in the case of a business function).

Special research on corruption and anti-corruption in some Eastern countries has already been carried out by Karin Hilmer Pedersen & Lars Johannsen. Based on interviews with more than 900 present and former ministers of government and politically appointed administrators in central government in 15 ex-communist countries (new EU-member states, Bulgaria, Moldova and countries in Caucasus and

Central Asia) they find that although 'day-to-day' corruption is found, as expected, the data shows disturbing levels of both administrative malpractice and political corruption by ministers and parliaments. Comparing the 15 cases they argue that the roots of these forms of corruption do not relate to the countries' democratic development or to the character of a communist past but rather to the country's initial choices of economic reform, giving leeway for higher level and political corruption. However, problems of low morals do, according to the elite, overrule institutional and economic reasons for being engaged in corrupt deals.

There are several types of corruption, but the researchers split corruption into two categories, as presented in Table 1.

Table 1
A typology of corruption based on actor categories

Type of corruption	Forms of corruption	The purchaser	The provider
Petty corruption	Day-to-day corruption	Individual citizens	Individual providers of public services – health personnel, police
	Administrative malpractice	Individual economic actors – firms etc.	Public control and licensing agencies
Grand corruption	Political state capture	Collective economic actors – interest organisations Individual economic actors	Politicians – individuals and political parties

The consequences of grand corruption are fundamental to democratic consolidation in society because grand corruption tends to de-legitimise the foundation of the democratic political system, political parties, parliaments and government, thus directly conflicting with democratic norms of inclusion (R. Warren, 2004).

Table 2
Identification of the 'provider' of corruption

Grand corruption	Parliament
Grand corruption/ Administrative malpractice	Ministers
Administrative malpractice	Top level officials
	Intermediate level officials
'Day-to-day' corruption	Lower level officials

The suggested typology gives us a tool of distinction between day-to-day corruption that can be related to ways of behaviour, which, during the communist era were necessary and appropriate to get things done and administrative malpractice, which, together with grand corruption, is related to the specific context of transforming and redefining private-public relations in society. In Table 2 we present the providers of corruption.

According to this, corruption amongst lower level officials will most certainly fall into the category of 'day-to-day' corruption, whilst corruption among top level officials is a sign of administrative malpractice. Moreover, corruption found at the level of Parliaments falls into the category of grand corruption. There are two categories of 'purchasers' that do not fit perfectly into the typology. First, corruption found at the level of Ministers may either be a sign of administrative malpractice or of grand corruption. The political functions of Ministers suggest that if they engage in a relation that is characterised as corruption, it is closely related to the political system and thus a sign of grand corruption, but on the other hand, Ministers are placed at the top level of the hierarchal administrative system and as such, being in a position where they have the opportunity to 'provide' private actors with valuable assets in form of lenient and individual regulative requirements. For the time being we leave the level of 'Ministers' in the intermediate position returning to the discussion on the background of our data. Second, corruption at the intermediate level of administration may either be a sign of administrative malpractice or 'day-to-day' corruption. The functions of some officials at this level can have the character of routine practice, but mostly they have more responsibility which places them in a position where administrative malpractice is possible. In the following, we investigate different aspects of the elite's view on corruption, i.e. from the perspective of the possible 'provider' – those who are in a position to gain from a corrupt deal.

The general tendency to *overestimate* actual levels of corruption makes four countries exceptional as they *perceive* the level of corruption much lower than the remainder of the countries (compared to the general mean score of 49.6 per cent saying that misuse is common). The four countries are Azerbaijan (5 per cent), Poland (17.1 per cent), Estonia (28 per cent) and Armenia (33 per cent). We suggest two different explanations as to why the elite in these countries may *underestimate* actual levels of corruption.

The first explanation the researchers put forward relates to the situation in Azerbaijan. In this case there is a perfect fit between the very small minority of the national elite who acknowledge that misuse is common and those who have experienced attempts of bribery. However, if our assumption put forward earlier that political culture may affect the inclination of elites to underestimate the level of corruption is correct this may be the case in point. Azerbaijan has, according to *Freedom House index,* a very low score on the level of democracy, indicating that the national elite simply does not play by democratic rules, and in an atmosphere

of distrust and competitiveness they are inclined not to give honest answers. A relatively low score in Armenia of 33 per cent, finding misuse common, could also be referred to this category. However, in the Armenian case the researchers find a similar relationship between *perceived* and *self-experience,* as in the other cases, so the political culture argument related to an immature democratic consolidation is not that strong.

The second explanation relates to the situation in Poland and Estonia. In these cases the Danish researchers found first that the *perceived* level of corruption is much lower than the average but at the same time, *self-experience* is higher than the perceived level (17.1 and 28.0 versus 22.3 and 34.0 per cent respectively). This finding is puzzling, although indicates that the elite at a general level *perceive* that misuse is not common although they themselves have experienced such attempts. With a closer look the respondents in both countries deny that attempts of bribery had any effect on the decision-making or administrative practice. In sequence, this could be the reason as to why the *perceived* level of corruption, i.e. the cases that officials actually use their position for private gain *is* lower than in the other countries.

A special sector of the corruption phenomenon is the political system. The researchers identified different levels of corruption in different countries and also discovered that there is a direct relation between politicians and the intensity of corruption. If we look at politicians as one of the corruption "providers", we can understand better their influence in the corruption reduction.

Evidence of 'providers' of corruption at the political level is particularly of concern in terms of democratisation and democratic consolidation because it indicates that the 'rule of the democratic game' is not yet settled and accepted by the key actors, i.e. the popular elected elites. While it is a problem when one out of four finds that corruption is most common at the level of parliamentary politics, it is however more telling to look into divergences from the average level because corruption at this level may suggest that political decisions are either taken in an atmosphere of open dialogue and debate or not. Leaving political morals and culture explanations aside, another explanation for the low level of corruption amongst parliamentarians could be the chosen neo-liberal reform strategy. If the state wipes away subsidies, import and export quotas, customs etc. there is simply less incentive for an agent to buy influence and obtain privileges through parliament. In these cases, it may be more strategic to try to influence Ministers or the top level of public administration thereby circumventing the already made political decisions in one's favour. Looking at the combination of political and administrative 'providers' of corruption in different countries may show how these causal explanations interact in concrete cases.

A combination of high level political and administrative malpractice is found in six countries: Latvia, Lithuania, Georgia, Moldova, Bulgaria and Kyrgyzstan. The

inclination to report political corruption bodes well with our explanation of an unfinished democratic transformation. In the case of Lithuania, the high penetration of illicit influence in parliament (Saimas) is supported by survey evidence from company managers and residents. 44 and 39 per cent, respectively, of the surveyed managers and residents in 2001 thought the Saimas was 'very corrupt' (Transparency International Lithuanian Chapter, 2004). Although the level of political conflict in Lithuania may not be comparatively as tense as in the other three countries, Lithuanian politics have been characterised by several changes in office and electoral turnovers. Thus between 1990 and 2002 no less 10 different governments served in Lithuania (L. Johannsen, P. Stalfors, 2005) and a history of antagonised political forces, each with their own constituency and roots in society, business and agriculture have dominated the political scene since the constitutional struggle in 1991–92 (O. Nogaard, 1992). Moreover, Lithuania is the only one of the Baltic countries where the former communist party, in reformed fashion, survived the advent of independence and democracy to remain a sizable and, at times, governing party.

Georgia, Moldova and Bulgaria are also examples of a late transformation of the political system and a lasting conflict between the governing elites (J. Lars, K. Pedersen, 2004) causing a political culture inclined to expect misdeeds by the opposing parties. In all cases, the frequency of corruption in parliaments may be an overestimation due to an unstable political situation in which our respondents, so to speak, come back at their political rivals through accusations of corruption. On the other hand, the lasting political conflict over power and the final settlement of the new political and economic order also makes public administration more vulnerable for individual discretionary power and thus, the possibility for providing individual services to the private sector. Accordingly, our respondents in these countries also report an above-average tendency for corrupt behaviour both at Minister and top levels of public administration.

In contrast to the first combination, low levels of corruption among parliamentarians are combined with high levels of corruption among ministers and top level administrators in Estonia, Hungary, Slovenia, the Czech Republic and Kazakhstan. Whilst the first four countries show signs of democratic consolidation, implying that the elite accept the rules of the game, making corruption at this level unacceptable (Johannsen, Pedersen, 2005), this is not the case in Kazakhstan. The report of high administrative malpractice in otherwise consolidated democracies indicate that when general legislation has to be transformed into detailed regulation, incentives and opportunities exist at the administrative level for Ministers, as well as top level officials for using their position for personal gain, causing a persistent problem in these countries. Moreover, Table 6 reveals that in two of the cases, Hungary and Slovenia, high levels of administrative malpractice are combined with high levels of misuse among intermediate officials, which is not the case in Estonia and the Czech Republic. This combination could indicate that intermediate officials in the first two cases are trusted with more discretionary power, thus giving them incentive and

opportunity to be providers in corrupt deals, whilst this is not the case in the latter. In other words, triangulating causes of corruption a concrete level of discretionary powers deciding on the actual transformation of legislative decisions is essential.

Although corruption at the parliamentary level in the above was explained by an immature democratic environment, evidence of *no* (or low) corruption can be evenly problematic when combined with undemocratic systems. This is the case in four of our countries where we based our democracy variable on the *freedom house* index. In the case of Azerbaijan, political corruption, according to the elite, is non-existent and in Armenia at a lower level than average. This fits well with the elite's denial of corruption at the general level of *perception* as well as *self-experience*. It is also supported by the fact that when the elite do find corruption, it is among lower level and intermediate officials. This supports our previous argument that a non-democratic political culture may encourage the elite to underestimate evidence of illicit behaviour, in particular in the political sphere, but also in administration. Furthermore, it could be argued that the relatively high perception of 'day-to-day' corruption and corruption at the intermediate level of public administration reported in those countries is a sign of political immaturity and an aversion tactic of political correctness, i.e. if corruption exists at all, it is 'the others' who are the bad guys.

Kazakhstan is an odd case, combining a low level of corruption in Parliament with a high level of administrative malpractice. Following the logic that providers of corruption must be found at the place where a decision is taken and discretion is possible, one explanation of the Kazakh case could be that a lack of democracy in Parliament directs debates and decisions on economic reform away from the political scene to the level of higher administration.

Poland represents a fourth combination of a high level of political corruption and a low level of administrative malpractice. The political situation in Poland has much in common with the other countries reporting high political corruption. Moreover, Poland is often seen as the frontrunner of economic reform, partly due to the Balcerowicz plan implemented early in the 1990's. However, even if administrative malpractice at the top-level of the administration is, reportedly, less a problem in Poland than in the other countries, it is still substantial. The reported lower level of corruption among ministers and high-level administers in Poland may be due to the high national priority ascribed to anti-corruption measures (I. Verheijen and A. Anusiewicz, 2002) pinpointing administrative malpractice at the level of intermediate officials, thus disregarding petty corruption (Pedersen, Johannsen, 2004) as a consequence of changed civil service mentality, modernised civil service legislation, job security, and higher salaries.

To sum up the findings in this chapter, corruption is frequently related to 'providers' at the political level and in the top administration. We have put forward an attempt to relate the character of 'providers' to the level of consolidation of the po-

litical system when corruption is high in Parliaments and to the comprehensiveness of economic reform strategy when corruption is high among Ministers and higher and intermediate level officials. Following up on this explanatory attempt we now turn to the elite's explanation of the causes behind corruption. Answers to the question: In your opinion, what are the main causes of corruption in the state administration?" – Weighted answers. Most important is 1, second is 1/2 and third is 1/3. In the search for the root causes of corruption it is possible to identify at least three lines of arguments: (1) the role of the state, (2) the institutional structure and function, and (3) culture. This corroborates with a review of the empirical research (J. Lampsdorff, 1999), which finds that the degree of state involvement in the economy, economic freedom, institutional quality and cultural determinants are important variables. While most of these studies are generated with the use of cross-sectional analysis at the macro-level, our data reveals the elite perception, with first-hand knowledge on the subject. The researchers have chosen to focus upon the latter two lines of arguments, as the role of the state in ex-communist countries has been dramatically redefined in the latter years, possibly blurring the picture, and included the specific item of organised crime, which has emerged as a public concern in these countries.[3] One aspect of the institutional argument is that malfunctioning political and economic institutions cause corrupt behaviour. In the survey, the institutional argument will be perceived as both a reference to the legacy of the soviet system and to low salaries.

The legacy problem refers to the unclear division between public-private relations, the fact that many public officials are inherited from the Soviet era, and that corruption was already systemic in the latter years of soviet life. The inherited public administration may explain why the legacy of the soviet system seems more problematic.

Finally, the development of illegal economic activity – mafia organisations – which certainly have been front page stories both in the East and the West, appear to be much overstated in comparison with the other factors. Illegal economic activity is endemic to hasty and comprehensive societal transformation. This has also been the case in ex-communist countries. However, as a fertilizer to corruption of public administration, only about 10 per cent blame illegal institutions for the level of corruption, but there are huge differences between the countries. In Hungary less than 1 per cent sees illegal organisations as the main cause of corruption whereas more than 17 per cent deem the mafia important in Moldova. Possibly the link between corruption and the development of mafia organisations is closely related to both the institutional and cultural argument, i.e. that stronger institutions, higher

3 It should be noted that at the aggregate level our respondents' exposure and experience with threats do correlate with the level of democracy (defined as the average Freedom House score (1997–2002)) and the degree of economic freedom (defined as the average Heritage index score (1997–2002)). Thus democracy and an open economy lead to a less frequent occurrence of threats.

salaries and an improvement in morals would make life more difficult for illicit organisations when they seek influence in the public administration. Thus while our data seem to corroborate the main trends of previous research, new insight has also been gained. As a first, the much-talked about Eastern mafia does not appear to be a major cause of corruption and secondly, the elites see the main cause of corruption related to the morals of the civil service.

With the previous discussion about the level of corruption in mind, demonstrating that it is a significant problem in all countries, it may not be a surprise to find that approximately two-thirds of respondents deem that the courts and other state institutions engaged in the battle against corruption are ineffective. However, given that low morals are pinpointed as the most important cause of corruption, it may be more of a puzzle that more than 60 per cent claim the anti-corruption legal framework is insufficient. The issues may not be connected, but if morals are the problem, the law may not be the first and best answer unless changes in the legal framework are, for example made to protect whistleblowers.

If we would like to have an overall picture about the corruption levels in different countries we can see them for each level in some selected countries in Table 3.

Conclusion

We can conclude that the various currently influential definitions and types of corruption, and the recent attempts to circumscribe corruption by listing paradigmatic offences, have failed. They failed, to a large extent, because the corruptive actions comprise an extremely diverse array of moral and legal offences.

Table 3
Corruption related to the level of government

	Hungary	Poland	Czech republic	Slovakia	Estonia	Latvia	Lithuania	Bulgaria	Moldova	Armenia	Georgia	Azerbaijan	Kazakhstan
Parliament	2	10	15	5	2	16	29	32	38	6	51		8
	7.1	32.3	34.1	11.6	4.0	32.7	54.7	42.7	48.1	6.0	51.0		26.7
Ministers	9	5	11	11	16	17	23	22	37	6	44	4	11
	32.1	16.7	25.0	25.6	32.0	34.7	43.4	29.3	46.8	6.0	44.0	4.0	36.7
Top Level	7	6	8	10	14	20	23	15	35	13	32	4	10
	25.0	16.7	18.2	23.3	28.0	40.8	43.4	20.0	44.3	13.0	32.0	4.0	33.3
Intermediate Officials	16	11	20	31	19	27	32	51	48	30	59	36	17
	57.1	36.7	45.5	72.1	38.0	55.1	60.4	68.0	60.8	30.0	59.0	36.0	56.7
Lower Level Officials	7	11	19	14	9	24	27	48	31	16	36	32	4
	25.0	36.7	43.2	32.6	18.0	49.0	50.9	64.0	39.2	16.0	36.0	32.0	13.3

Note: At which level of government do you think that the phenomenon of misuse is most common? – Percent answering "Common".

Chapter 10
Anti-corruption

A. Androniceanu

Introduction

In many countries, corruption has become part of the political-administrative everyday life. Bribery, embezzlement or other kinds of corruption have caused damage in the economy, to politics and to society. This has prompted many countries to place greater emphasis on controlling corruption. Whether in politics, administration or the economy, one thing is certain: corruption is spreading every day. It has become a pivotal obstacle to economic development. This is why there is a need to create a special framework with adequate instruments for fighting against corruption. The European Union has also recognised that corruption causes severe damage and has declared a comprehensive campaign against it. Anti-corruption is a concept which remains at the basis of a very complex process and it requires permanent activities to identify the reasons for corruption and to discover the measures required to prevent it.

Anti-corruption and how public managers can deal with it

This means the more activities public officials control or regulate the more opportunities exist for corruption. Furthermore, the lower the probability of detection and punishment, the greater the risk that corruption will happen. In addition, the lower the salaries, the rewards for performance, the security of employment, and professionalism in the public service, the greater the incentives for public officials to pursue self-serving rather than public-serving ends. This institutional perspective suggests fighting corruption through the following:

- Reducing the role of government in economic activities (to limit authority);
- Strengthening transparency, oversight, and sanctions (to improve accountability);

- Redesigning terms of employment in the public service (to improve incentives).

While this perspective gives us a parsimonious view of the problem, it does not take into account socially-embedded incentives to participate in or withstand corrupt practices. Independent of opportunities, costs, and professional incentives within government institutions, general attitudes toward formal political processes influence corruption levels. A number of factors can predispose groups or societies to disregard formal rules. In many cultures, particularly in the context of poverty or conflict, allegiance to personal loyalties such as one's family or ethnic, religious, or socio-economic identity outweighs allegiance to objective rules.

These considerations suggest anti-corruption efforts should also address attitudes towards corruption. Generally, such efforts need to raise awareness about the costs of corruption for the country's political and economic development. This means convincing the public that corruption is an extremely damaging pattern of interaction for society as a whole, and that the collective damages over time outweigh any possible short-term personal benefits. Along with raising awareness, these efforts need to stimulate demand for reform, helping mobilise citizens and elites to push anti-corruption into the political agenda. To the extent possible, anti-corruption efforts should also address the underlying structures that create anti-system attitudes, for example, by improving the access of marginalised groups to the political arena.

Responses to corruption, therefore, include **institutional reforms** to limit authority, improve accountability, and change incentives, as well as **societal reforms** to change attitudes and mobilise political will for sustained anti-corruption interventions. Within these two broad categories, the list of potential responses is extensive. Institutional reforms include measures to reduce government authority, increase accountability, and align official incentives to public ends. These measures target government institutions and processes in all branches and levels of government. Societal reforms, on the other hand, include measures to change attitudes toward formal political processes and to mobilise political will for anti-corruption reform.

As Phyllis Dininio, an anti-corruption specialist with the Centre for Democracy and Governance mentioned, in one very popular handbook published a few years ago, some of the most appropriate measures for anti-corruption are:

Institutional Reforms: Limiting Authority **Privatisation**—Privatisation offers a clear means to limit the authority of government. By removing the government from economic activities, it eliminates opportunities for recurrent corrupt dealing in sales, employment, procurement, and financing contracts. However, as many privatisation programmes have revealed, the process of privatising state-owned enterprises and government services itself is vulnerable to corruption. To ensure the integrity of the process, privatisation requires special measures of transparency.

In addition, successful privatisation programmes require adequate regulatory and commercial legal frameworks to protect consumers and investors and to create conditions for competition. Without these frameworks in place, privatising government operations may only shift rent-seeking from the public to the private sector. Indeed, in many developing and transition countries, unregulated or poorly administered privatisation has enriched insiders through skewed prices and conversion of public monopolies to private ones.

Liberalisation—Liberalisation offers a more straightforward means to limit state authority. Eliminating tariffs, quotas, exchange rate restrictions, price controls, and permit requirements simply strips officials of their power to extract bribes. At the same time, removing such controls reduces transaction costs, eliminates bottlenecks, and fosters competition. In recent years, accession requirements to the World Trade Organisation (WTO) have pushed many countries to liberalise their economies. For example, in joining the GATT (the WTO's predecessor) Mexico dropped the percentage of imports subject to licensing from 92 per cent to 22 per cent and reduced the average tariff from 23.5 per cent to 12.5 per cent. Transitions from communism have also entailed a substantial recession of controls. A special presidential commission in Ukraine, for example, recently reduced the number of licences required to open a business from 100 to about 55.

Competitive Procurement—Competitive procurement limits the authority of government officials thereby guarding against corruption. Competitive procurement removes personal discretion from the selection of government suppliers and contractors by prescribing an open bidding process and laying out clear procedures and criteria for selection. Because a corrupt procurement process can derail their development efforts, donors are making procurement reform a priority. For example, as an outcome of the 1997 Global Coalition for Africa's Policy Forum on Corruption, the World Bank is assisting the governments of Benin, Ethiopia, Malawi, Mali, Tanzania, and Uganda to reform their procurement procedures. Yet, without such government leadership, private firms may foster a competitive process. Through anti-bribery pacts such as Transparency International's "islands of integrity" approach, bidders agree not to pay bribes for a government contract and post sizable bonds that are subject to forfeiture in the event of non-compliance.

Competition in Public Service—Competition in public service reduces the opportunity for corruption by removing the monopoly power of any one government office. In so doing, it discourages extortion, since customers can take their business to a competing office when confronted with irregular demands or service. Overlapping jurisdictions, in the case of motor vehicle bureaux or passport agencies, or private and public provision of service, in the case of mail delivery or trash removal, are two ways of instituting competition in public service.

At the institutional level, the main reforms necessary against corruption, as Sahr John Kpundeh mentioned are:

Improving accountability entails efforts to improve both the detection and the sanctioning of corrupt acts. Better detection requires measures to improve transparency and oversight while better sanctioning involves establishing criminal and administrative sanctions, strengthening judicial processes, and improving electoral accountability. A description of such measures follows.

Freedom of Information Legislation—Freedom of information legislation improves accountability by enhancing the transparency of government operations. It counteracts official secrets acts and claims of national security that impede corruption inquiries. Freedom of information legislation also informs citizens of the procedures for government service, curtailing attempts to subvert the system or to demand gratuities for information that legally should be public. The Ugandan government, for example, now displays in relevant offices, the regulations, procedures, and fees for public services such as registering a vehicle or starting a company.

Financial Disclosure—Financial disclosure laws improve accountability by enhancing the transparency of officials' finances. The laws require public officials to declare their assets and incomes and so act as a deterrent to profiting through corruption. Public officials can include cabinet ministers, members of parliament, and top civil servants. In some countries, laws require declarations upon accession to and departure from office. Other laws prescribe yearly monitoring. Countries including Argentina, Brazil, Chile, Nicaragua, Poland, Sierra Leone, Uganda, Tanzania, Sri Lanka, and Russia have recently passed such legislation. While in most cases the laws have elicited declarations, public access to them or verification of their accuracy has often been a problem.

Open Budget Process—Open budget processes improve accountability by enhancing transparency of government expenditures and income. While the principle applies equally to national and local level budgets, the immediacy of local government provides an impetus and entree for citizens to participate in the process that are often missing at the national level. For this reason, recent efforts to promote transparent budgeting have concentrated on the local level. For example, decentralisation programmes in Bolivia, Paraguay, and El Salvador have featured improved citizen participation in and oversight of local budget processes.

Financial Management Systems and Audit Offices—Modern financial management systems improve accountability by enhancing transparency and oversight in government operations. Originally developed in response to the 1987 financial collapse in New York City, these systems apply high technology to the fight against financial mismanagement and corruption. Measures to improve financial management systems involve the design of financial software, installation of hardware, and training of accounting and audit staff. Tools for financial management systems include the following:

- High-speed computer comparisons of data that can disclose such abuses as duplicate payments to suppliers, double-salaried staff, and retirees drawing remuneration;
- Computer-assisted audits allowing selected sampling of activities subject to abuse;
- Automatic flash points that call attention to repetitive or inappropriate budgetary manoeuvres, or to deviations in areas of high vulnerability;
- General ledger controls over valuable resources such as land, buildings, vehicles, computers, and electronic equipment;
- Single bank accounts used to consolidate public funds and eliminate "off-budget" expenditures.

Hot Lines and Whistle-Blower Protection—Hot lines improve accountability by enlisting co-workers, businesses, and citizens to report corrupt acts. The government office responsible for investigating such acts often operates a hot line. For example, in Hong Kong, the Independent Commission against Corruption runs a hot line and guarantees that every allegation is investigated. It also protects those who make reports by granting file access to officers on a "need to know" basis only. However, in cases where anonymity cannot be guaranteed, those who protest corruption often place themselves at risk. In many countries, whistle blowers are often fired or punished, subjected to administrative harassment, and exposed to violence. For this reason, anti-corruption efforts need legislation to protect whistle blowers from official sanctions or even to reward them. Uganda, in fact, is now considering a recommendation to reward officials who provide information leading to the successful recovery of embezzled public funds.

Judicial Reform—Accountability requires not just establishing sanctions, but also enforcing them on an impartial basis. Without enforcement, tough laws have no impact on reducing corruption, and may foster general cynicism about reform efforts.

Realigning Incentives

Institutional reforms to fight corruption also include incentives to promote ethical behaviour in public service. Such incentives feature active human resources management to develop a professional, committed work force. As a first step, personnel systems can eliminate unnecessary positions and reduce the number of employees through hiring freezes and attrition, retirement packages, dismissals, and removal of ghost workers from payrolls. Personnel systems can also tighten job requirements, establish anti-nepotism regulations, develop codes of ethics, and provide training where needed. Compensation systems must then provide a living wage, but also ensure sufficient remuneration to attract and retain qualified personnel. In some cases, salary increases can be financed through reductions in force. In addition, performance-based incentives can bolster morale, professionalism, and pro-

ductivity. Systems can link performance to compensation or to such non-monetary rewards as more challenging tasks, influential assignments, public recognition, and professional awards. Regular performance assessments become necessary components of an incentive system.

Societal Reforms

Changing Attitudes and Mobilising Political Will

In addition to institutional reforms, efforts to fight corruption include societal reforms to change attitudes towards formal political processes and to mobilise political will for change. Societal reforms generate new information about the costs and causes of corruption to stimulate demand for change and provide guidance on what to change. Societal reforms also foster structures to facilitate monitoring and advocacy by civil society. Without the mobilisation of civil society, governments are unlikely to follow through on anti-corruption reforms once they enter politically difficult terrain.

Surveys—Surveys work to change attitudes and mobilise political will by defining the problem and focusing efforts to address it. Surveys can address the issue of corruption directly (e.g. corruption perception surveys) or approach it indirectly in politically sensitive situations (e.g. service delivery surveys). Corruption perception surveys ask individuals or businesses for their perception or experience of corrupt practices, often generating comparisons across branches and levels of government for national surveys, or across countries for international surveys. In its annual Corruption Perception Index, Transparency International draws upon seven international surveys of business people, political analysts, and the general public to rate approximately 50 countries on perceived levels of corruption. Service delivery surveys, by contrast, ask public service users about their satisfaction with specific services, such as utilities, housing, health, or education. While they may ask the total cost, waiting time, and negotiating time for service, these surveys do not ask for an appraisal of the level of corruption. They nonetheless provide essential information to help design reforms, monitor results, and ultimately make services more responsive to citizens' demands. The Economic Development Institute (EDI) of the World Bank and CIET International have assisted governments conduct service delivery surveys in Bosnia, Nicaragua, Tanzania, Uganda, Mali, and Jordan.

Public Relations Campaigns—Public relations campaigns work to increase understanding about the harm done by corruption and the ways to fight it. Using the mass media, community activities, or school programmes, they highlight the link between corruption and poorer public services, lower investment, smaller growth rates, and more inequality. They also emphasise citizens' rights to services and demonstrate that corrupt officials are stealing the public's money. At the same time, these campaigns articulate procedures for reporting corrupt practices and advocating for reform.

International Pressure—Pressure from foreign governments and international organisations can mobilise and sustain domestic efforts to fight corruption. Bilateral diplomacy at the highest levels or through embassies, exhortations from international bodies such as the United Nations, and strong recommendations or conditionality from development assistance agencies can push reluctant reformers to address corruption issues.

A strategy to fight corruption cannot and need not contain each of the institutional and societal reforms described. Rather, a strategy should fit the particular circumstances of a country, taking into account the nature of the corruption problem as well as the opportunities and constraints for addressing it. Therefore, designing a strategy requires an assessment of the extent, forms, and causes of corruption for the country as a whole and for specific government institutions. At the same time, strategy formulation requires taking a close look at the political will for anti-corruption reform in government and civil society. Such an assessment entails a political economy analysis of the reform process to identify supporters and opponents of anti-corruption reform and their respective interests and resources.

Determining the form of corruption is the next step of the assessment. Is the corruption petty, involving lower-level officials and smaller resources, or is it grand, operating at the highest levels of government with huge sums of money? Is the corruption organised vertically, linking subordinates and superiors in a system of payoffs? Is it organised horizontally, linking separate branches of government or agencies in a corrupt network? Is it not organised at all? Does the corruption entail unilateral abuses by government officials (e.g., embezzlement and nepotism) or does it link public and private actors (e.g. through bribery, extortion, and fraud)? Similarly, is the corruption linked to organised crime or the military, entrenched in patterns of patronage, or embedded in elite networks? Finally, in what government institutions is corruption concentrated? For example, is the chief problem found in the customs agency, in government procurement, in tax collection, or in the police?

The next level of analysis examines the causes of the different forms of corruption. Following an analysis of the corruption problem, the assessment must examine the opportunities and constraints for addressing it. The central issue for strategy development is the opportunity for reform in a country. While in many countries, there is limited or no opportunity to address the issue of corruption directly, in others, there may be partial or significant opening for reform.

Examples of institutional and societal measures useful when there is support for reform:

- Targeting government institutions where the corruption problem is serious and political will for change exists (often derived from a high-level official who identifies his or her tenure with fighting corruption);

- Identifying specific interventions based upon root causes of the problem—wide authority, little accountability, or perverse incentives;
- Sponsoring integrity workshops;
- Fostering anti-corruption NGOs;
- Encouraging anti-corruption advocacy;
- Promoting civic monitoring;
- Providing training in investigative journalism;
- Promoting private sector efforts to prevent corruption;
- Advocating international co-operation and conventions.

The new trend in the fight against corruption is putting an emphasis not only on efficiency but also on transparency and accountability of the public sector. The lack of transparency inherent to this sector is even intensified by such principles as official secrecy. In places where the public administration has become even less transparent for its own administrative bodies, citizens often fight a losing battle. The conditions of accessing information alone often exert a very regulative influence. This determines the behaviour of officials as well as their clients. That is why many states have inverted the legal position to basically grant citizens access to all the information, while the state has to separately set necessary restrictions.

However, corruption is a system and corruption has a system. Therefore, it can only be combated with a system. Anti-corruption measures on the government-agency level must, therefore, be bundled together into a systematic concept of prevention. A framework concept, which can be described as being "state of the art", should be understood as an aid to orientation and as an aid to formulate tailor-made anti-corruption strategies in government authorities. It is a way to prevent and combat corruption in government agencies in a systematic way.

General measures and recommendations to prevent corruption are independent of any particular task or department. They are directed towards the abstract threats and risks to which the entire organisation or the staff in general, is exposed. They are aimed at the heads of the government agency, or the organisation as a whole, and at employees. During their implementation, managers have a special responsibility, due to their duties of administrative and work supervision as well as to their function as a role model.

The prevention of corruption requires a continuous and long-term effort. One-time activities and an incoherent mix of activities will not produce the desired results. The challenge is to develop a coherent approach or strategy or plan. This could involve the following steps:

a) adoption of a general code of conduct (or anti-corruption guidelines) for public officials on the whole, or for specific categories of public officials, and the judiciary,
b) elaboration or adaptation of specific codes or guidelines by an individual administration or institution,
c) continuous training and integration in training policy,
d) risk analysis within the institution or administrations,
e) establishment of an internal control mechanism (e.g. an internal audit unit),
f) identification of specific measures to be undertaken on the basis of the code of conduct and the risk analysis,
g) identification of further training needs,
h) preparation and implementation of the prevention plan, and co-operation with other institutions.

Anti-corruption like any other basic concept connected with ethics involves several approaches and different forms for acting against corruption.

As Robert Sundberg, Mirjana Stanković said, in Serbia the adoption of ethical standards via implementing legislation, ethics laws and codes has been vigorously promoted. Public officials and institutions generally receive ethics training and attention – educational programmes are the primary means of informing society about the existence of and need for such principles and codes. However, the ethics aspects of anti-corruption programmes are intended to appeal only to the conscience of individuals, whereas the legal aspects of anti-corruption programmes set up the environment which is intended to suppress or eliminate corrupt practices.

Too often, anti-corruption programmes overlook the fact that ethics and legal systems alone are not sufficient to effectively address corruption. Rather, it is properly established institutions that prove to be powerful anti-corruption mechanisms. Such a systemic approach provides a framework for identifying both the sources of corruption and organisational behaviour patterns which involve the political, economic and social aspects to be addressed. A combination of ethical and legal anti-corruption measures and the introduction of functional mechanisms that both suppress and protect against corruption makes the ethical and legal procedures effective.

Generally speaking, the existence of established anti-corruption institutions provides a metric of both positive and negative incentives (rewards and sanctions) towards corruption and allows a more reliable measurement of anti-corruption indicators – rather than indicators based solely on the perception of the public. The authors' experiences in Serbia, in Romania and in Bulgaria reinforce this approach.

As in several Eastern countries, anti-corruption efforts are typically concentrated on certain strategies which are rooted in a traditional ethical/legal approach. These include promotion/establishment of ethics codes of conduct for public officials[4], legal reforms/anti-corruption laws[5], public anti-corruption awareness campaigns, training aimed at anti-corruption capacity building of civil society institutions and building the awareness/capacity of the business community to resist corruption. A set of "mechanical solutions" has been also introduced in Serbia, such as e-government systems or one-stops permitting operations. Although aimed at isolating potential corruption perpetrators from their potential victims through reducing personal contact during the local governing processes, these are not explicitly referred to as systemic anti-corruption operations. Properly established, organised and trained governmental institutions existing at known "corruption focal points" can function as powerful anti-corruption mechanisms, if addressed through a structured intervention. The existence (or non-existence) of such institutions also offers concrete evidence of the degree of a local government's weakness or susceptibility to corruption, in contrast to some indicators based solely on anecdotal evidence or public perception.

If such institutions have ethical and legal bases in authority they may be better able to resist outside pressures to conduct irregular practices and they may offer public officials legal and administrative authority to resist corrupt influences from other, higher officials. But, as much as they are necessary and supportive, adoption of anti-corruption-related legislation and ethics-promotional activities are not sufficiently powerful tools for addressing corruption.

The new trend in the fight against corruption is putting an emphasis not only on efficiency but also on the *transparency* and *accountability* of the public sector. The lack of transparency inherent to this sector is even intensified by such principles as official secrecy.

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4 In 2004–2005, an EU-funded Serbia-wide, campaign for an adoption of Ethical Code of Conduct for Local Government Officials was conducted by the Standing Conference of Towns and Municipalities, which led to a formal adoption of the Code by the majority of Serbian municipalities.

5 For example, recently adopted Laws on the Conflict of Interest (RS Official Gazzete 43/04) and on Free Access to Information of Public Interest (RS Official Gazzete 120/06).

mines the behaviour of officials as well as their clients. That is why many states have inverted the legal position to basically grant citizens access to all the information, while the state has to separately set necessary restrictions.

According to Hans Joachim Rieger's opinion (Rieger, 2007), "Corruption is a system and corruption has a system. Therefore, it can only be combated with a system. Anti-corruption measures on the government-agency level must, therefore, be bundled together into a systematic concept of prevention. A framework concept, which can be described as being 'state of the art', should be understood as an aid to orientation and as an aid to formulate tailor-made anti-corruption strategies in government authorities. It is a way to prevent and combat corruption in government agencies in a systematic way".

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Another concept very connected with ethics is a code of conduct, which is appreciated by the specialists like an instrument.

The purpose of a code of conduct for public servants is threefold, as Rieger mentioned:

- it is a statement of the ethical climate that prevails in the public service;
- it spells out the standards of ethical conduct expected of public servants;
- it tells members of the public what to expect from public servants in conduct and attitude when dealing with them.

Furthermore, as a well-drafted code of conduct describes in a coherent way the main elements of a corruption prevention strategy, it could be used as the 'charter' or the starting point for the elaboration of a prevention strategy or plan. The code of conduct or code of ethics for public servants recommended by the United Nations essentially comprises standards which employees should also adopt. As Hans Joachim Rieger exemplified:

"Employees…

… must recognise without any reservations that their official function is a position of trust which obliges them to act in the interests of the general public.

… must exercise their office with integrity and loyalty to their employer and perform the tasks assigned to them lawfully and conscientiously.

… must perform their tasks with fairness and impartiality. They may not unjustly favour or prejudice anyone or misuse the official powers transferred to them in any way.

… may not use their public office or official powers to promote their own interests. They may not undertake actions, or aim for positions or offices or pursue financial, economic or other comparable interests, which are or could be incompatible with their official functions.

… must ensure that they lead settled lives whose economic and social circumstances are orderly and they must ensure that their private lives do not give rise to any impairment of their official duties.

… may not directly or indirectly demand, accept promises for or accept any gifts or other benefits related to their official function or to the fulfilment of their official duties or which could affect their judgment.

… must report all (part-time) employment outside the agency to their employers. Such outside employment may not adversely affect the public's trust in the impartial performance of their official duties.

… are obliged to preserve official secrets and to treat all of the information acquired in connection with their duties confidentially, unless they are explicitly released from this obligation".

Based on their own surveys, some specialists also tried to identify other management instruments for reducing corruption. A few such instruments are presented below:

- *Establishment of an internal auditing unit*
  A risk analysis is not a one-time event but a continuous process. The implementation and effectiveness of measures resulting from a risk analysis should be monitored on a continuous basis. Therefore the management of a service or administration may want to establish an internal control mechanism, for example, in the form of an internal audit unit. Internal auditing is an instrument of management. It supports the duties of administrative and work supervision and the monitoring of the organisational structure and the processing of operations in the form of the implementation of auditing activities. Another focal task of internal auditing is the internal prevention of corruption. Internal auditing conducts risks analyses, initiates general and specific anti-corruption measures within the agency and supports their implementation.
- *Performance of risk analyses*
  As a constant task, the Internal Auditing Unit (or the Corruption Commissioner) will examine the organisational structure and the operating processes of the government authority for areas of risk as well as susceptibilities and weak spots, which can induce or favour corruption. Increased susceptibility can ex-

ist, in particular, wherever there are outside contacts (e.g. police presence in the public, conduct of investigations, exercise of local inspections) and/or decisions are made or prepared, which could favour or disadvantage third parties (e.g. awards of public orders). Even dealings with sensitive data (e.g. search data) are to be designated as such an area of risk.

On the basis of the risk analysis, target-group-oriented concepts to prevent corruption can be developed and adequate counter-measures or other preventive measures and control mechanisms can be installed as needed.

- *Monitoring outside employment*
  Outside employment can not only have a negative impact on the deploy ability and motivation of employees, but also can represent possible "docking areas" and gateways to corruption. Here the need for information by businesses or by the media (e.g. prospects for access to data) can play a significant role.
  Due to their basic importance in the prevention of corruption, taking stock of and auditing sidelines is a major prerequisite for a realistic assessment of the potential for risk. This measure is thus an important component of risk analysis.
- *Accepting rewards and gifts*
  As Rieger pointed out, regulations pertaining to the acceptance of rewards and gifts – as provided in Germany for all public employees – are a major orientation aid with respect to preventing corruption when delineating the permitted scope of action for actions with a criminal intent. These regulations must be emphatically communicated to all employees.
- *Regulating sponsorship*
  Strict regulation is also necessary when third parties are prepared to support the task of the government agency. The sponsorship policy should be clearly regulated.
- *Reviewing service regulations*
  Service regulations frequently contain regulations which collide with the interests of preventing corruption, or even counteract them in specific cases (e.g. recommendations on the subject of "lean government", standards on simplifying and accelerating procedures, expansion of discretionary powers for individual judgments, delegation of decision-making powers, etc.)
- *Task-specific or department-specific anti-corruption measures*
  Special anti-corruption measures are to be individually tailored to different departments, units, areas of tasks and functions for which increased susceptibility may be supposed, due to their respective jurisdiction or the description of the tasks to be performed and related contacts with outsiders.

  Special anti-corruption measures do not stand alone, but are always understood to be in combination with or as a supplement to general measures. Thus there are recommendations which are equally implementable in several target areas

and also those which are very specific and thus can only be applied in restricted areas.

In all areas which have proved to be particularly at risk as a result of a risk analysis, special measures suitable for reducing the risk of corruption are to be reviewed and implemented. Possible actions include the following:

- regular sensitisations of the employees assigned to areas susceptible to corruption,
- strict selection of personnel (technical, social and moral suitability of candidates),
- staff rotations; rotations of susceptible employees at intervals suitable for the tasks to be performed; if necessary repeated changes (shuttles) between two organisational units; avoidance of single rooms for employees with contact with outsiders; fluctuations while performing the same tasks (e.g. changing rooms and responsibilities of the employees in charge),
- separation of functions: Splitting complex task areas and process or decision-making processes; avoidance of the concentration of competencies in one person,
- standardisation of recurring work or case processes,
- maintenance of the four- or more-eye-principle in contacts with outsiders and in team-building,
- internal and external checks of files and invoices (superiors, internal auditing, General Accounting Office),
- assisting in the recognition of corruption; elaboration of a grid, which provides information about function-specific indicators.

It must be borne in mind that not all of the recommendations listed can actually be implemented in all of the organisational units and work areas susceptible to corruption. Some proposals, such as staff rotation, cannot be implemented at all or only with great difficulty in some areas, due to the special circumstances and possible consequences (risk of the loss of expert knowledge).

- *Additional measures with respect to the awarding of public orders*
  Public orders are issued by government authorities, for example, with respect to procurements, instruction and services, research and development projects, and the preparation of expert opinions.

Basically it must be borne in mind that larger orders requiring a public tender should not be split up, in order to enable the discretionary award of such orders due to the reduction of the order amount.

Attributes given to contractors such as "reliable" or "reasonably priced" should not lead to competitors being ruled out or for preferring individual contractors over a long period of time without any plausible reason. This applies, in particular, to open-ended service agreements.

Conclusion

Establishing systems which provide the needed transparency in public organisations is one of the major changes, if there is a clear intention for reducing corruption. More than this, it is clear that if public managers would like to decrease the corruption inside, they have to have a systematic strategy known by all human resources and a permanent monitoring system for surviving it. If we look across European countries, there is a real need, in many countries, for making progress in dealing with corruption by building new efficient systems for anti-corruption.

Chapter 11
Approaches to Ethics Management

A. Androniceanu

Introduction

There are several approaches for considering ethics inside and outside public organisations. Public organisations can manage ethics in their workplaces by establishing an ethics management programme. This chapter contains some of the most relevant approaches on how to consider the different variables and factors along the management process from public administration and also a few relevant aspects about how public managers could improve the ethics management from public organisations.

Some alternatives for approaching ethics management

Managerial/organisational approach

This approach is applied worldwide and is a universal means of achieving accountability in all kinds of organisations. It has several major tenets or values that cut across all organisations and the prevailing culture in societies. These universal organisational values are ethics, efficiency, economy, effectiveness, and control. Some of these are values of instrumental rationality, whilst others are both a normative and a rational imperative of organisational accountability. Organisational unity is important for maximisation of these values, and several means are used to secure it. Firstly, hierarchy, authority and responsibility need to be clearly defined and assigned. Overlapping functions should be reduced; lines of hierarchical authority should be clear and comprehensive. Plural agency heads/leadership tend to divide subordinates' loyalties and to obscure responsibility. Subordination is also necessary for organisational unity, effectiveness, and accountability. Insubordination is seldom tolerated and is punishable by dismissal. Lastly, the span of control is an effective means of organisational accountability. Public accountability should seek to enforce much higher standards of behaviour, and an approach that is professional

and legal or constitutional in nature. Audits are strong deterrents to corruption or other abuses of public trust. Audits can also be internal or external, and it may be desirable to employ external as well as internal audits. In many public organisations, both are required.

Political approach

The political approach takes a different road in stressing the need to develop an external means of accountability in public administration. This is frequently carried out through political control. This approach is applied effectively and is familiar to most systems:

- Legislative oversight, which can be achieved by means of legislative requirement for the ratification of the appointment of agency heads, legislative investigations and auditing;
- Budgetary control, which means the power of the purse, an extremely important legislative check on executive power;
- Rotation in office in order to reduce the risk of misrepresentation of public interest. Political executives are routinely rotated from office to office, or out of office, when a new political boss arrives – this has happened in developing countries;
- Representation and public participation as a means of broadening the composition of public service and encouraging diversity, which may bring administrative values closer to the general public, thus reflecting citizens' perspectives and preferences;
- Whistleblowing is a widely known practice, with its benefits and costs. The use of hot lines and other confidential channels may be safer for public administrators, protecting them from reprisals. Leaks to the press, exposure to the public and the media, reporting to a higher authority, resignation in protest, and exposure are some means of whistleblowing. Some countries have passed legislation protecting whistleblowers;
- Sunshine laws, which require open public dealings as an important means of securing accountability and the proper conduct of public officials. Today, most American states and local governments have adopted sunshine laws;
- Conflict of interest, which is similar to the organisational and managerial approach.

Legal approach

This is a judicial approach to administrative accountability. Administrative liability is one issue; another is a strong and personally internalised incentive to protect the constitutional rights of individual citizens.

Cultural approach

This is another means of achieving accountability in public service. It requires the inclusion of significant ethical components in the educational curricula for children and adults. Ethical education can be carried out through religious and secular institutions. Religious institutions and values can be used as major guiding principles in public service conduct. For example, in Islam, as in other religions, there is a high value attached to being a public servant and to a proper behaviour in both personal and public life.

Ethical values approach

A number of institutions can be created and empowered to promote and enforce ethical behaviour and accountability. For example, programmes for whistleblowing, ethics hot lines, ethics boards and commissions, ethics education programmes for elected, politically appointed, and administrative officials, agency ethics officers, financial and conflict-of-interest disclosure systems, and professional codes of ethics are typically found in modern governments. This approach means special attention from the executive public officers. Some public officials are oriented more on few values without much attention on building management capacity in a better way, but others take into account most of the values like part of the ethics programme of the public organisations.

Brian Schrag, Executive Secretary of the Association for Practical and Professional Ethics, clarifies: "Typically, ethics programmes convey organisation values, often using codes and policies to guide decisions and behaviour, and can include extensive training and evaluating, depending on the public organisation. They provide guidance in ethical dilemmas." Rarely are two programmes alike.

"All organisations have ethics programmes, but most do not know that they do," wrote business ethics professor Stephen Brenner in the Journal of Business Ethics. "An organisational ethics programme is made up of values, policies and activities which impact the propriety of organisation behaviours" (S. Brenner, 1992). Bob Dunn, President and CEO of San Francisco-based Business for Social Responsibility, adds: "Balancing competing values and reconciling them is a basic purpose of an ethics management programme. People need more practical tools and information to understand their values and how to manage them." There are numerous benefits in formally managing ethics as a programme, rather than as a one-shot effort when it appears to be needed. Ethics programmes contain a lot of elements, but some of the most important are the following:

- Establish organisational culture and roles to manage ethics
- Schedule ongoing assessments of ethics requirements
- Establish required operating values and behaviours
- Align organisational behaviour with operating values
- Develop awareness and sensitivity to ethical issues

- Integrate ethical guidelines to decision-making
- Structure mechanisms to resolve ethical dilemmas
- Facilitate ongoing evaluation and updates to the programme
- Help convince employees that attention to ethics is not just a knee-jerk reaction done to get out of trouble or improve public image.

Creating a culture of ethics requires that all levels of employees believe that the organisation wants to act ethically in all it does. Too often, however, the behaviour of middle human resources remains unchanged, and undermines ethical messages and the creation of an ethical culture which is a corporate priority. If they are not committed to the values and ethics, this is immediately apparent to the lower level civil servants. The implementation of ethics in an organisation is only as strong as its weakest link as it flows down into the public organisation.

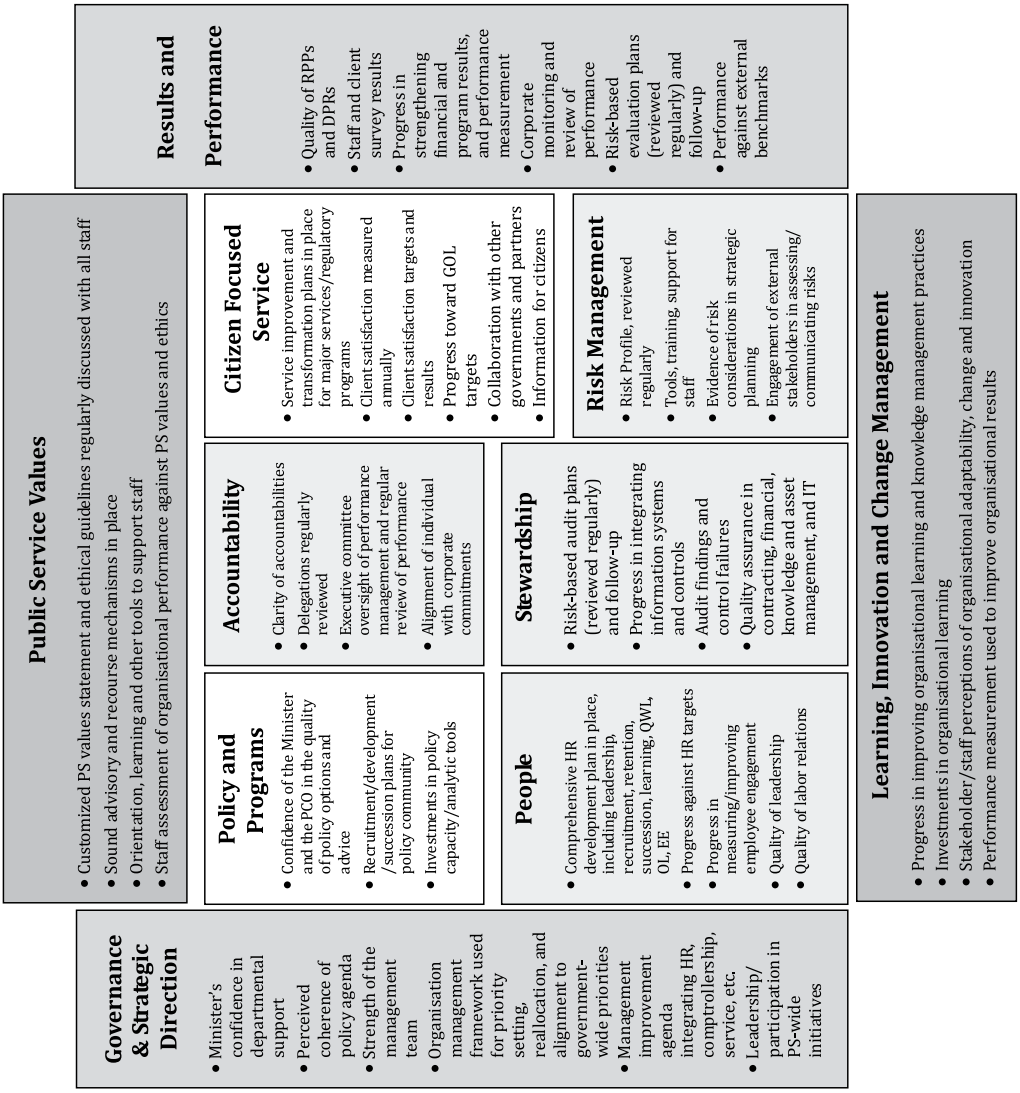
What is needed in every public organisation is an understanding by the top public officials and by the ethics/compliance professionals that they are seeking to influence the specific behaviour of middle people, just as they have focused in recent years on specific behaviour by top executives.

The problem of motivating middle public managers, however, is in many ways more difficult. At times, they may perceive that top public officials are actually giving them the message to focus on the quantifiable business goals and not on the "softer" ethical goals and that the ethical messages were "for the record" and not real. It is possible to specify the middle civil servants' behaviour that will help the creation of an ethical culture. These are similar to that of the top management but include some unique actions. The key behaviours are:

- Talk frequently about the ethical values and ethical commitment of the organisation;
- Anticipate ethical dilemmas which typically arise in his or her area of responsibility;
- Talk about how the ethical values and commitments apply to the work of the specific group;
- Talk about how the ethical values and commitments apply to specific decisions the middle public managers make or participate in;
- Recognise ethical issues when they do arise;
- Ask questions when the ethical action is unclear;
- Make ethical decisions consistent with organisational values and ethics;
- Report concerns about ethical and unethical actions to top public officials.

There are specific techniques which help the top to communicate the organisation's real ethical commitment to the middle public managers in ways that convince them that the public organisation is serious. Motivating middle managers

Figure 5
The frame of ethics management



Adapted by Ralph Heintzman Values and ethics, from principles to results, 2005

to reinforce the ethical culture of the organisation by their own actions requires several specific actions by the top. Among them are:

- Top public officials must themselves exhibit all the "tone at the top" behaviour, including acting ethically, talking frequently about the organisation's values and ethics, and supporting the organisation's and individual employee's adherence to the public values;
- Top public officials must explicitly ask middle managers what dilemmas arise in implementing the ethical commitments of the organisation in the work of that group;
- Top public officials must give general guidance about how values apply to those specific dilemmas;
- Top public officials must explicitly delegate the resolution of those dilemmas to the middle civil servants;
- Top public officials must make it clear to middle public managers that their ethical performance is being watched as closely as their financial performance;
- Top public officials must make ethical competence and commitment of middle managers a part of their performance evaluation;
- The organisation must provide opportunities for middle public managers to work with peers on resolving the hard cases;
- Top public officials must be available to the middle public managers to discuss/coach/resolve the hardest cases

As some of the experts in ethics management underlined, the drivers of values and ethical performance are:

- Leadership and people for achieving a high level of values and ethics performance;
- Risk assessment, standards for preventing and managing values and ethics problems
- Organisational culture which is the most extensive and influences all human resources behaviour.

There is also a special organisational frame for ethics management. A comprehensive image of it is presented in Figure 5.

Countries take action to ensure well-functioning institutions and systems for promoting ethical conduct in the public service. This can be achieved by:

- developing and regularly reviewing policies, procedures, practices and institutions influencing ethical conduct in the public service;

- promoting government action to maintain high standards of conduct and counter corruption in the public sector;
- incorporating the ethical dimension into management frameworks to ensure that management practices are consistent with the values and principles of public service;
- combining judiciously those aspects of ethics management systems based on ideals with those based on the respect of rules;
- assessing the effects of public management reforms on public service ethical conduct;
- using as a reference the Principles for Managing Ethics in the Public Service to ensure high standards of ethical conduct.

At the public organisation level there are few conditions for increasing the ethical dimension of the civil servants' behaviour which are in the responsibilities of top public officials. On the proposal of the Public Management Committee, the OECD Council recommends that some of the most important are as follows:

- Public servants need to know the basic principles and standards they are expected to apply to their work and where the boundaries of acceptable behaviour lie. A concise, well-publicised statement of core ethical standards and principles that guide public service, for example in the form of a code of conduct, can accomplish this by creating a shared understanding across government and within the broader community;
- The legal framework is the basis for communicating the minimum obligatory standards and principles of behaviour for every public servant. Laws and regulations could state the fundamental values of public service and should provide the framework for guidance, investigation, disciplinary action and prosecution.
- Professional socialisation should contribute to the development of the necessary judgment and skills, enabling public servants to apply ethical principles in concrete circumstances. Training facilitates ethics awareness and can develop essential skills for ethical analysis and moral reasoning. Impartial advice can help create an environment in which public servants are more willing to confront and resolve ethical tensions and problems. Guidance and internal consultation mechanisms should be made available to help public servants apply basic ethical standards in the workplace. Public servants need to know what their rights and obligations are in terms of exposing actual or suspected wrongdoing within the public service. These should include clear rules and procedures for officials to follow, and a formal chain of responsibility. Public servants also need to know what protection will be available to them in cases of exposing wrongdoing. Political leaders are responsible for maintaining a high standard of propriety in the discharge of their official duties. Their commitment is demonstrated by example

and by taking action that is only available at the political level, for instance by creating legislative and institutional arrangements that reinforce ethical behaviour and create sanctions against wrongdoing, by providing adequate support and resources for ethics-related activities throughout government and by avoiding the exploitation of ethics rules and laws for political purposes.

- The public has a right to know how public institutions apply the power and resources entrusted to them. Public scrutiny should be facilitated by transparent and democratic processes, oversight by the legislature and access to public information. Transparency should be further enhanced by measures such as disclosure systems and recognition of the role of an active and independent media.
- Clear rules defining ethical standards should guide the behaviour of public servants in dealing with the private sector, for example regarding public procurement, outsourcing or public employment conditions. Increasing interaction between the public and private sectors demands that more attention should be placed on public service values and requiring external partners to respect those same values.
- An organisational environment where high standards of conduct are encouraged by providing appropriate incentives for ethical behaviour, such as adequate working conditions and effective performance assessment, has a direct impact on the daily practice of public service values and ethical standards. Managers have an important role in this regard by providing consistent leadership and serving as role models in terms of ethics and conduct in their professional relationship with political leaders, other public servants and citizens.
- Management policies and practices should demonstrate an organisation's commitment to ethical standards. It is not sufficient for governments to have only rule-based or compliance-based structures. Compliance systems alone can inadvertently encourage some public servants simply to function on the edge of misconduct, arguing that if they are not violating the law they are acting ethically. Government policy should not only delineate the minimal standards below which a government official's actions will not be tolerated, but also clearly articulate a set of public service values that employees should aspire to.
- Public service employment conditions, such as career prospects, personal development, adequate remuneration and human resource management policies should create an environment conducive to ethical behaviour. Using basic principles, such as merit, consistently in the daily process of recruitment and promotion helps operationally integrity in the public service.
- High standards of conduct in the public service have become a critical issue for governments in OECD Member countries. Public management reforms involving greater devolution of responsibility and discretion for public servants, budg-

etary pressures and new forms of delivery of public services have challenged traditional values in the public service.

Conclusion

Globalisation and the further development of international economic relations, including trade and investment, demand high, recognisable standards of conduct in the public service. Preventing misconduct is as complex as the phenomenon of misconduct itself, and a range of integrated mechanisms are needed for success, including sound ethics management systems. The process of transforming public management is a very complex one and involves high professionalism in dealing with such a variety of approaches in a changeable environment.

Chapter 12
Organisational Aspects of Ethics

A. Androniceanu

Introduction

A planned and coordinated approach to enhancing ethics in the public service, including the active encouragement of ethical conduct from within and outside the public sector, is essential to yield long term results. A code of ethics will achieve little if it is applied in an isolated fashion. Institutions, whose integrity is challenged by corruption on a daily basis, will struggle to sustain their honesty. An ethics initiative is likely to fail if it lacks political commitment or suffers from an inappropriate legal framework, ineffective accountability mechanisms and a lack of enforcement. Public officials are more likely to breach rules where incentives for ethical behaviour, such as adequate levels of remuneration and career development prospects, are lacking and where the risks of detection and punishment are low. In short, the absence of holistic institutional tools and processes that support and promote integrity within the public service – sometimes referred to as an "ethics infrastructure" – threaten the sustainability and effectiveness of codes of conduct. This chapter contains several important aspects such as principles for more ethical public organisations, the characteristics of high integrity organisations, ethical dilemma from public organisations and a few suggestions relating to the inclusion of particular ethics aspects in the structure of job descriptions.

Organisational aspects of ethics

Standards of behaviour expected of public officials can be challenged in a variety of ways. Problems can arise when professional values conflict with other expectations. For example, the provision of friends and family with jobs and other favours, while not consistent with the integrity obligations of the public sector, is still accepted in some contexts. Problems can also be caused by complex situations where the "right"

ethical decision is not easily identifiable, as may be the case when law and the interpretation of "fairness" seem to require different courses of action.

Where the role and function of public servants becomes heavily influenced by expectations and management styles common in the private sector, traditional public sector values may be difficult to reconcile with the new approach. Conflict of interest concerns may, for example, be perceived to clash with a plan for commercial sponsorship of a public function.

A high standard of ethical behaviour is not something that "happens" to an institution. Rules and guidelines, or statements of principle and values, will not contribute to the public sector ethos if the values underlying them are not understood. As well as having access to codified standards and guidelines, public officials therefore need to have the technical expertise to understand and appreciate ethical frameworks and their implications, and to identify personally and professionally with the values and procedures they set out. Staff needs to receive regular training on ethics issues, and operate in a supportive environment, with encouragement from administrative and political leaders alike.

Mark Pastin, in 'The Hard Problems of Management: Gaining the Ethics Edge' (J. Bass, 1986), provides the following four principles for highly ethical organisations:

1. They are at ease interacting with diverse internal and external stakeholder groups. The ground rules of these organisations make the needs of these stakeholder groups part of the organisations' own good.
2. They are obsessed with fairness. Their ground rules emphasise that the other person's interests count as much as their own.
3. Responsibility is individual rather than collective, with individuals assuming personal responsibility for the actions of the organisation. These organisations' ground rules mandate that individuals are responsible to themselves.
4. They see their activities in terms of purpose. This purpose is a way of operating that members of the organisation highly value. And purpose ties the organisation to its environment.

Doug Wallace asserts the following characteristics of a high integrity organisation:

1. There exists a clear vision and picture of integrity throughout the organisation.
2. The vision is owned and embodied by top management, over time.
3. The reward system is aligned with the vision of integrity.
4. Policies and practices of the organisation are aligned with the vision; no mixed messages.
5. It is understood that every significant management decision has ethical value dimensions.

6. Everyone is expected to work through stakeholder value perspectives

Based on these principles and characteristics, it is possible to identify the key roles and responsibilities in ethics management. As Carter McNamara underlined, depending on the size of the organisation, certain roles may prove useful in managing ethics in the workplace. These can be full-time roles or part-time functions assumed by someone already in the organisation. Small public organisations certainly will not have the resources to implement each of the following roles using different people in the organisation.

However, the following functions points out responsibilities that should be included somewhere in the organisation by enriching the job descriptions.

1. **The organisation's executive public officials must fully support the programme.**
   If the executive public officers are not fully behind the programme, civil servants will certainly notice — and this apparent hypocrisy may cause such cynicism that the organisation may be worse off than if it had no formal ethics programme at all. Therefore, the executive public officials should announce the programme, and champion its development and implementation. Most important, they should consistently aspire to lead in an ethical manner. If a mistake is made, admit it.
2. **Consider establishing an ethics committee at the board level.**
   The committee would be charged to oversee the development and operation of the ethics management programme.
3. **Consider establishing an ethics management committee.**
   It would be charged with implementing and administrating an ethics management programme, including administrating and training about policies and procedures, and resolving ethical dilemmas. The committee should be comprised of senior public officers.
4. **Consider assigning/developing an ethics public officer.**
   This role is becoming more common, particularly in larger and more progressive organisations. The ethics officer is usually trained about matters of ethics in the workplace, particularly about resolving ethical dilemmas.
5. **Consider establishing an ombudsperson.**
   The ombudsperson is responsible for helping to coordinate the development of the policies and procedures to institutionalise moral values in the workplace. This position usually is directly responsible for resolving ethical dilemmas by interpreting policies and procedures.
6. **Note that one person must ultimately be responsible for managing the ethics management programme.**

Another important aspect related with ethics in public organisations is **ethical dilemma.** Organisations should develop and document a procedure for dealing with ethical dilemmas as they arise. Ideally, ethical dilemmas should be resolved by a group within the organisation, e.g. an ethics committee comprised of top leaders/managers and/or members of the board. Consider having staff members on the committee, as well. There are three methods which can be used to address ethical dilemmas: ethical checklist, a ten-step method and a list of key questions.

Laura L. Nash (adapted from: Nash, L. (1981). 'Ethics without the Sermon'. Harvard Business Review, (59)) poses 12 questions to help managers address ethical dilemmas.

1. Have you defined the problem accurately?
2. How would you define the problem if you stood on the other side of the fence?
3. How did this situation occur in the first place?
4. To whom and to what do you give your loyalty as a person and as a member of the corporation?
5. What is your intention in making this decision?
6. How does this intention compare with the probable results?
7. Whom could your decision or action injure?
8. Can you discuss the problem with the affected parties before you make your decision?
9. Are you confident that your position will be as valid over a long period of time as it seems now?
10. Could you disclose without qualms your decisions or actions to your boss, your CEO, the board of directors, your family and society as a whole?
11. What is the symbolic potential of your action if understood?
12. Under what conditions would you allow exceptions to your stand?

The ethics programme is essentially useless unless all staff members are trained about what it is, how it works and their roles in it. The nature of the system may invite suspicion if not handled openly and honestly. In addition, no matter how fair and up-to-date a set of policies is, the legal system will often interpret employee behaviour (rather than written policies) as de facto policy. Therefore, all staff must be aware of and act in full accordance with policies and procedures (this is true, whether policies and procedures are for ethics programmes or personnel management). This full accordance requires training about policies and procedures.

Another important perspective is the **decision making process**. As John Boyd mentioned, there are more detailed models which are particularly useful for complex decisions involving a number of stakeholders and with significant ethics issues involved. The main stages to be followed are:

- Describe the situation. Establish the facts of the matter.

- Define the ethical issue
- Assess the ethical obligations and other factors that relate to the issue
- List options and consequences. Weigh them up. Decide on the most appropriate option that is ethically defensible and in the public interest
- Act and implement the decision
- Reflect

Introducing the idea about ethical decision-making principles and processes is a critical first step before training and reinforcement 'ethics regimes' become relevant. In the 1980s and early 1990's it would not have been thought about in most organisations. Where there is an initiative to start, it may be driven by a range of factors from fear of the consequences of non-compliance with legislative provisions through to a visionary desire to develop the ethical culture of an organisation. Just like any organisation change project, the introduction of a new idea or process can be seen as threatening by some.

As one of the member states in E.U. since 2004, Estonia had difficulties with the implementation of the Code of Ethics in organisations. On the other hand The Estonian Public Service Code of Ethics was put forward as a collection of values which express the public service ethos. As a theoretical source, the PS Code of Ethics contains all important (core) values which are declared by the international community. The Code recognises the basic public sector values, which are commonly accepted in most European countries (P. Saarniit, R. Palidauskaite 2005). As Saarniit pointed out, "Comparison of its contents to the value cluster in the OECD report (2000) shows great similarities to the most important values of public service in the member states of the Organisation for Economic Co-operation and Development" (P. Saarniit, 2005). A similar set of values was also launched by the European Union and other democratic countries (EU 2004, Finland 2000). The practical recommendations of the EU and the OECD for the implementation of ethics and integrity into PS seem to be based on the assumption that the public services of the member states are relatively similar as regards their value attitudes. While the norms and values required by the European Code of Good Administrative Behaviour or in EU and OECD documents are recognised in new member states, there was a question as to whether and to what extent these values are recognised among public servants in Estonia, especially when there is a high level of mobility between public and private. As was previously mentioned in this paper, Estonian people have an interest in some old values, such as honesty, competency and lawfulness instead of independency, collegiality and efficiency. In spite of the fact that there are no well-developed mechanisms for avoiding unethical actions in the Estonian PS, many organisations and institutions have their own practices for dealing with these issues. At the same time, awareness of these mechanisms is quite low. In the survey, we simply asked about knowledge of the codes of ethics. At the same time, organisations may have

core values, inner norms and other regulative documents. On the one hand, questioning about codes reveals an awareness of the Estonian PS code of ethics, mentioned in the oath that every public servant should sign when taking up his/her position. On the other hand, this shows the general situation in creating organisational regulative mechanisms in the sphere of ethics. Codes of conduct with professional socialisation are seen as one of four parts of ethics infrastructure (OECD 1996, 28). These elements can also be developed within an organisation, even if the central coordination bodies in PSE are relatively weak (A. Pevkur, 2006).

Conclusion

An ethics climate encourages employees to internalise ethical values and standards to such an extent that it becomes a way of life for the organisation. For this to occur, ethical principles and values need to become a part of everyday life for employees – something that they know very well and are so fully committed to that they no longer have to think about it – 'it's the way we do things around here'. There are many ideas and possibilities for attempting to create an 'ethical organisational climate' and these are different from one country to another. Implementing an overall strategy which addresses identifying ethics risks and which provides for reporting and protection policies makes a good start to developing an ethics regime, as it can identify problem areas and address ethical difficulties in a systematic way and provide greater potential for internalising ethical values. Awareness programmes can assist in this internalisation by keeping ethics at the forefront of employees' consciousness on a consistent basis.

Chapter 13
Ethical Relationships

A. Androniceanu

Introduction

An **ethical relationship**, in most theories of ethics that employ the term, is a basic and trustworthy relationship that one has with another human being, which cannot necessarily be characterised in terms of any abstraction other than trust and common protection of each other. Honesty is very often a major focus. As contrasted to theories of ethics that derive from social dispute resolution, or the meta-ethics as defined in Western moral philosophy, ethical traditions emphasising abstract moral codes expressed in some languages with some judgmental hierarchy, ethical relationship theories tend to emphasise human development.

The major roles of the ethical relationships

Ethical relationships have appeared between people and institutions and have become part of their active life. The nature of ethical relationships is very much influenced by many factors and variables. Some of the most relevant elements are considered in this chapter in order to set up this very important, but not sufficiently known, concept related to ethics in public organisations.

In describing expected public service values, Andrew Podger (2003), has used words such as "impartial, professional, ethical, accountable, fair, effective, diligence, courteous, honest, integrity, and compliance with the law". Well, there is much to think about here, especially when you and your staff have probably had to come up with descriptions for each of those words, and probably others as well. But, when we look at that list we can pretty much divide it into the two supporting aspects of trust: rational and relational. People will evaluate the rational aspect or technical competence (whether we are impartial, accountable, effective, diligent, legally correct and so on) and they will evaluate the relational aspect or whether we have met our moral obligations (are we honest, fair, ethical, courteous?).

What did Andrew Podger mean when he said governance had to be made more 'moral'? If we look back, we can see the idea of trust as relational and a moral orientation in Aristotle's ethics work when he spoke of 'goodwill'. Aristotle linked the idea of goodwill to justice. "When a person has been the recipient of a good deed, he gives his goodwill in return for what he has received, and in doing so he does what is just. But if someone wishes to do good to another in the hope of gaining advancement through him, he does not seem to have goodwill for that person, but rather for himself …" [Aristotle, 1962]. Aristotle's idea of goodwill is not one of calculation or self-interest, but of a positive feeling towards the other, which reinforces a moral orientation. To behave in such a way, without the expectation of material gain, is ethical or just. This applies not only to our dealings with clients but also in our dealings with staff. Similarly, Kant believed that the "the morality of an action is not determined by its consequences, only by the intentions behind it" (R. Warburton, 1998). "Goodwill is good in itself, not because of anything else that it gives rise to" (Warburton, 1998). We can see here what is meant by moral or ethical. We are talking about the different intentions behind a future action – thinking about what we can do for the other, in contrast with thinking about what we'll get out of it.

All of these are based on trust. Trust is multidimensional – that is, it has both rational and relational aspects. Importantly, the basis of trust in government and its organisations is relational, that is, people feel a social connection or bond. Certainly as people interact with those they know less well, they rely on the evaluation of rational factors. However, the relational or moral aspect of trust remains strong, so strong that even when people feel powerless, in the sense that they feel they have no say in what's going on and that nobody listens to them, and they perceive there is corruption in politics, the relational aspect of trust in government and its institutions is only weakened, not destroyed, and remains intact.

Why is trust so fundamental for ethical relationships? Because, as public managers, we are key to the development of relational trust and ethical relationships – not only in the relationships the department has with the community, but in developing and maintaining relational trust in our colleagues. Trust is built through our relationships with those close to us. It begins in the family then is reinforced by other close associations. So the workplace is a very important generator of trust in and ethical relationships with those we don't know. If there is not a caring, supportive relationship in the workplace, people will learn not to trust and the dynamic in the workplace will be one of suspicion and distrust. Similarly, if a newcomer observes that the department or the team does not trust other organisations or the community generally, then the newcomer is likely to take on the culture of the workplace and behave similarly.

Carol Gilligan famously championed the role of relationships generally and ethical relationships based on trust, particularly as central to moral reasoning, and

superior as a basis for understanding human choices than any prior linguistic or meta-ethical concept (see ethic of care). Lawrence Kohlberg, her colleague, famous for his work on moral development as a part of human development, had reservations, but eventually joined her in starting a descriptive ethics of relationship conduct in what they called the ethical community or just community: This was in effect a community of practice which, at least in Kohlberg's conception, had a core epistemic community of those trusted to define and resolve the disputes between members, and to facilitate the growth of moral development: not only in children, but prisoners and others. Their democratic educational interventions are still the standard against which all work in ethical relationships psychology is measured.

Conclusion

The complexity of ethical relationships becomes higher and needs much more attention from the organisational psychologists' part and also from public officials. They have to work together to discover which are the most relevant variables with a clear impact on the content of ethical relationships and what kind of approach is appropriate for being effective from the perspective of human resources and also from the perspective of the public interest.

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SECTION II

Public Awareness

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Chapter 1
Public Policy and Awareness

M. Rękawek-Pachwicewicz

Introduction

It is reasonable to reflect upon the entire meaning of 'public policy', while discussing issues related to the creation of public policy, connected to the elimination of unethical behaviour in administration, as well as promoting ethical behaviour. The definition, rising from the doctrine, states that public policy is always related to the government's activities and its intentions (C. E. Ochran, 1999). Public policy is a result of a fight within the government – who receives what (T. R. Dye, 1992)? Public policy is the choice of a government about what to do or not to do (Charles L. Ochran and Eloise F. Malone, 1995). Or, finally, public policy is the sum of a government's activities (direct actions or via agencies) influencing the life of citizens (B. G. Peters, 1999). This chapter will discuss the connection between public policy and awareness in the field of public integrity.

Public policy main features

Public Policy is changing all the time, but public needs are also changing. Similar changes relate to the awareness and expectations of the society benefiting from public services. Beneficiaries of public services do not want to be treated as importunate applicants, playing a secondary role in relation to the officer, but on the contrary, wishes to be treated as a client, aware of his rights, and demanding a solid, professional and prompt reaction from the public officer/civil servant. However, it should be underlined that this is a constant natural process, which should not be artificially prompted or forced. A good example to illustrate this opinion are the changes in the American public administration which on one hand show that they are not only unavoidable, but necessary, and on the other hand that they are as positive as they are mild and fluent. Changes do not have to be reduced to two extreme positions, liberal and conservative, but the best and most effective is the third example, indi-

rect action. This solution refers to the idea of public management, in that authority should be transformed into an organisation which is able to act, as well as manage, a public enterprise. This trend is known as New Public Management, where the basic values are expressed by the three E's – Effectiveness, Efficiency and Economy (M. Rękawek-Pachwicewicz, 2008). First of all, the basic mechanisms which help to introduce new values into public life in every country are free choice and public awareness. Free choice is possible in a friendly environment created by public authorities which offer a range of institutions involved with service to the public with some necessary goods. These institutions should act independently on a competition basis and they should be flexible in their methods and conditions of service. However, only an aware and creative citizen is able to use the mechanism of free 'public market' to choose the best. Only aware and brave citizens can influence the quality of the public service, demanding innovative and efficient methods. Public administration rules in this context are to apply general and systemic solutions to guide the public sector and to eliminate the obstacles. One of the main problems of modern countries is corruption and every government has to deal with it to avoid the disintegration of the social structure. Taking into account one of the above mentioned definitions of "public administration" we should look at what governments do to fight this negative phenomena.

Doubtless, modern countries deal with the creation of an anti-corruption policy. Moreover, it would appear that government is the best entity to organise a specific ethic infrastructure in public administration. This relates mainly to the creation of procedures preventing *clientelism*, *nepotism* or *bribery* in public institutions. The procedures mentioned above cover inter alia approval of ethical codes, regulations of institutions' functioning, with prescriptions allowing the execution of rules. The introduction of objective methods of employee recruitment, hiring so-called ethical officers, who are advisers to civil servants in danger of corruption, and the use of new technologies. Promotion of entire behaviours may also be treated as anti-corruption policies in the light of public awareness. The procedure of safe information on ethical misuse and corruption known as *whistleblowing* could be an example. The introduction of procedures should be accompanied by activities pro-shaping the appropriate behaviour against informing practices. The objective of such activities would be to eliminate "the stamp of a denunciator" from people revealing corruption situations. Corruption itself, as a pathological phenomenon, shall remain the same, not by its prevention and revelation of gross, corrupt actions of civil servants, bosses or representatives of government. For example, in Mexico, the President decided to reward citizens who denounce the most absurd bureaucratic procedure that they have faced, and who propose the best solutions to cut red tape and bribery.

However, we must remember that similarly, as with the creation of other public policies, in the case of an anti-corruption policy, other actors will be involved (not only the governing cabinet, central administration or international

organisations, but also Community administration, local government at the regional and local level, NGOs, entrepreneurs, etc). In order to have an effective anti-corruption policy that is able to intercept the creation of ethical behaviour, it is necessary to involve different opinion-makers, such as social organisations, the media and citizens.

Also, methods of public policy creation have changed and in many modern administrations they are a reminder of the strategic planning used in commercial enterprises, where efficiency, quality, minimising the costs and maximising the effects is important. Utilisation of New Technologies, such as instruments enhancing the efficiency of policy is crucial. A good example is *eGovernment* – electronic administration. The introduction of administrative services online, besides simplifying administration activities, also has an anti-corruption dimension, by avoiding direct contact civil servants with a client, which in a traditional administration, may lead to corrupt behaviour. *EGovernment* is successfully used around the world as a means of corruption prevention in public life. The electronic system used in Seoul – the capital city of South Korea – may be used as a model. The Korean system OPEN (*Online Procedures Enhancement for Civil Applications*) is seen as an example of the utilisation of modern procedures in order to ensure higher transparency of the administration.

Social awareness

To engage citizens and their social awareness are the main factors of an anti-corruption policy and without them, any effort to live honestly would not have positive effects. Increasing public awareness is possible, thanks to political, organisational, legal and educational instruments, which together, create a global space for ethical tools. By using this possibility, society takes an active part in anti-corruption policy. Without a doubt, essentially thanks to the ability to conclude international contracts, where a nationwide referendum plays a crucial rule, social consciousness increases because the citizen is conscious of his part in the decision-making process. Alexis de Tocqueville discovered the contributions to American democracy which are the universality and activity of citizens waiting to realise a common mission, and they 'wait for the government to subordinate to high standards, and they are happy to subordinate dispositions they impose on themselves' (J. Pope, 1999). Parliament, in its resolutions, encourages other bodies: European (EU) and national bodies to support and strengthen information and communication actions aimed at an effective increase of public consciousness, both in Member States and Accession Countries[1].

1 EP Resolution of 13 May 2008 on matter of common policy on co-operation for the benefits of new Member States (2007/2140 (INI)).

Average citizens often regard corruption as a matter concerning only politicians and the private sector, but usually they fall victim to this. Delegation of competence by central bodies to the lower level (*deconcentration*), or such organisations of administration, which allows fulfilling tasks by bodies at the local level (decentralisation), allows citizens to take part in the political decision–making process, which goes on to making laws. However, it is not easy to act for an individual citizen in this process because awareness of his rights, especially in the field of law making, is often really low. Therefore citizens should act collectively because the more citizens work out public affairs together, the higher and more effective collective awareness is. That is why, within social inter-sectorial relations, it is so important to involve citizens in the realisation of public tasks. One of the most reasonable methods to implement this idea is close co-operation between the public sector and so-called third sector, consisting of non-government organisations. Special attention should be paid to the partnership rule in their relations. The public sector cannot treat members or supporters of non-government organisations as intruders, those who are in a lower position with no power to introduce ideas to counteract important social problems. Without a doubt this opinion also refers to participation of the third sector in the creation of an anti–corruption policy. Why does it seem to be so important? The clue of a modern, democratic state is the idea of public interest. Of course there are many interpretations given academics, lawyers or jurisprudence through the spoken and the written word. However, it seems that the best method to define it rationally is to use in this context, the so-called rational, popular view of the average citizen. It is also presented in the definition that public interest is a result of any individual's choice if the individual can see clearly, think rationally and act unselfishly and charitably (J. G. Kazman i S. J. Bocznej, 1999). This definition expresses the subjective character of the 'public interest idea, therefore it may be perceived differently in everyday life. This situation imposes high requirements on people who apply the law and create public policy. Therefore government should ask the average citizen what corruption is and what its reasons and results means for him. Only reliable research aimed at public awareness of this phenomenon may create the basis for a real and credible anti-corruption strategy. However, because of the danger of so-called asymmetry of information between government and citizens (resulting from the incomprehension or subjective attitude of the average citizen) this research should be filtered by independent, professional organisations and placed amongst them. In British literature one finds that there exists a similar term to "public interest" – "public good". Public good is characterised as "public or collective goods, which generate positive utilities or benefits to those using them" (D. Farnham, S. Horton, 1996). So-called goods are normally available to anyone wishing to use them and have two main features – *non-rival consumption* and *non-exclusive good.* N*on-rival consumption* means that normally, when one individual uses public good, this does not reduce its availability to others. The second feature *non-exclusivity* means that once a public good is provided, the provider is unable

to prevent others from using or consuming it. Therefore we can say that the way of supplying goods is always a matter of public choice, because it is paid for from public money. If we accept the idea that the creation of an anti-corruption strategy influences directly supplying the public goods (e.g. to put a project out to tender) citizens should be involved in the policymaking process by the government.

The above-mentioned factors, which seem to have a positive impact on democracy and social consciousness, are often its "problems". Globalisation, inter-cultural migration, individualisation of life and decreasing the importance of the State, intensify the increase in the superficial interpretation of information. This status quo contributed to the creation of an 'innovation in democracy', institution which aims at increasing citizens' participation in the decision-making process, e.g. deliberative democracy sortition, demiarchy, consensus conferences, technological panels, citizens' juries, planning cells, which are commonly applied in Great Britain, Denmark, Germany, Switzerland, USA, Canada and Romania, Bulgaria or Hungary.

Conclusion

In summary, the ethical perspective of public service always demands from the power-holders a deep understanding of what the public interest is and what their role is in the creation of a public policy close to the average citizen. They should always use accessible and adequate tools to involve citizens in policymaking and to increase their collective awareness.

Chapter 2
'Selling' of Ethics

R. Szczepankowski

Introduction

Mutual understanding between public sector employees and citizens is crucial in the ethical management of public services. There are many techniques and tools to support or improve it. Citizenry as customers are not very interested in internal processes, hierarchies and other intra-organisational issues. However, in many cases, citizenry evaluates public servants through their attitudes towards them and public servants' conduct. It implies that the image of public administration and its employees is important to all customers. Nowadays, simultaneously to compliance-based ethical management, other aspects such as integrity-based solutions must be taken into consideration in the public sphere. This means that customers require more 'non-legal' activities, showing public administration as an organisation composed of people who are fragile, responsive and responsible towards the citizenry. 'Selling' of ethics is an approach which we are trying to develop in this paper to show another dimension of ethical management. We believe that to some extent 'non-legal' instruments are more important to streamline public administration and make it more 'citizenry-friendly'.

Understanding the 'selling' of ethics

'Selling' of ethics could be acknowledged as an element of an integrity-based ethical management method. In general, it is about promoting good and proper conduct in professional interrelations. On the contrary to compliance-based ethics management, formal structures, punishing of unethical behaviour by public servants, etc. are not so important in integrity-based ethical management (and 'selling' of ethics as well). Of course, it doesn't mean that this method of ethical management is an alternative to the second one. These two methods of ethical management are complementary to each other (J. Bartok, 2001:54). In this chapter we would like to focus

on shared values, good practices, home applied ethics vs. work applied ethics and many other components of the above mentioned integrity-based ethical management. 'Selling' of ethics relates to building public awareness through the mentioned elements. This task is very hard to fulfil because of the different variables which influence the level of mentioned awareness. For instance, culture, the history of nations, political determinants, etc. are just a few variables which are important when talking about morality and ethics. Nowadays, we must take into consideration more factors than listed above. For example, a globalised market economy determines – to some extent – the marketisation of public services and influences the standardisation of an ethical approach to public administration.

'Selling' of ethics might also be understood as purchasing a certain type of 'values' from public servants. According to this, people are consumers who receive goods on the basis of market principles. In other words, people live in a state which is comprehended as a 'big store' filled with different kinds of merchandise. To be successful in 'selling' these 'goods', public administration, state representatives, etc. must use all acceptable marketing methods to convince people that public administration is ethically managed!

First and the foremost, the issues to be explained are values seen from two perspectives: personal and professional. On one hand we have the civil servant who is supposed to be a professional expert dealing with many public tasks. The same civil servant is – on the other hand – somebody's child, life partner, parent, etc. and as such has to live in a world of non-professional values. These two worlds meet somewhere and if balance between them is reached, we may have a 'perfect' civil servant. 'Selling' of ethics begins with the definition of values and standards of professionalism.

All values are organised into value systems, in which values are ranked in terms of their relative importance (K. Kernaghan, D. Siegel, 1995:313). Additionally, there are general values and more specific (or specified) values which depend on countries, societies, etc. When talking about public administration, a certain number of values could be named: i.e. accountability, responsibility, integrity, neutrality, responsiveness, etc. It is very hard to decide which of these values are the most important. However, values are not the only determinants of ethical or unethical behaviour of civil servants. In general, the basic impulses for all actions taken by humans in every environment are emotions and feelings. Of course, there is a difference between impulse and action itself. When we take actions or make decisions we need to deliberate over an issue, or a problem to solve (P. Singer 1999; B. Skarga 2008). For instance, helping needful people emanates from our egoistic approach to life. We want to appease our conscience after overspending in a luxury store or buying a comfortable car, etc. When we see someone whose living standard is below the accepted level, or handicapped, who needs to have a new artificial limb, we feel sorry and it makes us want to help them. In the matter of professional eth-

ics, especially in the public sector, these issues could be named responsibility and accountability, and have different meanings. First, people should feel responsible for the society they live in and state, which provides the necessary means to secure their future. Citizens must be responsible for their political choices, which are important not only for economic development, but also for any other aspects of a state's functioning. It means that single citizens are accountable to the state and other citizen fellows. Taking this issue from another perspective, state, its authorities and administrative apparatus are responsible for citizenry welfare. State representatives are accountable to the citizens. The above mentioned issues of responsibility and accountability are crucial to public administration (T. L. Cooper 1998:65). There is an important relationship between these elements, which may cause a lot of interdependency between society and state. Unethical behaviour of state representatives generates resistance from citizens, which influences the success or failure of many internal reforms. In other words, to be successful in governing, authorities must be responsive to social needs. Unresponsiveness equals – in this case – unethical behaviour. For instance, the increasing number of cars in the city, lowering the quality of main roads, etc. causes very heavy traffic. This situation implies that public authorities should consider new solutions for all road users and other stakeholders (drivers, bikers, pedestrians, landowners, etc.). It means that new roads should be built or current traffic should be reorganised. Public administrators must act in a way to satisfy all parties involved in solving this problem. On one hand there should not be any resistance to new infrastructures, but public administration cannot take the line, and all arguments (against or for), must be taken into consideration. If public administrators ignore any of these factors, it may give the impression of low responsibility. How can the citizenry be convinced that public administrators are responsive, responsible and accountable?

According to Agryriades (2006) there is a discrepancy between political rhetoric and reality in the public sphere. We have to deal with political relativism which does not equate to community needs. A public administrator who is unable to see the difference between business and governance cannot be moral. 'Selling' of ethics in terms of good governance is a process which must prevent diversification of society for those who have money to pay for public service and those who are poor. Additionally, a distinction between clients' needs and community needs is undesirable (Agryriades, 2006).

The second important issue which needs to be taken into consideration here is the professionalism of public servants. This element goes with the specialisation of the work and the variety of tasks which must be fulfilled by the governing institutions. There is no doubt that public administration is serving different types of subjects acting in many spheres. 'The public manager's environment is very complex and complicated, involving multiple constituencies, responsibilities, and challenges' (D. Gueras, Ch. Garofalo, 2005:5) It means that all fields should be covered with exact coherent policies. Such programmes have to be written down and implemented

by professional and experienced administrators. Effective ethical management and policymaking is full of many more additional challenges than mentioned above (i.e. ethical dilemmas). In a professional organisation which hires professional employees, ethics could be seen as a threat, because home applied ethics do not go along with a careers office. Additionally, obedience of rules and statutes hinder task fulfilment (in the clerks' eyes). In this case, 'selling' of professional ethics is related to codes of conduct which are supposed to be present in every public organisation. Missions and any other official statements about the role and importance of particular public agencies must be commonly known. In other words, public administrators ought to know that non-legal regulations are there to help them in dealing with potential dilemmas. To be successful in introducing and implementing the instruments mentioned, every citizen or potential client has to be ethically educated. In simple terms, a win-win situation in a successful public service (from an ethical point of view) happens when both sides are aware of their rights, duties and responsibilities. To 'sell' professional ethics, two-fold actions must be taken. First, internal actors (i.e. civil servants, etc.) should be involved in setting up professional codes of ethical conduct. Public administration employees must be professionally trained specialists who have no doubts when dealing with any case. 'Codes can reduce uncertainty among public servants as to what constitutes ethical and unethical behaviour'. (K. Kernaghan, D. Siegel, 1995:361) Second, external actors (i.e. citizens, community members, etc.) should have full access to professional codes of ethical conduct which are supposed to be clearly written and transparent. Additionally, there must also be a kind of Citizen's Charter which would help in keeping an equal relationship between citizens and the public administration. Codes promote public trust and confidence in the ethical behaviour of public servants. For instance, 'taxpayers – following K. Kernaghan, D. Siegel (1995) – can be better assured that they will be treated fairly and impartially, and that public servants are less likely to use their positions for personal gain'.

There is a third core issue in the 'selling' of ethics which touches public administration directly and indirectly, and is related to legality and law obedience. However, although we think that public administration was established to implement established laws, this task may, to some extent, hinder the professional administrating of public life. According to general principles of the 'Rule of Law' public administration, as a part of executive branch of power, must act on the grounds of law and within the forms given by the law. Thanks to this principle, the rights of people are protected against domination of bureaucracy over citizenry. In addition, wherever a person lives (in one unified country) he/she may expect the same or at least similar regulations. Nevertheless, public administration could be 'cursed' with legal norms. On one hand, any reorganisation or structural improvement could not be fulfilled because of a lack of proper legal norms or even over-regulation in this matter. On the other hand, public administrators who are going to make a decision in someone's case might have too much discretionary power. Outcomes of such a

situation could be a lack of a decision because the public servant is not sure if he/she can make it or, even worse, all decisions will be positive, which means that the decision maker does not care at all about public interest. There is also a civic dimension of legality and law obedience. Over-regulated public administration is malfunctioning. Bureaucratic machinery is not able to process all incoming motions. Thus, it does not work effectively.

In spite of all the burdens brought about by over-regulation, the legality of public administration is very important in the context of 'integrity-based ethical management'. Promotion and use of declared values and standards are important. However, public administration should have specific mechanisms helping with the operationalisation of these elements. In other words, before values became part of a civil servant's formal life, they must be 'translated' into a language of norms – legal norms. Of course, this does not mean that these norms are supposed to be voted at national level. Nevertheless, without operationalisation, we would still have a list of 'pious wishes'.

'Selling' of ethical values is fulfilled through many instruments which are very helpful with the monitoring of expected and professional behaviour. These instruments – according to J. Bartok (2001) – prevent unethical actions. Integrity-based ethical management relies on transparency, conflict of interest prevention and a public administrator's responsibility. To obtain satisfactory levels of each of the components mentioned, much effort must be made to create proper working conditions. This is about the organisational culture and well-working structures which help in human resources management, development of civil servants' skills and professional knowledge. Another important element in the 'selling' of ethics is forming an advisory team structure which is responsible for solving ethical dilemmas.

Conclusion

Success in building an ethical infrastructure depends on many variables. In this case the most important element of this infrastructure is the human being with his/her feelings, emotions and morality. In spite of an analysis of very well tailored organisational structures, we should focus on values which are a mixture of personal and professional features. To achieve the most desirable effects in ethical management, such activity as the promotion of ethics, or as we have said in this paper, the 'selling' of ethics seems to be the most important.

To conclude, 'selling' of ethics is an element of integrity-based ethical management. It concerns – mainly – informal and unenforceable values which are promoted by an organisation into two directions: internal and external.

Chapter 3
Transparency

P. Sitniewski

"Where mystery begins, justice ends"

E. Burke

Introduction

The principle of transparency of public administration has already had quite a long tradition in European countries, even although there are still countries which have failed to launch any special efforts aimed at the assurance of transparency in their administrative structures. The phenomenon of *Public administration transparency* itself is a term implying many meanings, and it should not be restricted only to legal regulations. It cannot be concealed, however, that adoption of specified legal regulations in this scope is an important step to achieve the target. Thus I propose to adopt a specific conceptual scope of the phenomenon of transparent administration, which would allow defining it quite comprehensively; with one reservation, however, namely, that individual elements thereof are not always of a universal nature. What is more, there are different obstacles in various countries preventing full implementation of the rule in question.

Transparent public administration

Transparent public administration is characterised by the following features describing its structure and way of acting:

- Its actions are predictable,
- Its structures are transparent,
- It is open to properly formulated demands of media representatives,
- It guarantees the exercise of the general right to information,
- It guards information that is legally protected against third parties' access,

- It justifies its decisions with due care, in particular when applying *public imperium* (*authority*) and interfering in the rights and obligations of external subjects,
- It is based on the apolitical body of civil servants.

Predictability of administration

It is a system constructed, according to the rules, saying that recipients are informed about scheduled actions in advance. Nowadays, the Internet websites operated by administrative authorities play a significant role therein. The very fact that they exist, however, is not sufficient. It is of the utmost importance that they are updated on a regular basis, and are not just a formal fulfilment of an obligation imposed by law on administrations in some countries. If we relate this feature to legislative bodies, it means the obligation to inform the public about scheduled legal regulations and carry out extended social surveys. Even if only a few subjects take advantage of the possibility to express their opinions, the very possibility to do so is invaluable. Apparently, a natural consequence is the common acceptance of the rule *lex retro non agit* (law is not retroactive) unless it is to change the situation of citizens for the better or add new laws, instead of imposing new obligations. Only in such a situation can a democratic state, ruled by law, admit the possibility of a retroactive power of law. In Poland, for instance, there has recently been introduced the institution of the so-called public hearing, understood in the following way: anyone is admitted to express their opinion in an orderly way and at the time the law is made if this law may concern them[2]. The aim of the thus constructed institution is[3]:

1) to reduce bribery and corruption through providing a possibility of hearing arguments for as well as against,
2) to provide the legislator with arguments and opinions expressed by all parties,
3) to balance conflicting interests in order to maximise the common good.

This institution has been functioning in the USA and several EU countries for many years. On the regional level, it exists in Italy and in some German lands (*Offentliches Hearing*). The European Commission has been suggesting a wider use

2 Resolution of the Sejm of the Republic of Poland of 24. 02. 2006 on the change of the Sejm Regulation, MP of 2006 No. 15, item 194.

Act of 7. 07. 2005 on lobbying in law-making process.

The Cabinet Ordinance of 7 February 2006 on public hearing of ordinance drafts *(Journal of Laws – Dz. U. of 24 February 2006)*.

3 Resolution of the Sejm of the Republic of Poland of 24. 02. 2006 on the change of the Sejm Regulation, MP of 2006 No. 15, item 194.

Act of 7. 07. 2005 on lobbying in law-making process.

The Cabinet Ordinance of 7 February 2006 on public hearing of ordinance drafts *(Journal of Laws – Dz. U. of 24 February 2006)*.

of public hearings by the European Parliament since the White Paper of 2001 (European Governance, A White Paper). At the same time, the European Commission more frequently takes this rule into account in its own works, e.g. the Rules of Procedures for the Committees of the Regions.

Transparency of public administration structures

This feature should be considered from the beginning to the end. The beginning is understood as the stage of selecting personnel to perform public functions. The very nomination/appointment to official posts should proceed according to two principles: transparency and competitiveness. In many countries, such a proceeding is finalised by the creation of the Civil Service Corps, which is an apolitical, impartial and reliable structure in performing tasks the officials are entrusted with. It is not always necessary to launch a long-term and comprehensive reform of the administration structure to create a separate Civil Service Corps to meet these requirements. Sometimes it is sufficient to provide the possibility of the social monitoring of the process of recruitment to offices through mandatory publication of the notice of recruitment, the list of applicants and the results of the qualifying procedure for a given post on the Internet. Polish local self-government has been following such a system since 2007.

Media-friendly administration

Motto – "The freedom of speech is useless if a speech is not free".

The role of the press in making public life transparent has been enormous. The largest scandals that have been revealed, have been unveiled by journalists. If it had not been for their determination and, at the same time, journalist confidentiality strongly protected by law, many of these cases would not have been detected. It would be ideal if the media were faultless, but anything human is full of imperfection. In the distant past, when the media just began to develop, information was a rarity, whereas today, it is daily bread. Unfortunately, with such an accumulation of information, we are frequently living in chaos, which misinforms rather than instructs, by its message. Mark Twain was right saying that "a lie can travel half way around the world while the truth is putting on its shoes". For the average recipient of the reality, the news they have heard becomes a fact and creates the real world because we have no time to verify its truth due to chaos. The worst scenario is the situation where the media do not leave people a place for their own judgment or opinion, replacing them not only in collecting information, but also in their independent evaluation. Only information exists but there is lack of knowledge and what is worse, the mind that should judge the knowledge is weak and shaky. Time does not allow the mind to analyse the obtained information appropriately because

another piece is already running behind, followed by another one. Nevertheless, there are many values which are worth mentioning for the freedom of the media, but only a few that could replace it.

In most countries where legal regulations such as the Freedom Information Act (FIO) are observed, the press was a strong force lobbying for the adoption of such provisions. Poland is one of them and may well be an example here. The Act on the Access to Public Information, which has been in force since 2002, is the effect of endeavours articulated by different groups of journalists.

Administration assures the realisation of the general right to information

Specifically, the right to information was recognised as a human right by international laws much earlier than it was enlisted by domestic legislations of democratic countries. Such a situation is an excellent example of the influence of international law on the content of domestic legal orders in individual countries. At present, national laws are acquiring more importance, since a vast majority of countries regulated these issues through domestic regulations. In most countries which formed on open government, there are separate legal acts regulating access to public information – from Sweden, whose experience therein goes back to the 18 century (1776), to the USA, Canada, Australia, New Zealand, Norway, Holland; both France (1978) and Great Britain introduced the rule of transparency to their legislation (the Act of 2000). The American Freedom of Information Act (1966), which is recognised as a model act concerning the transparency of information and administrative files, began the process of FIO adoption by many European countries. David Banisar writes in the world report on the right to information from 2006 that a number of countries which have introduced legal regulations assuring the right to information is constantly growing, and as of today this number is over 80 (www.freedominfo.org).

With reference to the transparency of action of the European Community bodies, legal regulations guaranteeing transparency of action of the European Commission, Council and Parliament have been introduced over the past years. On 30th May, 2001 the European Parliament and Council regulation was adopted on public access to the European Parliament, Council and Commission documents[4]. This regulation specifies the subject[5] as well as the object[6] scope of the right of ac-

4 Regulation 1049/2001 – OJ L 145/43, Public access to the European Parliament, Council and Commission documents, came into force on 3rd June 2001.

5 Art. 2 item 1 of the Regulation – Any citizen of the EU, and any natural and legal person residing or having its registered office in a Member State, has a right of access to these documents. The above institutions themselves may extend access to documents.

6 The object scope includes documents which are held by these three institutions. These may be documents received, drawn up by them or simply in their possession.

cess to information, simultaneously setting forth exceptions when it is possible to refuse[7] to give access to certain information. The rules determined in this regulation are not binding national legislations of Member States as they only refer to Community institutions. Nevertheless, this is a basic document regulating the right of access to these documents. Appropriate amendments were already introduced by the European Parliament (29th November 2001), the European Commission (5th December 2001) and the Council (22nd November 2001). Moreover, the Committee of the Regions made a decision in February 2003 about the right to public access to documents in its possession[8]. The European Economic and Social Committee made an analogous decision[9]. Only these documents clearly determine who has, and according to what rules, the right to information about the content of documents held by the Community bodies.

The European Code of Good Administrative Behaviour is a document which describes public administration functioning to a wide extent, and in particular the quality of performing entrusted tasks. It was passed on 6 September, 2001 by the European Parliament, and prepared by the EU Ombudsman, Jacob Söderman. ECGAB does not have an absolute binding force because its provisions are only recommendations from a formal point of view. In Article 23, ECGAB refers to granting access to public documents. In this scope, if the official receives such a request, it should be dealt with in accordance with the rules adopted by the Institution. If an oral request cannot be complied with by the official, he or she should advise the citizen to formulate it in writing, whereas Art. 22 refers to providing access to information to parties who are directly interested in a given case. It indicates the official's proper behaviour if they appear to be unable to cope with the request, or the requested information may not be disclosed due to its confidentiality.

Summing up, it should be stated that legal regulation of the issue of access to public documents held by the EU bodies has been lingering for quite some time. It seems that the fact that appropriate regulations thereof appeared at all has been somehow forced by the negative reception of practices of making decisions by the Community bodies without wide social participation by Europe's community.

7 Two general cases of possible refusal to give access to documents have been determined. They occur when: a) disclosure of a document undermines the protection of public interest as regards public security, defence and military matters, international relations, the financial, monetary or economic policy of the Community or a Member State; b) when disclosure of a document undermines the protection of privacy and the integrity of the individual.

8 Decision OJ.L.03.160.96., 64/2003, Public access to Committee of the Regions documents, came into force on 28 June 2003.

9 Decision OJ.L.03.205.19., 2003/603, came into force on 14 August 2003.

Administration guards information protected by law

The institution with the general right to information in the form of a constitutional entry or ordinary legislation should always proceed in accordance with regulations which guard the confidentiality of specified information. The right to information cannot act in an absolute manner, and it will always oppose the rights of one individual or another, subject to keeping specified information secret. On the other hand, however, the right to information for the sake of the common good allows entering spheres which have been inaccessible to third parties so far. A good example here may be a perpetual dispute as to the limit of private life, whose trespassing is justified by public interest to realise the general right to information about public officials. Anglo-Saxon countries, in particular, profess the rule that the commencement of performing public functions justifies the request of media representatives to provide readers and TV viewers with information about public figures' private lives. The Constitution of Poland entitles everyone to the right to protect their private and family life[10]. The precise recognition of the limit of admissible interference has been deprived of judicial interpretation and developing practice therein. The Press Law in force in Poland stipulates that the information and data referring to the sphere of one's private life may not be published without the person's consent, unless they are directly connected with their public activity. It results from the above that the sphere of intimate life is subject to absolute protection and any justified publications may only refer to the information from the sphere of private life. Thus, if a journalist intends to publicise certain information about a person, he or she should fulfil three conditions: it must be a public figure, the information refers to private, not intimate life, and there is a close and direct connection between the information from private life and a public function performed by this person.

Only such an approach will allow exercising both rights: the right to information and the right to protect one's privacy, and maintain a proper balance between them without the breach of their constitutional essence.

Undertaken attempts to define the term of public information, which we may come across in different countries, constitute a part of the rule of legally protected information. One of the methods to define this term is to list one by one all the items that are public information; thus all excluded items therein are not public information. Such an approach, however, may result in legal solutions becoming outdated after some time, and the need will arise to constantly amend or reinterpret them. Another method, which we find better, is to define public information as, most of all, information about public affairs. Such an approach signifies the idea applied by the legislator, and its effect is the prevalence of transparency over confidentiality of public information. The advantage of this type of definition is the fact

10 Art. 47 of the Constitution of the Republic of Poland of 2 April 1997 stipulates: "Everyone shall have the right to legal protection of his private and family life, of his honour and good reputation and to make decisions about his personal life".

that it covers a very wide sphere of facts and information, thus shaping a general rule, according to which any information about public affairs is open. Therefore, it can be stated that we put transparency in first place, whereas any exceptions from it should be treated as deviations from the rule and be interpreted strictly, rather than extensively. On the other hand, it may be of significant importance, while deciding about disclosing some information in a given case. In case of doubt, this should always be resolved in favour of transparency and the other way round. Therefore, there is a general interpretative rule indicating prevalence of the rule of transparency as a fundamental one.

In this context, there appears the most essential finding resulting from this reasoning – **public administration does not guard public information. Public administration should guard secrets protected by law.** Following this direction, administration representatives are not their owners but only temporary holders. Their sole and basic task is to protect legally defined secrets against unauthorised access by third parties so that it is not violated. Anyone who wishes to make use of the right to information does not have to prove why they wish to make use of the right they are entitled to. It is the duty of the administration body to analyse such a request with regard to possible statutory regulations banning access to specified data. To sum up, having such a broad definition of public information, it is absolutely groundless to demand the applicant to justify in any particular way their request or to prove that the requested information is public in the light of this definition.

Administration thoroughly justifies its imperious decisions

Public administration activity and the scope of performed tasks still cover many spheres where undertaken actions are imperious in nature. It is essential to establish procedural guarantees which would alleviate a newly formulated administrative-legal relation where a citizen, as a matter of fact, does not take equal position when confronting an administrative body. Therefore, different kinds of procedures are binding in the proceedings before administration bodies, which assure the parties' active participation in the proceedings. The most important ones include: the rule to inform parties about legal and factual circumstances that could influence their legal situation; the rule of active participation of the parties at each stage of the proceedings; the obligation of precise justification of one's decisions with regard to both legal and factual aspects; the obligation of instructing the parties about their right to submit an appeal.

Administration based on apolitical civil servants

The lack of appropriate guarantees in the above scope leads to politicisation of the body of civil servants. On the threshold of the 21 century, tendencies to politicise

public administration constituted a threat to the civil service, obliterating an attempt to retain balance between the sphere of politics and administration (L. Rouban, 2003: 310). In post-communist countries a debate on the creation of a professional civil service was resumed after 1990. The problem proved to be quite serious. So far, nominations for official posts were decided politically; substantial preparation of the candidates was very often ignored. Criticism of the administrative apparatus regarded not only post-communist officials who continued to hold their posts, but also currently governing political parties and their influence upon appointing posts in public administration (A. Górski, 2001/2002: 77). The necessity to single out apolitical posts in administration has been recognised. Therefore, it was necessary to separate political posts from those where recruitment was carried out on the content-related basis. In Poland, the National School of Public Administration, established in 1991, has become a cradle of civil service personnel, following the example of the French *École National d'Administration*. Intended changes were reflected in deliberate separation of political officials' apparatus from the professional corps. The latter were to assure continuity of public administration and become resourceful creators of public policy.

The research carried out by Roswith M. King in 2001–2002 in Poland, Estonia, the Czech Republic and Lithuania, which was based on interviews with civil service employees and politicians from these countries, indicates that both groups agree 100 % that in their countries, the civil service section is not separate from the political one. According to R. M. King, politicians paradoxically prefer the civil service to be separate from politics, explaining their opinion in two ways. The first is connected with the very essence of the civil service – its durability and professional preparation, which is so crucial to implementing policy worked out by the governing party. The second, as the author points out, provides a cynical explanation – when a governing party fills posts in the civil service with their people, taking into consideration the stability and durability of the civil service and a change of rudder of government, they would guarantee previous parties in power having their people in the civil service's ranks too. Apparently, willingness to influence a choice of personnel in the civil service is strong amongst many politicians, regardless of their political orientation.

Conclusion

All indicated elements do not need to occur together. Much depends on previous experiences in a given country. It is particularly important in post-soviet countries. In such situations, it is worth relying on already worked out models which have been functioning for many years in democratically well-developed countries.

Chapter 4
Actors Involved

M. Wenclik

Introduction

This chapter will be devoted to subjects that can be involved in creating the process of ethical policy. Taking into consideration the output of doctrine in the field of public policy, it is reasonable to show the variety and possible division of actors involved in the process of ethical policy creation. It is obvious that in modern societies it is not only government that is responsible. It is necessary to show the role of international organisations and also the role of so-called non-official subjects such as NGO-s or the media.

Actors of Ethical Policies

From the definition of public policy it transpires that the basic actor is the government. Public policy, as the authors pointed out above, is a kind of plan, with a guide serving the decision-making process or achievement of predefined results.

Subjects involved in the creation of public policy may be categorised in terms of various criteria. The first presents the internal and external entities:

a) **Internal entities** – those directly influencing the shape of a national public policy directly involved in its creation. They are the following: public administration –governmental (central) and local governmental administration, **administrative and political machinery**. If we delve deeper into the creation of policy, this group will, according to the rule of the tri-division of power, have the legislative power.

b) External subjects – those subjects that do not directly make a decision on the shape of a public policy; however, their voice may be of crucial importance in its shaping. Here we have opinion-maker centres, interests groups, as non-governmental organisations, lobbyists, professional organisations, federation of employers, political parties, media, churches and confessional associations.

The criterion of externality and internality may refer also to the division on the following subjects:

- **National – national public administration**;
- **International organisations** – EU, OECD, the Council of Europe
- **Other organisations** – UN, NATO

T. A. Birkland (2005) presents the division in relation to initiators of public policy:

a) **Official** – subjects that are legally or constitutionally responsible for a created public policy – this is the executive power, legislative power and courts,

b) **Non-official** – subjects non-responsible whose role is to present and transfer the intentions and will of represented subjects (NGOs, trade unions, political parties), including the media.

The other division presented by J. Hoos, G. Jenei, L. Vass (2005) is the following:

a) **State institutions (public)** – national (legislative power, executive power, courts, and administration at the country level), regional and local.
b) **Bureaucracy**
c) **Lobby**

Regardless of the divisions presented in the bibliography, some similarities between them can be observed.

Supranational organisations dealing with the problem of combating corruption that may be treated as actors of anti-corruption policy creation are the following: the United Nations, the Council of Europe, European Union (effects of anti-corruption activities are presented in Chapter 2), OECD, World Bank, Group of Countries Against Corruption – GRECO, that monitors the obeisance of '20 leading rules in combating corruption' and make an assessment of the implementation of regulations of Civil Convention on Corruption, as well as the Criminal Convention on Corruption, and the Recommendation of the Council of Europe related to codes of public officials' performance.

The next supranational organisation fighting for transparency in public life is OLAF – the European Anti-Fraud Office, which may independently lead a control procedure and impose financial penalties on member states if their duties are neglected.

Parliament

Parliaments in traditional political systems constitute the centre of creation of public policy. Also, in the majority of non-democratic political systems, parliaments are used to legitimise activities undertaken within the system in relation to their own citizens, as well as to the external world. Its main task is to run a political debate in

the framework of complicated legislative procedures, allowing the presentation of various points of view, mainly by initiators of legislation – i.e. government or parliamentary opposition or so-called social initiative (in this case particular influence groups concerned may play the role of initiators – representatives of NGOs, trade unions, etc.).

However, there are some imperfections in the parliamentary system and participation of parliamentarians in the creation of public policy (B. G. Peters, 1999a). Taking into account the way they are elected, as well as their external professional experience, we may say that the majority are dilettante in terms of experience in the creation of public policy and knowledge of public needs. Unfortunately, even if parliamentary commissions work over the issues of public policy, very rarely do they have at their disposal well qualified bureaucratic personnel (as in the US and Germany). There are offices servicing the commissions, but their personnel usually uses data collected and analysed by the appropriate units of public administration, and are very interested in the result of parliamentary discussions.

The following problem related to the involvement of parliamentarians in the creation of public policy is that they are often afraid of being involved in making decisions that may be unpopular with society. Parliamentarians are, in a sense, dependent on their electors, or certain lobbyists, whose interests are to represent. This is especially visible in the case of systems with a so-called binding mandate, typical of Anglo-Saxon parliaments, where parliamentarians are bound by political/election instructions and may be called off by their electors before the end of their term of office**.** Therefore, parliamentarians counting on re-election may block any involvement in types of public policy which are unpopular in a given society. That is why parliaments concentrating only on politically safe projects may have a tendency to maintain the *status quo* (T. A. Birkland, 2005).

On the other hand, a parliamentary system may guarantee that in the case of persons without public trust, suspected of being corrupt, appear in parliament or subsequently in government, and that it is very probable that they disappear from public life during the next elections.

Bureaucracy

Increasing the bureaucracy rule is the consequence of economical and political system development of modern states. An increase in bureaucracy on public policy was noticeable at the end of XIXth century and is constantly increasing. This was pointed out by Max Weber, who prepared the requirements for official apparatus.

Bureaucracy may be identified with professional, impartial and competent official apparatus which possess the required skills and competencies. The main bureaucracy task is to implement the assumptions of public policy into real life. However, as was mentioned above, this is not its only task. Bureaucracy also possesses

proper information, gathers data, prepares reports and delivers conclusions to the direct initiators of public policy e.g. representatives of government. Civil servants should be independent of politics. Taking into account the fact that the politically dependent part of the public administration apparatus changes during parliamentary elections, changes also take place as a result of political events. The important issue here is the professional stability of bureaucracy which guarantees the continuity of the realisation of public administration tasks. Within the perspective of the creation of an anti-corruption policy, bureaucracy is definitely a subject of this policy. Where public officials make decisions of a different type, especially in the sphere of permissions, licences and redistribution of public goods, they impose duties, allow and discharge liabilities or impose penalties. Administration is also a subject of this policy, especially in situations where decisional space and discretionary power is present, above all in the situations of conflicting interests of "administrative clients". To counteract corruption in public administration attention should be paid to:

a) Ethical attitude of the candidate to the public service as an employment requirement,
b) Ethical management in public organisation,
c) Regular training on ethical behaviour,
d) Preparation, popularisation and introduction of ethical codes.

The methods to assure ethical administration of public affairs are as follows:

a) Implementation of ethical procedures to management processes,
b) Identifying and eliminating organisational weaknesses which have an influence on unethical behaviour,
c) Elimination of gratuities as an insignificant expression of someone's gratitude,
d) Utilising the opinions of professional advisers on ethical behaviour,
e) Regular meetings and information exchange on ethical administration affairs amongst employees,
f) Appointment of an Officer on Employment Discipline who takes care of complaints referring to actions of co-workers,
g) Introduction of an info-line to file a complaint referring to unethical activities,
h) Verifying the property statements by competent persons,
i) Regular polls to gain the opinion of employees on the issue of ethics in their office,
j) A duty to obtain a certificate on the knowledge of employment duties,
k) Consequent sanctions for breaching public duties according to the system regulated by law,
l) A duty to obtain permission to take up any additional employment or duties,

m) Implementation of a system of rewards for proved complaints referring to unethical activities and increases in salaries.

Political posts in public administration

Some posts in public administration are connected to designation, according to the path fixed after the successful election of a political party. It concerns central administration bodies (Prime Minister and the Council of Ministers), as well as local government, both of whom were elected as a result of direct election, e.g. the Mayor, as opposed to those elected by representative organs e.g. a regional board. The executive power tasks and bureaucracy, as well as politicians, who hold administrative posts, depend on the implementation into real life of public policies. The role of politicians in this matter is also to aim at initiating these policies. The reason for this is that governors at the central, regional or local level elaborate strategies, plans or reforms, as their initiator or, on the contrary, block the initiatives of other politicians (In Kabul it is possible to buy a post, e.g. to hold the position of the Chief Commander, one must pay 100,000 dollars).

Both MPs and politicians who hold managerial public functions are the same people who, at the same time, take part in the process of the creation of the anti-corruption policy and are the addressees of this policy. Such persons benefit from privileges, thanks to the positions they hold, which may mean, e.g. free access to state secrets or the right to control prosecution agencies.

Difficulties to fight corruption in government also result from the fact that it became deeply rooted in human consciousness, originating from the antiquated tradition of the cult of power, which is the source of the conviction that persons who hold public positions cannot be treated the same as average citizens or ordinary clerks employed in the average office.

In the case of officials at the highest levels of power exists also certain difficulties resulting from the fact that the higher the position the person holds in the State, the smaller the number of those who are informed about his official competencies (J. Kurczewski, 2000). This is the reason why in some countries there are advanced attempts to shape a special model of action against persons who hold the highest positions in the State. It is proposed to impose on these people precisely described duties, which, if fulfilled systematically, would simplify the social control of the functioning of their office. A good example of this is the duty to submit a property statement, (treated as public information) by public functionaries (every year and at the beginning and at the end of the term). Rules governing the legal responsibility of such persons are also prepared and are different from the rules concerning the responsibility clerks working under different conditions. According to these rules, public officials are subject to statutory penalties imposed on them depending on the significance of their charges. Such a system of control can be observed

in the example of the common law system and similar legal systems, especially under the American jurisdiction. The international institutions established to combat fraud have already been mentioned in the paper; however, the national institutions specifically aiming at fighting this pathology are important as follows. One of the oldest institutions engaged to combat fraud is the Corrupt Practices Investigation Bureau (CPIB) established in Singapore in 1952. As an example, it should be mentioned that in Lithuania there is a Special Inquiry Service of the Lithuanian Republic – STT, which was established by the Lithuanian Republic Government on 18 February 1997. In Hong Kong, The Independent Commission against Corruption (ICAC) was established in 1974, during the period of acceptation and consent to corruption. In Tanzania, there is an organisation called Taasisi ya Kuzuia Rushwa eng. Prevention of Corruption Bureau (PCB) established in 1974, whereas in France, the Service Central de Prevention de la Corruption (SCPC) was established relatively late in comparison to the above mentioned countries, in 1993. In Poland, an institution was established in 2006, the Central Anti-corruption Bureau (CBA), and not that much younger than the Polish CBA, is the Latvian Korupcijas novēršanas un apkarošanas birojs – Corruption Prevention and Combating Bureau, established in 2003. Apart from specialised institutions, certain agencies and government institutions which held competencies to fight corruption operate at the national level. The common reason to establish them is social acceptance to corruption (often this phenomenon is also accepted by an authority) and resulting from this, a shortage of specialised institutions. There are also agencies, institutions or bodies which are not established to fight corruption *sensu stricte*, however it is an additional activity. The following are such examples: operating in the USA since 1961, the U.S. Agency for International Development (USAID); founded by John Major – Prime Minister of Great Britain – in 1994, the Committee on Standards in Public Life in response to suspicions of MPs' unethical behaviour or Kontrolli i Lartë i Shtetit (KLSH) – State Supreme Audit founded in 1997 to control finance and the economy in Albania and the Korean Anti-Corruption and Civil Rights Commission (ACRC) established in 2008.

Citizens

It is worth asking the question: Has the average citizen the possibility to influence public policy? Commonly, the following instruments make it possible for citizens to take part in the creation of public policy: free elections, possibility to use instruments of direct democracy (referendum, public consultations etc.), citizens' rights to legislative initiative, petitions to government, possibility to contact official representatives – MPs, councillors, or finally, participation in peaceful demonstrations and mass meetings (P. J. Suwaj, M. Wenclik 2009). It seems that participation in the process of the creation of public policy is often a distant problem to the average citizen. What is the reason for this conclusion? First, the analysis of election turnout,

both national (parliamentary, presidential) and local, indicates that it is very low, e.g. in 2005, in the parliamentary elections in Poland, ballot boxes were visited by only 40.5 % of citizens entitled to vote (the worst result since 1989), and is almost 6 % less than in 2001 when during the euro-election only every fifth Pole voted (M. Kula, 2005). During the presidential pre-elections in the USA in 2000 only 15 % of voters took part (T. A. Birkland, 2005).

Even worse are the statistics for the public participation of citizens in a direct democracy tool – a referendum. Out of a total of 432 local referendums which took place in Poland in 1992–2005, only 49 were formally successful, as a result of low election turnout, which was no higher than the 30 % legally entitled voters (data of State Election Committee). It can be said that taking part in elections is the best proof of citizens' mobilisation, because even less people use the right to contact their official representatives – MPs – or take part in public meetings, petitions, express legislative initiatives or engage in peaceful demonstrations and mass meetings.

It should be added that other states, e.g. during the French referendum of 25 May 2005 regarding the Treaty on the Constitution of Europe recorded a turnout of 69.9 %. On the 20 February of this year, a referendum on the same subject took place in Spain and the recorded turnout was 42 %. In Holland, on 1 June 2005, 62.8 % of voters participated. It should be stated here that turnout mostly depends on the political consciousness of citizens. It is generally said that average Pole or Belorussian is not aware of his decision-making rights in serious issues concerning the country he lives in. It also depends on the subject of the referendum, e.g. on the 16 April, 2000, in a referendum in Ukraine regarding empowering the President over Parliament's competences to combat corruption and to advance political and economical reforms, 67 % of voters took part. In Venezuela, in a referendum of 2 December, 2007, referring to a Constitution amendment, which would, inter alia, allow the President to be a candidate with no limited term, 56 % of voters took part.

What are the reasons for such low citizen engagement? Three suggestions are as follows:

a) Insensibility – we are not interested in the decision-making process,

b) Alienation – withdrawing from public affairs,

c) Moving responsibility to others as the result of a belief that others (other citizens, lobbying groups, politicians, officials) are better at arranging certain matters.

Observation of different types of citizens' activities give the basis to conclude that people are engaged in public affairs only when certain decisions made by public officials concern directly their way of life. We can mention here two situations. First, we observe the inactivity of decision-makers when there exists a need to solve an important problem e.g. decisions taken on building ring roads aimed at limiting

long-distance transport through the city centre (e.g. protest against it in Poland – inhabitants of Podlaskie Region – Augustów or Wasilków towns) (P. J. Suwaj, M. Wenclik, 2009).

The second situation regards the activities of authorities which encroach on a certain *status quo*, which is beneficial to inhabitants e.g. liquidation of schools resulting from a reform of the educational system.

Apart from the low activity of the individual citizen, his vote is very important during the process of public policy creation; this mostly concerns consulting public opinion, and creating the fundamentals, then justifying social interest in the creation of public policy.

Interest Groups / Non-Governmental Organisations (NGOs)

We also listed among intermediary bodies of public authority the so-called interest groups. Interest groups, initially regarded as non-democratic, currently are accepted as belonging to the plural system. Setting up interest groups is also connected to the insufficient representation of crucial interests by political parties. In contemporary democracies their activity does not cause any special surprise, or suspicions against the intentions of this type of policy-maker. On the contrary, in Western Europe, the view that their open presence is one of the features of civil society was presented, and the EU documents the meaning of holding 'open and structural' (institutional) dialogue with them is underlined (J. Sroka, 2003, 2006). In political and legal literature this term refers to 'pressure groups', 'institutional interest groups', 'lobbies' or 'lobbying groups' or other forms of exerting pressure on decision-making centres in the State. It should be emphasised that interest groups are mostly of an informal character (J. Sroka, 2006).

Interest groups do not aspire to conquer and maintain authority. Their aim is to exert influence on an authority centre as a way to care about their own or supported group interest (M. Clamen, 2005). However, the domination of large interest groups favours an oligarchy of public life through the popularisation of informal coalitions known as *iron triangles*. Coalitions of this type connect public administration, political parties and influential interest groups. One of the negative results of their functioning is the limitation of or even closing (monopolisation) free access to the political market by objects which are distant from the arrangements shaped this way (M. Olson, 1971, J. Sroka, 2006).

There are many ways to categorise the groups of interest. Among them, the meaning of non–profit organisations is underlined (P. Fic, M. Butora, 2005). To describe them precisely, many terms are used e.g. third sector – as a sector different from public and private – aiming at profit, *non-governmental organisations sector* (NGOs) – aiming at other values than profit, voluntary sector or charity – described by the British as the "informal sector". Relations between the public sector and the

so-called administration creating directly public policy and NGOs in general, may be double–tracked. It may shape the form of co-operation or it may cause some conflict between these sectors. Without a doubt, it is also an important actor supporting the fight against corruption, because non-government organisations represent so-called 'civic society'. "Civic society" and corruption are two contrary values, because there is no room for corruption within this society as there are no advantageous conditions to develop corruption there. The reason for this is simple – a strong and well-organised civic society does not allow corruption to destroy its standard of living and interfere with citizens' rights.

Co-operation means that NGOs analyse the grounds of social problems and identify the problems which seem to be the most serious; afterwards, they exert pressure on the government to become interested in the given areas of the problems. If the government is positive about this suggestion, it begins to implement the required programme with the help of non–government organisations to solve the problems, to find sources of financing and – at the end – asks the non–profit organisations, as well as commercial organisations, to provide the necessary services.

The scenario of the conflicting relationship between the public sector and non-profit organisations appears as the next step, following the identification of the problem by NGOs and suggesting methods to solve it. It happens that governments do not accept non-government organisations arguing that they do not have the legal right to act in solving a certain problem. Well-known non-government organisations which participate in preventing and fighting corruption are as follows: Interpol (International Criminal Police Organisation) – international police organisation established in 1923 in Vienna; Institute for Global Ethics (IGE) funded by Rushworth Kidder in 1990 in Camden in the State of Maine (USA), where its mission is to develop common fundamentals based on equal ethical standards, inter alia on justice, honesty and responsibility or Transparency International which was set up in 1993. A good example of an interesting initiative is the Publish What You Pay (PWYP) campaign, which associates over 300 NGOs. The campaign was set up to help rural developing countries, owing to the mineral resources, to manage benefits gained from this extractive industry. Crucial contributions to disclose corruption and to fight this phenomenon are made by the above mentioned Interpol (International Criminal Police Organisation). This is a network which allows a quick flow of information between national Police in the engaged countries. The other institution which plays an important role in fighting and disclosing corruption is the previously mentioned Transparency International (TI). This organisation is engaged in counteracting corruption and the introduction of different anti-corruption strategies. Both organisations are authors of reports and surveys facing corruption problems in almost every country. It is also worth mentioning the role of the Organisation for Economic Co-operation and Development (OECD) which creates and promotes international standards of ethical behaviour in the public services of member states, as well as the activity of the World Bank in this field.

Interest groups express their interest using different methods and instruments. One of them is lobbying. However, authors do not mean lobbying by the State Watch – a non-profit organisation which joins academics, lawyers and university lecturers, because this organisation invites social debate, leads journalistic enquiries concerning the state functioning, human freedom and rights, justice and home affairs.

Political parties

Political parties play a crucial role in the process of creating public policy. Even in countries deprived of political parties (e.g. Uganda), as well as in countries of monocratic systems (e.g. China), society is focused on its leader, which bears witness to opinions of a given social group (J. Pope, 1999). The main motivation of almost most of the parties is to take over power and identity with certain political views (party of right, left wing or national parties), which, as a consequence, may suggest the framework of future public policy established by the party (e.g. if it is going to put pressure on social affairs, free education or wealth care – these values are usually underlined by left-wing parties). It is obvious in the systems of the historically shaped position of two political parties, e.g. the USA, where voters are conscious that the Republican Party is more conservative about social affairs. Otherwise political parties relay voters' preferences.

Joint research centres

Their importance increases, particularly if we take into consideration the number of changes in today's world by means of technology, civilisation etc. On the other hand, the engagement of administration in the process of regulating this sphere of the human environment also arose. It often happens that the political and administrative apparatus (politicians at the top) do not attract professionals and special know-how, which is an essential element of the decision-making process or an agenda (e.g. know-how in information technology).

Independent research centres or so-called "think thanks" are competent to prepare polls, to compare statistical data or the results of analysis. Independent expert statements in a given domain are also a base supporting the solutions taken.

Mass media

To deepen the knowledge about the role of the media in fighting corruption we should remember the Watergate Scandal, as one of the examples often called upon to illustrate the meaning of the free press to bring forth a number of political scandals. So-called journalist enquiries are common in almost every country. We should mention here one of the oldest political scams which took place in 1721. It was

revealed and branded by the free press and concerned the first financial crunch connected to the South Sea Company. Isaac Newton lost millions of dollars (according to current currency) and summed up his loss: "I am able to foresee the movement of stars, but never human madness".

A common conviction that the media is one of the powers in a democratic state is obvious. The media is the source of common, broadly accessible and systematically delivered information on the issue of social and political life – also about corruption. It shapes knowledge showing some of the examples; however, it may not be giving out information about all of them. According to its quantity and character, information may shape opinions on how common corruption is or that it does not exist at all. The media, without a doubt, may influence attitudes to corruption and opinions. The media may reveal a mechanism of corruption and brand loopholes, which facilitate unethical behaviour.

It is correct to call the media the fourth power. Open access to the media or even the possibility to influence the media gives politicians the ability to create reality. That is the reason why there are so many controversies and disputes on the appointment to key posts in the public media and committees, e.g. the National Council of Radio and Television in Poland. This is also the reason why there are so many "hot" disputes on the existence of public television and its mission.

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SECTION III

Legal Framework

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Introduction

P. J. Suwaj

It has to be pointed out at the very beginning of this section, that law and legal regulations concerning public integrity are of high importance and value since they go together with other, law-additional mechanisms. However, my legal background causes legal orientation in observing and analysing public administration, I am also strongly convinced, at the same time, that law and its instruments cannot work separately. What we call 'ethics infrastructure' consists of several, different and interacting mechanisms and instruments: public policy design and goals, legal framework, organisational culture (at the macro and micro scale), level of public servants' professionalism, HRM system, system of control as well as education and training.

Countries, their parliaments and governments introduce different degrees of complex and restrictive legal systems, which cannot be compared and applied 'everywhere' in a simple way. What creates contemporary models of building public integrity is a mixture of history and cultural conditions as well as legal traditions. The important role in creating an ethics infrastructure also displays a degree of openness of society and its will to participate actively in public life. A society, which is standing back from the current problems and wishes to live in a better way but does nothing to change the situation, cannot expect that government will change the situation.

This section is about the legal solutions present in different countries, which concern prevention, detection, investigation and prosecution of malpractices in public administration.

Chapter 1

Emphasise the Connection Between Complex and Clear Legal Regulation

P. A. Borowska

Introduction

Legal acts containing anti-corruption regulations are of an international, community and national character, which indicates theirs complexity. There is a question whether with such a number of acts existing in various legislation (from acts of the Council of Europe, to national acts established e.g. by German *Bundestag*), we can still speak about the clearance of regulations.

Complexity of laws and regulations concerning malpractices

At the international level, it is possible to point out the acts established by the Council of Europe (also called the '*soft' anti – corruption acquis*, as they bind member states only when ratified (Monitoring the EU Accession Process…, 2002):

1. Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime of 8 November 1990,
2. Criminal Law Convention on Corruption of 27 January 1999, pointing out that corruption endangers: legality, democracy, human rights, honesty and justice, slows down economical development, and is dangerous for the stability of democratic institutions and the moral base of societies. The Convention defines activities to be regarded as crimes in the light of a national law,
3. Civil Law Convention on Corruption of 4 November 1999, that ensures effective measures to protest the interests and rights of persons who have been harmed as a result of corruption,
4. Recommendation of the Council of Europe – May 2002 – for member states, related to the code of rules for civil servants,

5. Resolution of the Council of Europe No (97) 24 on 20 leading rules in combating corruption, approved on 6 November 1997.

And by the United Nations:

a) Convention of the United Nations Against Corruption (8 December was established as International Day Against Corruption),
b) Resolution of the General Assembly of the United Nations on preventing of corruptive practices and illegal transfer of funds,
c) Resolution of the General Assembly of the United Nations on counteracting corruption and bribery in international transactions,
d) Resolution of the General Assembly of the United Nations on combating corruption – International Code of Civil Servants' Behaviour,

Organisation of Economical Co-operation and Development (OECD):

a) Convention on Combating Bribery of Foreign Public Officials in International Business Transactions of 17 December 1997. It obliges member states to penalise active bribery of foreign civil servants and to establish the responsibility of national legal persons for that crime.

At the Community level, it is possible to point out several documents. Speaking about sources of the Community law we shall bear in mind not only acts referring directly to corruption (direct anti – corruption acquis):

a) Treaty of the European Union, having an objective to ensure citizens of a high level of safety in the space of Freedom, and justice through prevention and combating organised crime, including corruption,
b) Convention concerning the protection of the financial interests of the Communities of 1995, defining minimum standards that shall be introduced by member states to national criminal law in order to efficiently fight against financial misuse in relation to the Community budget,
c) The first and second protocol to the Convention mentioned above, binding member states to take up activities in order to penalise active and passive bribery,
d) Convention on Combating Bribery of Public Officials in Member States of the European Union of 1997, defining the term 'civil servant' in international processes on corruption and active and passive corruption, obliging member states to introduce these definitions into their national criminal law,
e) Convention based on art. K. 3 of the Treaty of the European Union on establishing the European Police Office (Europol Convention), in Brussels on 26 July 1995,

f) Council Regulation No 259/68 of 29 February 1968, containing rules being the legal base of functioning of civil servants of the European Union. In 1990 the rules were re-named Civil Servant Statute [UE].

Rules referring to combating corruption at the national level are included in systems of sources of law of particular countries (hard law) e.g. in the Constitution, in the Criminal Code and in acts relating inter alia to: Civil Service, Administration, Access to Information. Anti-corruption prescriptions are also contained in the so-called "soft law", e.g. in ethical codes. For example, Council of Europe has given its Model.

Code of Conduct for Public Officials [Recommendation No. R (2000) 10]. The European Parliament has adopted a resolution (6. 9. 2001) approving the European Code of Good Administrative Behaviour for the European Union's institutions and bodies; OECD has published its Guidelines for Managing Conflict of Interest in the Public Service (2005), and the United Nations has published its International Code of Conduct for the Public Service.

Officials (A/RES/51/59, 12. 12. 1996). Directors General responsible for Public Administration in EU Member States, agreed on the common values included in the Ethics Framework (European Code of Ethics, 2004).

The phenomenon of corruption and malpractices in public administration are reaching many spheres of life: social, political and economical, and therefore it is crucial to create regulations simple enough to be transparent and understandable not only to legislators but also to society.

Several inter-related factors influence the complexity and clearance of legal acts. There is the so-called **ethical infrastructure,** consisting of many elements influencing the development of the ethical management of public affairs. According to the OECD definition, ethical standards creating ethical infrastructure are composed of processes, mechanisms, institutions, conditions motivating the professional behaviour and high standards or introducing regulations to limit undesirable behaviour.

Legal instruments supporting ethical infrastructure

According to the Office of Public Administration, an ethical infrastructure consists of: effective law – acts and other regulations ensuring obeying norms of behaviour; policy – politicians who are obliged to underline the significance of ethics and to be an example of proper behaviour; effective mechanisms of responsibility – administrative procedures, audit, mechanisms of control and supervision; active society supervising/controlling government activities. Therefore, a well functioning ethical infrastructure is able to support and integrate tools of promotion of high standards of behaviour existing in the public sector.

Amongst all the above mentioned elements it is possible to extract 4 groups containing organisational – legal institutions that create an ethical infrastructure:

a) Law – legally binding acts and non-legally binding ethical codes as regulations related to a desired behaviour of civil servants (the role of ethical values);
b) Agencies – offices responsible for ethical activities of public civil servants (transparent recruitment procedures);
c) Transparency – transparency of public activities (openness of information, management of public goods);
d) Responsibility of civil servants for unethical behaviour (B. Kudrycka, M. Dębicki, 2000)

Law

Countries widely define a diversity of ethical values paying attention to the national, social, political and administrative context. Not only hard law, but also codes of civil servants' behaviour and ethical codes, establish pillars of a new system of human resources management (J. Dobkowski, 2007).

In countries where the culture "*commonwealth*" (e.g. the USA) exists and where there is no codified law and administrative procedure, and the duties of civil servants are established in a few legal acts of a various legal power, the ethical codes are of great significance. In other countries, the rules relating to public officials are established in the legislation or in procedural law.

Ethical codes, as an element of ethical infrastructure, shall be of crucial significance, due to the ethical values defined. In codes there is a set of standards of desired behaviour of civil servants. It contributes, to a great extent, to a better understanding of the rule of political neutrality, impartiality, reliability and honesty by civil servants and their superiors (Kudrycka, B.; Peters, B. G.; Suwaj, P. J., 2009).

The most important ethical values in the OECD countries are: impartiality, legality, integrity, transparency, efficiency, equality, responsibility and justice. Those standards are also motivating and develop professional education and discourage unethical behaviour (B. Kudrycka, 1995). Ethical codes complement loopholes defining relations between a civil servant and a client. Very often this sphere is wider from the norms stated in the legislation or administrative procedure. The profession of civil servant, and fulfilling a public function, show a need to obey such ethical standards that do not have to be obeyed by other members of society.

Ethical codes not only increase a culture of organisation of administrative institutions, but also help in the identification of ethical dilemmas faced by civil servants fulfilling their functions.

Agencies

The special positions/institutions dealing with personal issues of civil servants (*Human Resources Director*) have been established in order to combat corruption, and cultivate an art of professional fulfilling tasks of a civil servant. They act in line with worked out administrative pragmatics, internal regulations, acts and regulations dealing with the civil service. Human resources directors subordinated to that special office manage ministries or defined areas of administrative issues such as the protection of the environment, education and social care. In Poland, the position of a director general is created in offices serving ministers, members of committees of the Council of Minister, in a Chancellery of the Prime Minister, in offices servicing the managers of central offices (e.g. director general of the Office of the Committee of the European Integration) and in *voivode* offices. In the USA that role is fulfilled by the Federal Office of Personnel Management, which replaced the Commission of Civil Service in 1978, and in France there are offices subordinated to the General Direction of Administration and Civil Service (*D.G.A.F.P.*) which is subordinated to the Prime Minister (in reality to the Minister of Administration). In Germany there is the Office for the Civil Service subordinated to the Minister of Internal Affairs, and in Great Britain there is a system of offices and referees subordinated to the Minister of Civil Service. Offices dealing with the personal affairs of the civil service tackle some problems related to daily management, instead of putting them on ministers or department directors. Additionally, in a formal way, they divide the policy from personal affairs to what influences professional management (Kudrycka, B.; Peters, B. G.; Suwaj, P. J., 2009).

One of the basic rules common for all Human Resources Management (HRM) models is that employing of people from an investment into human capital that shall be developed, effectively used in order to exploit fully its potential value (S. Horton, 2001). Therefore, the development of ethical education by means of courses, training, promotion of professionalism in the job concerned, support and implementation of recruitment and selection processes based on contests and exams are an important element of the public administration functioning.

Management of human resources of civil servants also covers the career path, transfer and change of position on the basis of the entire criteria. The offices dealing with personal issues of civil servants have a huge influence on professional performance of the job and also they have an objective to protect the professional ethics of civil servants. They are responsible for assistance to a civil servant in terms of ethical dilemmas (e.g. dilemma of responsibility, conflict of interests). A system of such offices shall be helpful in solving all dilemmas or problems that may be signalised by a civil servant if he trusts those persons dealing with personal issues and who are responsible for ethical administration.

Transparency

Access and free flow of information to society, openness and transparency of administrative procedures, rules of disposal/management of public goods, *whistle-blowing* – public revelation of information on unethical performance of civil servants, the role of interests' conflict, and presentation of property declarations by civil servants – all that shall serve an ethical administration of public affairs. Openness and participation of society in the decision process is a huge influence on the quality of legal regulations; therefore it combats corruption to a large extent. To fulfil these objectives, legislation of information freedom has been established (FOI – Freedom of Information), and thanks to them, citizens have access to official documents without the necessity to prove "a special interest" (J. Pope, 1999).

Democratic countries have already, in the 80s–90s worked out a legal basis ensuring the openness of administration activities e.g. in Australia there is the *Freedom of Information Act* from 1982, in Norway the Act on Freedom of Information, in Finland – the Act on Transparency of Official Documents. In other countries such legislation entered into force only in 2000: In Poland there is an Act on Access to Public Information of 2001, in Great Britain – the Freedom of Information Act 2000 is binding (besides the Scottish organs which are covered by the Freedom of Information (Scotland) Act 2002) and in Germany, the federal government has approved the Law on Freedom of Information, additionally *"Informationsfreiheitsgesetz"* is binding in 9 out of 16 lands.

According to the EU Regulation on public access to documents of the European Parliament, transparency 'allows citizens to participate closer in the decision-making process and guarantees that the administration is proud of a higher rightness, is more efficient and responsible to citizens in the democratic system'.

Transparency contributes to the enhancement of democracy rules and respect for basic rights defined in art. 6 of the Treaty of the European Union and in the Charter of Fundamental Rights of the European Union. A directive on the repeated utilisation of information of the public sector defines the rules of the repeated use of information of the public sector.

In order to ensure transparency of the decision-making process within the EU, the European Commission has run a voluntary register of lobbyists since 2008. The transparency of the activities of administration is not only openness of information, but also transparent rules of public finance management. So called 'proper financial management' is touching the sphere that is very sensitive to the partiality of civil servants: public procurement, job contracts in administration and the use of funds. Improvement of finances management is dealt with by the World Bank and International Financial Institutions. They not only improve the functioning of their own financial programmes but also take care of the modernisation and professionalisation of the management of finances by national governments (J. Pope, 1999).

Responsibility

Civil servants are regarded by society as an example of ethical performance and action against ethical norms could cause a decrease in the level of values. The person deciding on issues related to the performance of other persons shall ensure that his/her own performance is above reproach. The civil servant is responsible for the intentional infringement of duties, or lack of their fulfilment and violation of rules of ethical behaviour rising from the service relationship (Kudrycka, B.; Peters, B. G.; Suwaj, P. J., 2009). The responsibility of civil servants may by seen in 3 aspects: *responsibility* – responsibility in a legal sense, *answerability* – responsibility as a reaction for social needs and *accountability* – responsibility as a relation between two subjects, where one subject: person or organisation is responsible for the performance of services by the second subject (A. Pawłowska, 2008). An infringement of rules of ethics is very often related not only to inter-organisational responsibility, but also criminal (B. Kudrycka, 1998). If civil servants are proven to be infringing their duties in exchange for defined benefits, then they bear criminal responsibility (in the USA a civil servant is obliged to prove his innocence). Ethical behaviour is a challenge, not only for civil servants, but also – thanks to ethics – they serve a general interest and their behaviour is determined by the need for an equal treatment of citizens. Sanctions of criminal law do not list all the negative behaviours caused by the infringement of ethical rules of behaviour by civil servants, therefore the responsibility for them shall be sought in social, moral and administrative responsibility (service and disciplinary) (B. Kudrycka, M. Dębicki, 2000). The rule of the responsibility of civil servants in front of public opinion is of crucial importance as well. According to that rule, civil servants taking up all actions shall be aware that they may be commented on by journalists on the first page of a popular magazine – the '*Washington Post*' (B. Kudrycka, 1995). In that way, self-control is born and civil servants more thoroughly choose the directions of their performance. Civil servants shall obey not only rules drafted by the law, but also shall perform in line with rules of ethics and professional ethos.

These factors are motivating to professional performance and high standards of behaviour or introduce regulations limiting undesirable behaviour. It all serves an institutional fitness, understood as a creation, use and development of rules, mechanisms and tools of management in order to improve the functioning of units of public administration (Kudrycka, B.; Peters, B. G.; Suwaj, P. J., 2009).

Social acceptance of legal regulations connected to combat corruption is surely related to the involvement of non-governmental entities into subsequent phases of creation of complex solutions for combating corruption. The creation of legal acts is one out of many elements of the entire policy. Therefore it is crucial and important to consult created legal solutions with groups of interest and society as a whole.

Conclusion

The aim of complexity and clearness of legal regulations in the field of integrity is to create mechanisms of reliable, predictable, and at the same time effective and efficient administrative practices. Complexity and clarity of legal regulations can be achieved by involving different actors, directly or indirectly touched by these regulations. Apart from procedures, also politicians and citizens (in a scale of region, country or EU) have a positive influence on creating a legal framework for public integrity. Modern Europe is characterised by a certain paradox: UE citizens expect from politicians, that they will introduce a set of solutions for all problems. On the other hand, these citizens lose their trust in public institutions and their politicians, or have no interest in engaging in public life. This problem, observed at the national level looks much more dangerous at the EU level (White Paper on European Governance, 2001). That is why the European Union is trying to equal expectations or make citizens interested in the law, which is being created. We have as an example the European Transparency Initiative: A Framework for relations with interest representatives (Register – Code of Conduct, 2008). The Commission has created a webpage, which invites all interested parties to consult the Commission's proposal.

Does clarity means complex? Of course not. But, as we can observe, legal regulations covering smaller categories (of subjects and merit), would be more transparent and understandable to its addressee. On the other hand, too many regulations concerning the same categories of officials or the same categories of matter may lead to certain difficulties and cause confusion. The system, as a whole, should cover maximum fields that have to covered, depending on different circumstances, because as we will see in the next chapters – under-regulation does not necessarily mean that all integrity problems will be solved.

Chapter 2
Legal Principles for Public Administration Integrity

P. J. Suwaj

Introduction

Administrative law, in other words, is the legal framework within which public administration is carried out. Description and prescription of administrative law are not easily separated. For some it is a law relating to the control of governmental power. The main object is to protect the individual. Others place greater emphasis on rules, which are designed to ensure that the administration effectively performs the tasks assigned to it. Yet others answer the question 'what is administrative law?' by providing a catalogue of the institutions commonly dealt with by administrative law, and a description of the main legal principles applied to them (P. P. Craig, 1983: 1). But one of the principal objects of administrative law is common to all democratic systems: to ensure efficient, economical, and just administration. A system of administrative law that impedes or frustrates administration would clearly be bad, and so, too, would a system that results in injustice to the individual. But, to judge whether administrative law helps or hinders effective administration, or works in such a way as to deny justice to the individual, involves an examination of the ends that public administration is supposed to serve.

This is the role of administrative law which appears, not only as the instrument which organises the public administration, but also the law that regulates the exercise of the administrative powers and provides for the control of its use. Clear rules and principles of administrative law strengthen the certainty of law in this area and reduce the possibility of arbitrariness, without curtailing the necessary legal margin of discretion, which must be left to administrative authorities for the sake of fair and efficient management of public affairs (Council of Europe, 1996).

This chapter will present the most important principles within public administration supporting public integrity. The term "principle" refers to the term "rule", which means general recognition, in the law and practice, of certain principles commonly recognised.

Principles of international origins

Here we would like to present some examples of legal principles which influence public integrity:

UN Principles of Public Administration

(United Nations' Economic and Social Council (2005) "Bottom-up Approaches and Methodologies to Develop Foundations and Principles of Public Administration: The Example of Criteria-Based Organisational Assessment". Document presented to Committee of Experts on Public Administration, Fourth session, New York, 4–8 April 2005 (E/C.16/2005/3)).

In contemporary democracies, public administration is an essential tool for good governance and the achievement of the Millennium Development Goals (MDGs). According to this assumption, the Committee on Public Administration and Management for Development proposes to the Economic and Social Council of the United Nations the following principles constituting a work agenda.

Principles related to the structure of the state

1. The state will provide directly, through its statutory civil service, only the specific activities of state, i.e., the activities that involve the use of state power, or that control the state's resources.
2. Among the other activities, auxiliary activities should be distinguished from the provision of social and scientific services. The former should be competitively outsourced to business enterprises, the latter, contracted out with non-governmental organisations.

Principles related to the civil service

3. Public administration will be based on a professional and high level civil service, recruited and promoted according to merit, and trained according to the ethos of the public interest, well paid, and motivated by a variety of incentives.
4. Public officials will be committed to effectiveness of the state organisation and to the rule of law, while applying in a contemporary way, the classical principles of bureaucratic public administration; to efficiency or the reduction of cost and to the increase of the quality of public services, while managing public services according to the practices of modern public management.

Principles related to management practices

5. In a world where technological and social change is increasingly fast, public officials are supposed to be more autonomous in taking decisions, and, as a trade-off, they, as well as the agencies that they manage or to which social and scien-

tific services are outsourced, are supposed to be more accountable to the state organisation and to society.

6. Increased accountability will be achieved through the combination of classical mechanisms of administrative supervision and auditing with the more recent methods of management by results, managed competition for excellence, and the use of social accountability mechanisms.
7. Increased accountability will be additionally achieved through the adoption of a full transparency policy, which involves the extensive use of the Internet.
8. Increased effectiveness will be achieved in so far as legal institutions are well adapted to society's values and moods, and as public officials are committed to the ethos of public service.
9. Increased efficiency will be assured in so far as autonomous public officials are able to choose the means to achieve the accorded objectives, feel proud of the results attained, and are accordingly rewarded.
10. Increased efficiency will additionally be achieved by the widespread adoption of information technology.

Right to good administration (Article 41 of the Charter of Fundamental Rights of the European Union).

1. Every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions and bodies of the Union.
2. This right includes: – the right of every person to be heard, before any individual measure which would affect him or her adversely is taken; – the right of every person to have access to his or her file, while respecting the legitimate interests of confidentiality and of professional and business secrecy; – the obligation of the administration to give reasons for its decisions.
3. Every person has the right to have the Community make good any damage caused by its institutions or by its servants in the performance of their duties, in accordance with the general principles common to the laws of the Member States.
4. Every person may write to the institutions of the Union in one of the languages of the Treaties and must have an answer in the same language.

In connection with the above, only the broadest generalities can be attempted. It can be asserted that all states, irrespective of their economic and political system or of their stage of development, are seeking to achieve a high rate of economic growth and a higher average income per person. At the same time, in most contemporary states, the quality of performed tasks and high "moral" standards of public officials are key points of public policies.

The level of popular expectation is much higher than in former ages. The government is expected not only to maintain order and achieve progress but also to have a professional and "malpractice-resistant" corps of civil servants.

The growth in the functions of the state is to be found in the more-developed and in the less-developed countries; in both old and new states; in democratic, authoritarian, and totalitarian regimes; in the Communist countries of Eastern Europe and in the mixed economies of the West. The movement is far from having reached its zenith. With each addition to the functions of the state, additional powers have been acquired by the administrative organs concerned, which may be central ministries, local, provincial, or regional governments, or special agencies created for a particular purpose.

From the formal point of view, standards (principles) concerning public administration can belong either to the area of the so-called hard law, which means that their legal force is mandatory for all interested states (or one single state if they are of internal nature), or to the area of soft law, which refers to acts not having a mandatory character (Izdebski, 2006). Soft law proves to be a better instrument of regulation – and still more of self-regulations – in some fields (e.g. ethics) or in some situations (e.g. privatisation of public services). Therefore, as Izdebski points out, it may not be underestimated. On the contrary, soft law in its different forms (recommendations, resolutions, propositions) are moreover, much easier to adapt and implement, than formal standards of hard law. The above presented UN principles are an example of soft law. Also OECD standards, as well as some recommendations of the Council of Europe are of a soft law nature. Among acts of hard law, adopted within the Council of Europe, which groups 46 states, particular attention has to be paid to two documents: the European Convention on Human Rights and its five protocols (1950), and the European Charter of Local Self-Government (1985).

On 6 September 2001, the European Parliament adopted a resolution approving a Code of Good Administrative Behaviour which European Union institutions and bodies, their administrations and their officials should respect in their relations with the public.

Roy Perry first proposed the idea of a Code in 1998. The European Ombudsman drafted the text, following an own-initiative inquiry and presented it to the European Parliament as a special report. The Parliament's resolution on the Code is based on the Ombudsman's proposal, with some changes introduced by Perry as *rapporteur* for the Committee on Petitions of the European Parliament. The Code takes account of the principles of European administrative law contained in the case law of the Court of Justice and also draws inspiration from national laws.

The Charter of Fundamental Rights of the European Union was proclaimed at the Nice summit in December 2000 and has now become Part II of the Treaty, establishing a Constitution for Europe. The Charter includes as fundamental rights of Union citizenship the right to good administration (art. 41) and the right to com-

plain to the European Ombudsman against maladministration by the Union's institutions and bodies (art. 43).

The Code is intended to explain in more detail what the Charter's right to good administration should mean in practice. The European Ombudsman investigates possible cases of maladministration in the activities of Union institutions and bodies, in accordance with Article 195 of the EC Treaty and the Statute of the Ombudsman (Decision of the European Parliament on the Regulations and General Conditions governing the performance of the Ombudsman's duties, OJ L 113/15, 4. 5. 1994)

The Ombudsman's definition of maladministration in his 1997 Annual Report is that "maladministration occurs when a public body fails to act in accordance with a rule or principle which is binding upon it". This definition has been approved by the European Parliament.

As we can see in the Introduction to *The European Code of Good Administrative Behaviour* (2005), when it approved the Code, the European Parliament called on the European Commission to submit a proposal for a regulation containing the Code. The view was that a regulation would emphasise the binding nature of the rules and principles contained therein and apply uniformly to all EU institutions and bodies, thereby promoting transparency and consistency. This goal could now best be achieved on the basis of a proposal from the Commission for a European law on good administration. Article III-398 of the Constitution could provide the legal basis for such a law.

It states that:

"In carrying out their missions, the Institutions, bodies and agencies of the Union shall have the support of an open, efficient and independent European administration. In compliance with the Staff Regulations and the Conditions of Employment adopted on the basis of Article III-427, European laws shall establish specific provisions to that end."

Apart from the existence of the above mentioned Code, which consists of the most important principles of administrative law, which influence public integrity, as lawfulness (art. 4), absence of discrimination (art. 5), rule of proportionality (art. 6), absence of abuse of power (art. 7), impartiality (art. 8), objectivity (art. 9), it is worthy of note that these, and other principles of administrative law and procedure, were established in the Polish Code of Administrative Procedures (1960).

A good example of principles of international dimension, concerning public administration, is a set of substantive and procedural principles, prepared by the Council of Europe (1996). Among substantive principles of administrative law there are: lawfulness, equality before the law, conformity to statutory aim, proportionality, objectivity and impartiality, protection of legitimate trust and vested rights, open-

ness. Procedural principles consist of: access to public services, right to be heard, notification, statement of reasons and indication of remedies.

Principles adopted at the national level

Almost all the constitutions of the EU Member States address the subject of the civil service, though in different ways. Exceptions to the constitutional principle are Ireland and the UK (for the reason that in the UK there is no written constitution). In most EU countries, the constitution contains references to general principles on the organisation of the public administration applicable to statutory civil service. That situation is common for Belgium, Denmark, France, Germany, Greece, Spain, Italy, Luxembourg, Austria, Portugal, Finland, Sweden, Poland and Czech Republic. Generally detailed regulations are also subject to laws and legal texts laid down by government and or/parliament. In many countries, the basic provisions are set out in 'public administration law' or 'public administration code (among others France, Germany, Poland and Spain).

All over Europe, civil servants have a special legal status due to the fact that their employer is the state or another public authority. Mostly, a civil servant is responsible for ensuring public efficiency, legal certainty, independence, impartiality, neutrality and stability, which allows us to conclude that European countries, in their principal legal regulations, take into consideration the importance of high professional standards of civil servants as well as promote integrity in public administration.

Rules and standards in the field of integrity (ethics, anti-corruption or conflict of interest) in European countries can be found in legally binding acts and provisions (constitution, laws, regulations, acts, statutes) as well as acts of internal character (administrative practices, documents such as codes of conduct, codes of ethics, etc.). But what is characteristic of all modern democracies, is that law is one of the key elements building and organising ethics infrastructure.

Conclusion

Principles for public administration are of gross importance for building public integrity. However, they do not directly influence a particular behaviour of public officials and there is no doubt that they support creating an ethical climate within public institutions, the country and society. Most principles are common for modern countries, despite a "different" location in legal order (constitution, laws or internal acts). These principles create an outline, which can be filled diversely, depending on a country, its culture, history, tradition, society, wish and will of authorities etc. In turn, filling out may depend not only on the law, but also on other instruments and mechanisms used towards setting "absolute" integrity.

Chapter 3

Legal Instruments Supporting Public Integrity Categories of Measures

P. J. Suwaj

Introduction

Legal instruments to ensure public integrity can be categorised according to their subject – depending on which group of public officials they concern, or their object – this would demonstrate different types of legal instruments. The term 'public official' is relatively broad and encompasses different categories of public officials as well as *sensu stricte* officials.

It is clear (as a significant body of research in Poland and other countries confirm)[1] that, for the average citizen, there is no distinction between a Member of Parliament, a Minister or a head of municipality (e.g. Polish *Wojt)*. It is due to the general perception that each of them "are in power" and "rule", which results in society's increased expectation in regard to the attitudes and behaviour of public officials. However, a substantial difference can be determined between the various categories of public officials. How their various functions and duties are authorised and their particular responsibilities depend on:

a) the function they perform,

b) the work under different "conditions" in regard to their organisational, institutional, political and legal status

c) how much attention the media devotes to them.

However, as presented later on, the definition of "public official" is restricted. Legal solutions in the matter of supporting public integrity in different countries

1 e.g. The research conducted by A. Kubiak for the Stefan Batory Foundation concerning the level of societal trust in public institutions: www.batory.org; or in comparison to the research conducted in Great Britain: Social Research Institute, Survey of Public Attitudes towards conduct in Public Life, London, 2006, p. 11.

will be subject to further study. In this part of the discussion, particular emphasis will be placed on the legal regulations preventing malpractices in public administration, such as corruption and particular conflicts of interest, which are not yet a subject of sufficient interest in European studies, but what is very important is that it may transform into corruption if not recognised in time. Detailing a conflict of interest will enable a better definition and description of public integrity with its realisation not simply limited to combating corruption.

Legal regulations for malpractices

During the past years, only a few studies of international and European dimension concerning the legal aspects of governmental ethics were carried out. Most European–wide comparative studies have been undertaken on public officials, but two of them have to be underlined. One is the study prepared by M. Villoria-Mendieta on Conflict of Interest Policies and Practices in Nine EU Member States, in which the author of this chapter took part (2006) and the comparative study on Regulating Conflicts of Interest for Holders of Public Office in the EU, prepared by Ch. Demmke, M. Bovens, T. Henökl, K. van Lierop, T. Moilanen, G. Pikker, A. Salminen, (2007). The study on Combating Conflict of Interest in Local Governments in the CEE Countries also has to be cited (B. Kudrycka, 2004). The further presentation will be based mostly on the above mentioned studies.

All modern democratic countries accept that effective integrity management requires an integrative policy which depends not only on the introduction of effective punitive measures, but also on guidance, prevention and management instruments for increasing awareness (Demmke et al, 2007: 42). That is why systems supporting integrity are no longer based purely on law, compliance and penalising wrongdoing. They are more oriented towards preventing malpractices from promoting ethical behaviour through guidance and orientation measures (training, codes of conduct).

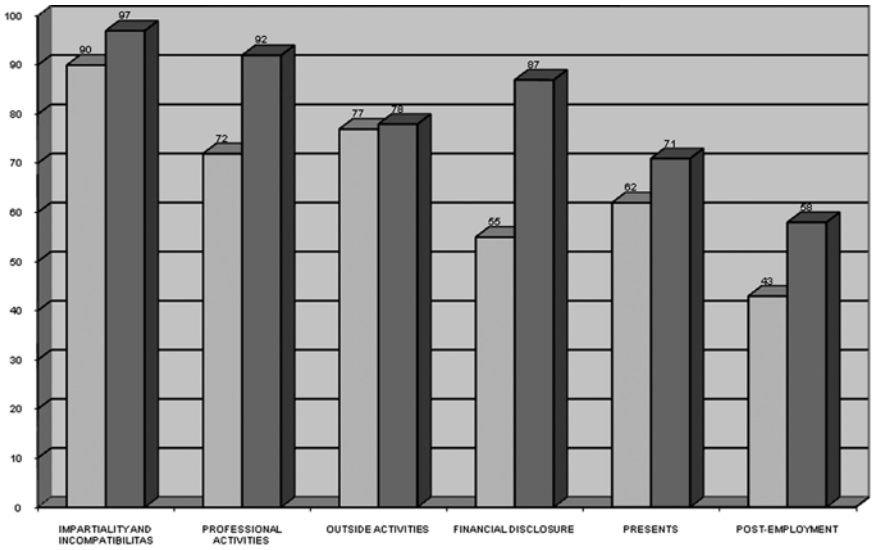
For this and not only this reason, the rigorousness of legal regulation surrounding the matter of malpractices is varied amongst European countries, both in terms of the particular categories of malpractices (e.g. conflict of interests) and between the "old" and "new" member states of the EU (Figure 6). It is no surprise that the new Member States have a higher regulation density than the old EU Member states (probable causes of that situation were presented in Section I, Chapter Conflict of Interest). While some objective categories are countered by intensive regulation, others are in direct contrast. Put broadly, the general ethical rules and obligations of public officials are almost entirely regulated and, as authors of the study point out, they are well regulated (Demmke et al, 2007; 52). Authors also suggest that there are two general principles: a **principle of impartiality** and a **principle**

of incompatible public posts (*incompatibilitas*) which are regulated at the highest level among European countries.

These principles are expressed in many "hard" legal acts as well as in acts of "soft" law. Figure 6 also illustrates a greater quantity of legal regulations in "new" member states in comparison with the "old" ones. The most noticeable difference is the more restrictive attitude to the disclosure of financial resources in newly accessioned EU Member States (87 %) than in the "old" Member States. (55 %).

Figure 6

Intensity of regulation in regard to categorised conflicts of interest

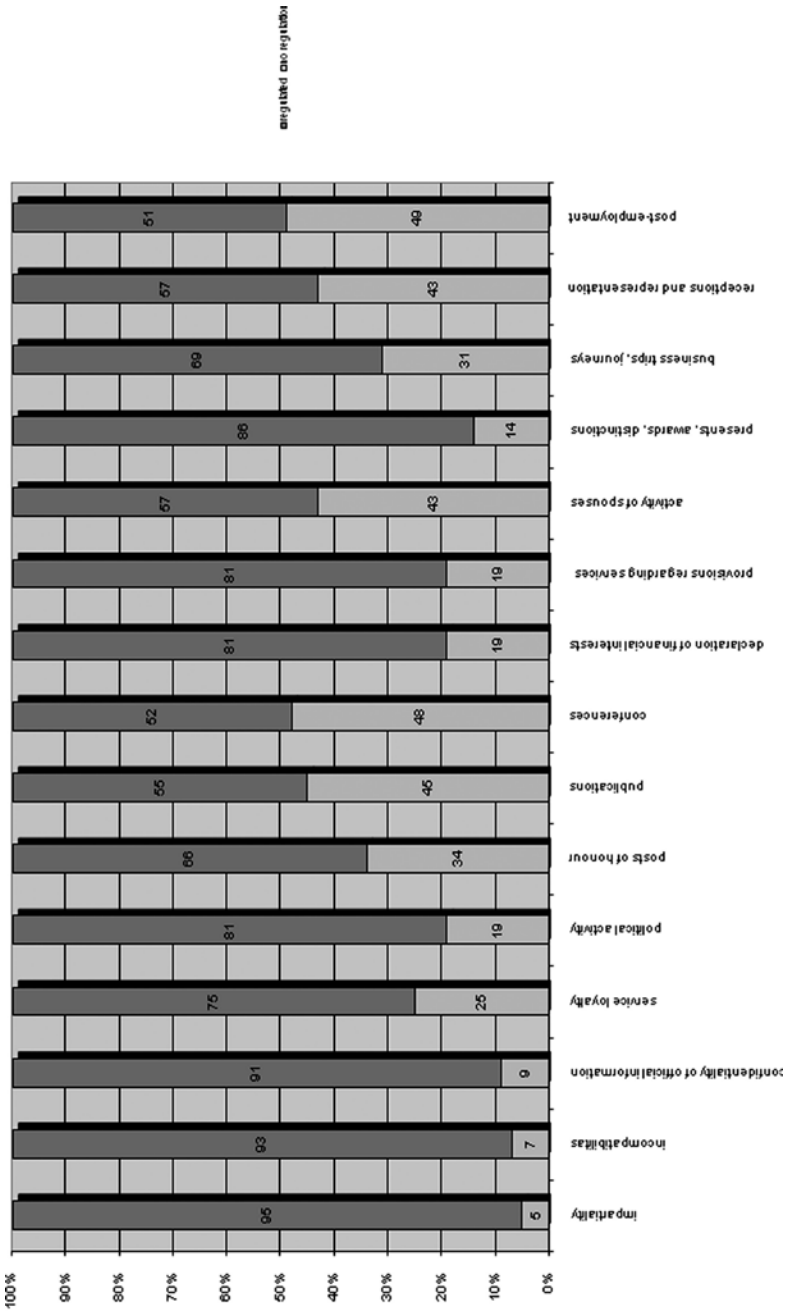


Based on: Ch. Demmke et al, 2007, p. 52

Figure 7 illustrates the regulation of conflict of interest in European countries, by conflicts of interest category.

As the comparative analysis of EU countries shows, the dominant subject in the regulation concerning malpractices is the impartiality of public officials and the rules of *incompatibilitas.* The professional activities of officials are usually limited by the confidentiality of official information (91 %) more than by service loyalty (75 %). The most frequently regulated external activity is the political activity of officials. The legal regulations concerning the disclosure of financial interests and capital, as well as the regulations concerning declarations (81 %) are often found equally amongst EU countries. However, the limitation of spouses' activity is controversial, and affects the level of regulation for this form of potential conflict of interest. The obligation to disclose financial interests and assets is a consequence of these contro-

Figure 7
Intensity of regulation for specific categories of conflicts of interest



Based on: Ch. Demmke et al, 2007, p.54

versies. However, such an obligation does not refer to the spouses of these officials. This situation is typical for Austria, Belgium, Cyprus, partially Estonia (only joint property of spouses is disclosed), France, Hungary, Luxembourg (where public officials do not have to disclose their financial resources, but the disclosure of spouses' resources is obligatory), The Netherlands, Poland, Estonia and Sweden. However, it should be stressed that some officials of EU institutions (e.g. The European Commission or The European Court of Auditors), are obliged to disclose both their own financial interests and those of their spouses. The receiving of gifts and other benefits (86 %) is frequently regulated, whereas issues related to trips (67 %) and attendance of receptions or representation are rarely subject to legal regulation.

According to the data, issues concerning post-employment are regulated less frequently. However, many of the new MS have also introduced such rules in their legal systems; nevertheless, this form of conflict of interest does not seem to be adequately recognised. Although some bans and restrictions are introduced in some countries (which aims to avoid conflicts of interest after an individual's completion of public service) they are not prevalent in most EU countries. In 49 % of the cases examined, the issues relating to post-employment are neither subject to legal regulation in statutory law, nor are they included in "soft law". Some countries have implemented restrictive provisions in the matter of transitional periods as so-called "*cooling-off periods*" for various categories of public officials; others do not provide such periods at all. France is an example of a country with a complete ban on employment in a company, enterprise, with a share of The State Treasury, as well as in banks and firms connected with the state's capital. In Poland [according to Art. 7 (1) of the 21 August 1997 Act on Limitation of Conducting Business by Persons Performing Public Functions] the enlisted officials, within the period of a year since the termination of the occupied post or function, cannot be employed nor act on behalf of a business if they participated in decision-making on individual cases concerning that business. It does not apply to administrative decisions on the level of local taxes and charges, because of separate provisions excluding decisions concerning tax relief and the exemptions therein[2]. The regulations on this matter applied in the European Union countries differ greatly from those applied in the USA or Canada.

The research on legal regulations in the scope of conflicts of interest in nine selected member states of the EU (Villoria-Mendieta, 2006: 12) shows that all of the "new" member states applied wide-ranging strategies for preventing and combating corruption (part of which is the counteraction against conflicts of interest). Among "old" member states, only Germany adopted the act on this issue at a federal level. In contrast, the United Kingdom introduced a prevention programme against conflicts of interest as a part of a major strategy for ethical standards in the public sector. It is also worth underlining that new member states of the EU principally present a preventative approach, with simultaneous use of preventive measures, e.g. Poland

2 Dz. U. 1997, No 106, item 679 with subsequent amendments.

and Latvia, whereas Hungary is an exception with only a preventative aspect to the provisions on conflicts of interest (the sanctions for the infringement of regulations concerning conflicts of interest have not been introduced there); among "old" member states only France is characterised by both approaches, whereas the remainder of the member states adopted merely a preventive approach to conflict of interests in public administration (Villoria-Mendieta, 2006).

Law in European countries is a fundamental and principal regulator of malpractices in public administration, supplemented by so-called "soft" regulations. General rules and standards (inter alia impartiality, confidentiality of official information, loyalty) are usually covered by joint regulation of law and ethics. Whereas declarations and statements of a different kind, including those concerning spouses and issues related to post-employment, are typically regulated nearly exclusively by hard rules of law.

Categories of measures

Mechanisms stimulating building and strengthening accountability of public sector and its integrity are generally put into four major categories:

1) A political system – which comprises not only of commitment and political leadership and an ethical approach, but also the avoidance of social inequality, creation of social capital and the support of citizens' trust in public authority, wealth distribution within society and a high level of democracy. A modern democratic system is integral in all the associated European countries of the EU, although to varying degrees, and is generally based on the constitutional system, which indicates the basic principles supporting the prevention and the combat against corruption, conflicts of interest, etc., such as: lawfulness, equality, proportionality, impartiality, etc.;
2) Preventative instruments, which, apart from efficient instruments in law, include also ethical codes, codes of practice, a working system of officials' liability, professional civil service, or mechanisms of professional socialisation, in the shape of ethical and democratic values;
3) Instruments of inquiry (investigation) and detection which usually include the establishment of an authority which coordinates and observes public life (a watchdog), mechanisms disclosing unethical behaviour (e.g. a whistle-blower hotline) and programmes which protect people disclosing unethical behaviour of their co-workers, effective co-operation by prosecutors, as well as sufficiently specialised judicature, inspectors, auditors, etc.;
4) Penalisation and prosecution instruments, including criminal law and its instruments, systems of disciplinary proceedings, systems of financial liability and administrative sanctions.

Conclusion

Taking into consideration the purpose of this section, as well as the general character, the instruments included in the first group will not be discussed, while the remaining three groups will be analysed. It is also worth underlining that modern legal systems are characterised by the introduction of legal instruments that are similar (and in this sense typical) and untypical (peculiar) in the meaning that they are characteristic only for one or a few systems. Hence, the deliberations included in the following parts of the book will be dedicated to the presentation of both groups of instruments: those typical for the majority of European systems or those for only some of them.

Chapter 4
Preventive Measures

A. Androniceanu, P. J. Suwaj

Introduction (P. J. Suwaj)

The obligations and limits imposed on a civil servant play a most important role in the prevention and avoidance of corruption and conflicts of interest among the legal preventative instruments:

- Restrictions on additional employment – *incompatibilitas*,
- Declarations and public disclosure of personal and family income, assets,
- Restrictions and control on receiving gifts and other forms of benefits and declarations of gifts,
- Declarations of private interest relevant to decision-making, relevant to participation in preparing or giving policy advice, or interests in management of contracts,
- Restrictions and control of post-employment in business or NGOs activities,
- Restrictions and control of external concurrent appointments (e.g. with an NGO, political organisation, or government-owned corporation),
- Security and control of access to internal information,
- Recusal and routine withdrawal of public officials from public duty when participation in a meeting or making a particular decision would place them in a position of conflict,
- Personal and family restrictions on property titles of private companies,

- Divestment, either by the sale of business interests or investments or by the establishment of a trust or blind management agreement.[3].

The justification for formulating legal restrictions aimed at minimising malpractices in public administration is accurately formulated in the resolution of the

3 An example of such a kind of regulation can be found in, for example, the Canadian legislature (trust or blind management agreement), source: http://www2.parl.gc.ca/HousePublications/Publication.aspx?DocId=2331246&Language=e&Mode=1&File=35. House of Commons of Canada, BILL C-388 An Act to regulate conflict of interest situations for ministers and to provide a code of ethics for ministers

Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

1. This Act may be cited as the Code of ethics for Ministers Act.
2. The definitions in this section apply in this Act.

"blind management agreement" means a management agreement that

(a) places the assets that are the subject of the agreement in the hands of a manager who is at arm's length from the minister;

(b) empowers the manager to exercise all the rights and privileges associated with these assets;

(c) subject to paragraph (e), provides that the manager shall not seek or obtain the advice of the minister;

(d) subject to paragraph (e), provides that the minister cannot offer or provide advice, nor participate in any discussion or decision-making processes, wherever they may arise, that may affect the assets that are subject to the agreement;

(e) provides that the minister may personally intervene in the management of the assets only where

(i) the Commissioner has been consulted, and

(ii) the Commissioner is satisfied that the intervention would not give rise to a conflict of interest;

(f) provides that the minister must make a divestment and file a statement concerning the divestment under section 10; and

(g) provides that the minister is entitled throughout the duration of the agreement to be kept informed of the basic value of the assets.

"blind trust" means a trust agreement where

(a) the assets placed in trust are registered to the trustee, unless they are placed in a Registered Retirement Savings Plan account;

(b) the trustee is at arm's length from the minister and the Commissioner is satisfied that there is an arm's length relation between the trustee and the minister;

(c) the trustee is

(i) a public trustee,

(ii) a company, such as a trust company or investment company, that is public and known to be qualified to perform the duties of a trustee, or

(iii) an individual who may perform trustee duties in the normal course of the individual's work;

(d) the minister has no power of management or control over trust assets;

(e) the assets placed in trust are listed on a schedule to the trust agreement;

(f) the term of the trust is for as long as the minister continues to hold office as minister;

(g) the trust may be terminated once the trust assets have been depleted;

(h) the trustee shall deliver the trust assets to the minister when the trust is terminated;

(i) no information is provided to the minister except information that is required by law to be filed and periodic reports on the overall value of the trust;

(j) the trustee is not authorised to communicate to the minister information relating to the composition of the trust; and

(k) the minister may receive any income earned by the trust, add or withdraw capital funds and be informed of the aggregate value of the trust assets.

Polish Constitutional Tribunal of 13 April 1994[4], which states that "citizens who perform public functions have to take into account the far-reaching limits to their rights and freedom. The purpose of these restrictions is the prevention of a public person's engagement in situations that could not only call into question his/her impartiality or honesty, but also undermine the authority of the state's constitutional bodies".

1. Restrictions in the scope of additional activities (A. Androniceanu, P. J. Suwaj)

All of the European countries examined are characterised by preventive instruments on conflict of interests – these are the restrictions concerning additional activities (called restrictions on simultaneous employment, non-conjunction of posts or *incompatibilitas*) (Villoria-Mendieta, 2006: 12). Officials and politicians in public administration [who both perform their functions as a result of elections (direct or indirect) and who are "regular" staff (civil service)] are subject to the same limitations, although in France, Germany, Poland and Spain these limitations are more severe in comparison to other European countries.

Incompatibilitas constitutes the consequence of constitutional division of powers and in this context, it is a protection against a conflict of roles rather than against malpractices analysed herein. The statement that the conflict of roles, by simultaneously performing forbidden functions, would also be a specific conflict of interest does not seem to be exaggerated. It is specific, due to the fact that the public interest (represented by the same public official) would be placed twice in a conflict situation. The separation of an executive function performed by authorised entities from legislative and judicative functions usually constitutes the justification for the introduction of the solutions prohibiting the concurrence of specified public functions. The limitations to *incompatibilitas* in specific EU countries are diverse and depend on the adopted model of separation of powers, also in a personal sphere.

Table 4

Conjunction of posts in a government with a parliamentary mandate

The principle of conjunction of parliamentary mandate with the participation in the government	Ireland, Malta, Great Britain
A possibility of conjunction of a parliamentary mandate with participation in the government	Austria, Czech Republic, Denmark, Finland, Greece, Spain, Lithuania, Latvia, Germany, Italy and with subjective limitations Poland and Hungary
A ban on conjunction of a parliamentary mandate with participation in the government	Belgium, Cyprus, Estonia, France, Holland, Luxembourg, Portugal, Slovakia, Slovenia and Sweden

Source: G. Rydlewski, 2006, p. 165.

4 W 2/94, OTK 1994 r., No. 1.

The remit of *incompatibilitas* may also aim to prevent the use of organisational, material or personnel resources of public administration offices for intra-party needs. Such limits could also constitute a form of countermoves against the misuse of the authority of public offices. In some countries (Finland, France, Spain, Germany) this is linked with a ban on politicians performing any other public function by holding political, or managerial posts; elsewhere (Great Britain) the decision depends on the Prime Minister's opinion, or the type of post (Latvia). The restrictions discussed are usually of a political character, whereas the most often applied legal instruments of that type against a conflict of interests concern civil servants. It is understandable that politicians employed in administration structures carry out political tasks. They are members of political parties at the central level, constituting a parliamentary base for the government, and take part in the workings of the party bodies (G. Rydlewski, 2006: 101). There are some common restrictions on the simultaneous holding of clerical posts with parliamentary membership in EU countries (Belgium, Finland, Greece, Holland, Luxembourg, Germany, Poland), although the phenomenon of politicisation (politisation) of the civil service in some member states (Austria, Greece, Spain, Great Britain) or moderate politicisation (*politisation moderée* – France) is identified in the literature (D. Bossaert, C. Demmke, K. Nomden, R. Polet, 2001: 34; V. Kondylis, 1994: 418). Concurrent employment in the Italian civil service with a parliamentary mandate is possible on condition that, in this case, civil servants are promoted only on the basis of a full term of service (Rydlewski, 2006: 102). In France, for example, parliamentary membership is admissible on condition that the civil servants are on leave from their work in administration; the same applies to their presence in political cabinets of Ministers. In both cases, a civil servant is guaranteed to have his/her administration post reinstated after the political activity has ceased (Rydlewski, 2006).

However, it is difficult to avoid the impression that even the strict provisions which enact numerous restrictions over concurrently held posts and functions are not an efficient barrier against the temptation for governing elites to interfere in appointments to the Polish civil service. A specific downgrading of the civil service, a reduction of medium grade posts[5] in 2006, along with the politicisation of personnel management in public administration (with the implementation of the State Human Resources Act)[6] was an alarming development loudly commented on in legal circles and also by the media. This meant, from the perspective of the former regulations and equivalent regulations enacted in European countries, that the institution had regressed. Fortunately, in 2008, the situation has changed and the

5 According to Art. 2 (1) of the 24 August 2006 Act "Civil service corps consists of employees on clerical posts: medium level of management, coordinating, individual, expert and supporting (…)", Dz. U. 2006 No. 170 item 1218 with subsequent amendments.

6 The 24 August 2006 the State Human Resources and High-Ranking State Posts Act (Dz. U. 2006 No. 170 item 1217 with subsequent amendments).

new Act on Civil Service (21 of November 2008) locates the Polish civil service in its previous – "privileged" place.

Incompatibilitas is similar to concurrent employment, which directly applies to "employment", understood as the formal relationship between an employer and an employee. There are two standpoints accepted in the literature, according to which a concurrent employment is employment solely in the form of a legal relationship, or also any additional work, irrespective of whether it is carried out under employment law or as another legal relation e.g. in accordance with the civil law.

In Polish law *incompatibilitas* is expressed not only in the Constitution in Art. 103, but also in constitutional acts[7], specific acts of administrative law[8] and service instructions (pragmatyki służbowe)[9]. Only in France and Hungary are local government officials allowed to simultaneously serve as a member of parliament Villoria-Mendieta, 2006: 12). Nonetheless, in all countries, there are limitations to private sector employment for public officials if they are permanently employed in a public post and receive remuneration for the function served[10]. However these restrictions are not absolute and certain exceptions are allowed [11].

The bans and restrictions on conducting business activities by people performing public functions, which exist under Polish law, could also be broadly identified as restrictions on concurrent employment.[12]

It is worth underlining that most European countries do not only introduce restrictions in the sphere of simultaneous employment under the employment law and relationships governed by the civil law, or the conducting of a business activity,

7 e.g. Art. 24a (1) and (2), Art. 24b (1), 24d, 24e, 24f (1) of The Act on the Commune Government of 8 March 1990 (uniform text Dz. U. 2001 No. 142 item 1590 with subsequent amendments); similar regulations are adopted in the Act on the Poviat Government (uniform text. Dz. U. 2001 No. 142 item 1592 with subsequent amendments); The Act on the Voivodeship Government (uniform text. Dz. U. 2001 No. 142 item 1590 with subsequent amendments).

8 e.g. Art. 4 of the Act on Limitation of Conducting Business by Persons Performing Public Functions of 21 August 1997 (Dz. U. 1997 No. 106 item 679 with subsequent amendments). However, in this case there are some doubts, if the act regulates any domain of public administration or rather the status of public officials. It seems to be closer to employment law rather than to administrative law (it still regulates employment relations irrespectively of their legal character).

9 e.g. Art. 49 (4), Art. 51 of the 24 August 2006 Act on Civil Service (Dz. U. No. 170 item 1218 with subsequent amendments).

10 The ban on conducting a business activity by public officials enlisted in the act, compare Art. 4 of the 21 August 1997 Act on Limitation of Conducting Business by Persons Performing Public Functions (Dz. U. 1997 No. 106 item 679 with subsequent amendments) is an example of such a solution.

11 e.g. presidents of cities in Poland can be employed in private schools.

12 e.g. the rule of law included in Art. 4 (6) of the 21 August 1997 Act on Limitation of Conducting Business by Persons Performing Public Functions (Dz. U. 1997 No. 106 item 679 with subsequent amendments) bans public officials enlisted in the act from conducting a business activity at their own expense or together with other persons, and also from managing such an activity as a representative or a proxy. The exception therein is conducting a productive activity in agriculture in the scope of floral and animal production, in the form of family farm.

but the introduced restrictions also refer to other external activities (inter alia political parties, NGOs and others). Such regulations are typical in several EU countries e.g. France, Germany, Latvia, Poland, Spain and Great Britain. For example, the Italian civil servants' Code of Conduct, enacted by a decree of the Minister for Public Administration on 28 November 2000, states that "the employee shall maintain a position of independence in order to avoid making decisions or carrying out activities related to his duties in situations of real or apparent conflicts of interest. He shall not carry out any activity that is in conflict with the correct performance of the tasks involved in his job and shall undertake actions to avoid situations and conduct that may damage the interests or image of the public administration" (art. 2.3); "The employee shall abstain from participating in decisions or activities that may involve his own interests or those of relatives or cohabitants" (art. 6.1).

The Latvian Law on Prevention of Conflict of Interest in Activities of Public Officials names offices in public, political or religious organisations, the work of a teacher, scientist, doctor or creative work as being compatible with public office (section 7). Having a second job is permitted in Estonia, but this is subject to certain restrictions, "if the enterprise does not hinder the performance of his or her functions or damage the reputation of his or her position" (article 72 of the Public Service Act) and requires obtaining the superior's prior authorisation. The Lithuanian Law on the Compatibility of Public and Private Interests in the Public Service does not address the issue of combining offices but the Law on Public Service does. Until 1 July, 2006, public servants were allowed to carry out the work of a teacher, scientist, and trainer or be a member of a municipality council. The Revised Law on Public Service does not specify another employment sphere but stresses normative requirements of the right to other employment. The office should not cause a conflict of interests, underlie misuse of office for personal benefits, damage public authority or interfere with the proper execution of the determined functions, etc. (article 16).

Political party activity by civil servants in European countries is subject to state control, although it should be stressed that such control takes place to different extents. The ban on the formation and membership of political parties is binding to all civil servants in Poland (hence the exclusion of civil service workers from the area of that regulation is inexplicable) and is also applied to a considerable extent in Ireland. The Italian constitution stipulates the curtailment of the right to political party membership for certain groups of civil servants (Rydlewski, 2006: 102). The Greek constitution, on the one hand, provides for the ban on activity supporting political parties, but membership of political parties is allowed (Bossaert et al, 2001: 35). The texts of public pronouncements and publications of civil servants in Great Britain are subject to prior authorisation by their superiors. Belgian, German, French and Portuguese regulations do not specify any restrictions of political party membership for public officials, although a requirement for moderation and

restraint from political activity is imposed in France and Germany (Bossaert et al, 2001: 35).

More liberal solutions can be found in Austria, where public officials are vested with full enjoyment of political rights, yet these rights are accompanied with additional monitoring mechanisms such as remuneration control.

Civil servants (all or particular categories) also face restrictions in the sphere of trade union membership, union activity or participation in strikes. Such solutions exist, although to a different extent, in the Czech Republic, Latvia, Spain, Germany, Poland, Slovakia and Hungary.

The restrictions and monitoring of public officials' private sector activities takes place, not only while they carry out their functions, but also after they have terminated their work. The prohibitions or restrictions referring to post-employment also aim to prevent potential conflicts of interests. For example, in Spain and Portugal, a public official who held a political post cannot accept an offer of employment (for a period of two years in Spain or three years in Portugal after the termination of his/her public service) in an enterprise, whose affairs s/he was involved in during his/her public service. On the other hand, German, Hungarian and Italian regulations do not provide such restrictions. Polish regulations, in comparison to other European regulations, are moderate as far as the level of restriction is concerned – as a rule, there is a ban (for officials holding political and clerical posts in state, government and local government administration) on employment or on the performance of other activities for the entrepreneur if they participated in reaching a decision in the individual cases concerning that entrepreneur. The performance of additional, external activities (before public service is completed or within one year after its conclusion) is allowed, in justified cases, after acceptance by a commission appointed by the Prime Minister[13]. These limitations concern members of the civil service in France, Italy and Great Britain. In Poland and Lithuania the ban lasts for a year, in Great Britain for two years, Estonia and Latvia – three years, whereas in France it is a five-year period. France possesses quite a detailed post-employment regulation concerning members of the civil service, whilst in Great Britain, officials must inform about any employment offer (including NGOs offers) received after the termination of their public service (Villoria-Mendieta, 2006: 15).

Ensuring advantageous conditions to "resist temptation" is the legal reason (*ratio legis*) for restrictions and bans (on the performing of additional activities, concurrence of functions, paid and unpaid activity) introduced into legal systems. Therefore, it seems, there is justification in trying to avoid situations where an official faces such temptations, hence the legislator found the introduction of statutory bans an appropriate way to prevent potential malpractices. The introduction of restrictions and bans in this matter aims at the creation of the best conditions to

13 Art. 7 (1) and (2) of the Act on Limitation of Conducting Business by Persons Performing Public Functions.

administer public affairs (including administrative decisions) in an objective and impartial way; the fundamental obligation of civil servants is to ensure the impartial performance of duties, which has already been stipulated in the Constitution of the Republic of Poland.[14]

The bans on undertaking simultaneous employment and other incidental activities were present in the Polish Act on State Civil Service of 17 February, 1922[15]. As B. Cudowski indicates, employment law doctrine from the 1960s also included bans and restrictions in this matter (B. Cudowski, 2007: 45). It was said that the performance of incidental activities could obstruct the appropriate fulfilment of duties: the employee's appearance on any call would be hindered; it would require a devotion of energy to the detriment of service, and would weaken trust in impartiality or could offend the dignity of the office.

The restrictions and prohibitions, both in the systems of European countries and in Poland, were introduced to protect the public interest. However, in the area of Polish resolutions, how much such protection is realised is questionable. Protection seems to be inadequate, despite a relatively large amount of restrictions in comparison to other European countries. A laconic and imprecise construction of bans, the bans and restrictions concerning the same public officials stipulated in different acts of law, the undetermined scope of the employer's entitlement (indispensable for efficient enforcement of bans) – all of these constitute obstacles in both the realisation of the bans and restrictions and the protection of public interest.

In the light of other countries' regulations, the Polish legal approaches to prevention of corruption and conflicts of interests are thought to be simultaneously the most developed and restrictive. It is important that restrictions to prevent malpractices should be clear and precise in their definition. However, there are some Polish regulations which lack this clarity and precision, which may result in some difficulties in interpretation. The Polish Act on Civil Service provides for a ban on undertaking simultaneous employment by a member of the civil service, and the ban on performing activities or tasks contradictory to statutory duties or undermining trust in the civil service. The difficulties in interpretation due to, for example, the lack of legal definition and a different legal context, are caused not only by the concept of simultaneous employment, but also by the concept of "performance of activities or tasks undermining trust in the civil service". This concept employs under-defined expressions which are general and vague in their scope, without formulating any auxiliary evaluation criteria. Hence, the judgement on whether a specific incidental activity is contrary to statutory duties or causes suspicion (defined in the provisions), should depend, each time, on the concrete, factual state of affairs and needs to be closely scrutinised by the examining authority. The inadmissibility

14 That obligation was specified in Art. 153 of the Constitution of the Republic of Poland, and then duplicated in Art. 1 of the 24 August 2006 Act on Civil Service.

15 Dz. U. 1922 No. 21 item 164 with subsequent amendments.

of undertaking activities that conflict with service duties and the non-reception of any payment for public speeches connected with the post held is also stipulated in Art. 4 of the Polish Code of Ethics in Civil Service. This provision, although serving as a directive for interpretation (useful for precisely defining the concept of "undermining trust in the civil service") does not constitute an autonomous basis for a civil servant's liability, due to the low rank of the act by which it was introduced. The compliance of this regulation with Art. 65 of the Constitution of the Republic of Poland, as well as the issue of it having any binding force at all, is doubtful due to the abolition of the 18 December, 1998, Act on Civil Service and its replacement by two new acts (2006, 2008).

The restrictions and bans on undertaking additional activities under Polish conditions are specified in numerous acts of law. However, not only their wide dispersal results in a lack of clarity for many of them, but also the fact that one group of public officials are concerned by widely dispersed bans and limitations. For example, the bans concerning members of the civil service in the prevention of conflicts of interest are placed in their service instructions as well as in the "anti-corruption" act[16]. A similar situation refers to workers of state offices, as well as local government workers. The duplication of bans, which exist in the same or similar shape[17], creates unnecessary confusion and does not stimulate the clarity of devised restrictions; *ipso facto* does not serve the protection of the public interest sufficiently.

2. Property instruments (A. Androniceanu, P. J. Suwaj)

To prevent a conflict of material interests, many European countries have devised so called "material (or property) instruments", which are diversified in their scope and stringency. They concern both politicians and officials working at all levels of administration. These regulations are the largest group of preventative instruments against malpractices in public administration.

Monitoring the material status of politicians and officials is routine in European countries. The most commonly used forms of monitoring are income declarations and property declarations. Statements on family income and family property are less popular. In some countries, public officials are obliged to declare an interest concerning the contracts they are involved in, while participating in the decision-making, settlement or voting processes, or a declaration of interest while preparing

16 A colloquial name of the Act on Limitation of Conducting Business by Persons Performing Public Functions is used therein.

17 The limitations on additional activities whilst in public service are introduced by c. f. Art. 4 of the Act on Limitation of Conducting Business by Persons Performing Public Functions, also Art. 51 of the Act on Civil Service; in the case of local government employees, apart from the "anti-corruption" act mentioned above, the bans are also stipulated in Art. 18 of the 22 March 1990 Act on Local Government Staff (uniform text. Dz. U. 2001 No. 142 item 1593 with subsequent amendments).

an expert opinion. It is important to underline that such declarations are frequently publicly available.

Declaration of private income is not obligatory in France, Germany, The Netherlands, or in the UK. However, such instruments are widely used amongst others in Italy, Poland, Spain and Latvia. Elected officials in Italy[18] and local government representatives in Poland or Spain (Villoria-Mendieta, 2006) have to declare their income. In Poland, this obligation is imposed on a broad range of public posts in local government and concerns not only members of the local council and the members of local executive bodies, but also departmental managers, and business managers who have a stake in municipal assets and administrative decision-makers.[19] However, the so called "ministerial" officials, the central offices' staff and other public officials, who are listed in the Act on Limitations of Business Activity by Persons Performing Public Functions, have not been obliged to make such declarations. In Latvia, such an obligation is additionally imposed on members of the civil service[20].

Private income declarations by an official's family are rarely used. Probably the most rigorous regulations of this kind are used by the local government authorities in Poland, and only concern the public official's spouse. In Spain, such declarations are optional and depend on the goodwill of the spouse of a public official[21].

The statements concerning an official's property are yet another preventive instrument. Such statements are not compulsory in Germany[22] and the UK. The members of the German civil service, before being appointed, have to declare their financial encumbrances (Villoria-Mendieta, 2006: 13). Taking into consideration the use of this preventative instrument, the tendency is different in 'old' and 'new' countries of the united Europe. In the 'old' member states, the obligation for members of the civil service to declare their income is actually not applied; however, it is included in the regulations of almost every 'new' country. Thus, almost all countries

18 The 5 July 1982 Italian Act No 44 on the Declaration of Financial Interests and Resources (*Disposizioni per la pubblicitá della situazione patrimoniale di titolari di cariche elettive e di cariche direttive di alcuni enti*).

19 e.g.: Art. 24h, §1.2 of the Act on Local Government and respective regulations included in the acts concerning the *poviat* government and the *voivodeship* government.

20 Chapter IV of Latvian law of 25. 04. 2002 on Preventing the Conflict of Interests in the Activities of the Public Officials, knab.gov.lv/uploads/eng/cpcb_in_brief.pdf.

21 C. f. New Code of Good Governance and the Bill of Conflict of Interest, OECD report from 2006, www.olis.oecd.org/olis/2006doc.nsf/ENGDATCORPLOOK/NT00000A5A/$FILE/JT00197213.PDF.

22 C. f. *Gesetz über die Rechtsverhältnisse der Mitglieder der Bundesregierung.*

(Bundesministergesetz – Law on the legal relationships of Members of the federal Government) 17. Juni 1953 (BGBl. I 1953, 407), www.gesetze-im-internet.de/bundesrecht/bming/gesamt.pdf, officials, knab.gov.lv/uploads/eng/cpcb_in_brief.pdf.

(except Germany and the UK) oblige the relevant officials both at national and local government level to declare their financial interests[23].

Declarations of property and resources owned by an official's close family are required by Polish local government law (originally this obligation was applicable to the official's ascendants, descendants and siblings, his/her spouse; on the grounds of the Constitutional Tribunal's judgment; such an obligation only refers to the income and resources owned by the spouse)[24]. Such an instrument is also used in Hungary. The obligation to declare financial interests is imposed on every family member who lives with a public official[25].

Restrictions to and the monitoring of gifts received and other benefits are yet another preventive instrument, and they vary in different European countries. Latvian and Lithuanian legislation try to draw the line between acceptable (diplomatic gifts) and unacceptable by estimating the value of the received gift, whereas the Estonian legislation does not allow accepting gifts which may directly or indirectly influence the impartial performance of an employee's duties of employment or service. The Latvian legislation permits accepting a gift if the value does not exceed the amount of the minimum monthly salary. The Lithuanian legislation differentiates gifts received from private persons and legal persons and, accordingly, sets different value levels for gifts received within a one-year time period. Particularly stringent regulations in this matter apply in the UK. Those people holding political posts can accept gifts only when their value does not exceed £140, whilst members of the civil service cannot accept any gifts. Similarly, in Germany and Spain, a complete ban on the acceptance of any gifts by public officials is provided in the regulations. In France, the acceptance of gifts is not forbidden with the reservation that the receipt of benefits will affect an official's bias. Restrictions of this kind are also present in Polish and Hungarian law. However, in each case, the line between a gift and a bribe is very fine, therefore it can be concluded that in every European country there is no tolerance for accepting gifts which could influence the impartiality of an official. The obligation to declare every gift by every public official is compulsory in Latvia[26]. In Poland this obligation is imposed only on applicable public officials and those who were appointed to a so-called 'political' post (e.g. a voivode, or a council treasurer).[27] In Germany, Spain and the UK, the declaration of gifts is compulsory

23 C. f. Ch. Demmke, M. Bovens, T. Henökl, K. van Lierop, T. Moilanen, G. Pikker, A. Salminen, op. cit., Annex III, p. 157 and the following pages.

24 Art. 24 h of the Local Government Act; Art. 25c of the *Poviat* Government Act, and Art. 27c of the Voivodeship Government Act.

25 C. f.1992: XXIII Act on the Legal Status of Civil Servants, Ch. Demmke, M. Bovens, T. Henökl, K. van Lierop, T. Moilanen, G. Pikker, A. Salminen, op. cit., Annex III, p. 224.

26 Chapter IV of Latvian Law from 25. 04. 2002, *on Prevention of Conflicts of Interest in Activities of Public Officials*), knab.gov.lv/uploads/eng/cpcb_in_brief.pdf.

27 Art. 12 of the Act from 21. 08. 1997 On Limiting The Commercial Activities Of The Persons Appointed To Public Offices (Dz. U. No 106, po. 679 with changes).

for those officials who hold political and government administration posts (Villoria-Mendieta, 2006: 13).

Another preventive instrument against a conflict of interest and corruption is the declaration of private interests concerning contracts. Such statements are required mainly in the 'old' member states, e.g. in Portugal. The public officials have to declare any private interests from a period of three years before the post has been accepted.[28] German and Spanish regulations impose this declaration on eligible officials of local government (Villoria-Mendieta, 2006: 13). In the UK, such a declaration is compulsory for all public officials every time there is a suspicion that this interest could be perceived by others as causing impartiality and prejudice (this can also serve as an instrument preventing a real conflict of interest). Public officials in the UK have to include the interests of the family and close relations. In France, Hungary, Italy and Latvia this declaration is not compulsory but it accompanies the decision-making process (Villoria-Mendieta, 2006). Similarly, in Poland, Art. 17 (2) of the Act on Public Procurement imposes the obligation to produce a written statement of any existing circumstances which justify excluding a person from the procedure of awarding public office; those circumstances have been detailed in paragraph 1 of this article[29]. In the case of the conflict of interest, or if there is an assumption that a public official would act in a partisan fashion, a private interest connected to the proceedings needs to be declared, in order to start a procedure of exclusion.[30]

The declaration concerning private interests connected with the settlement or voting procedures, as well as the statement of a private interest in the process of preparing expert opinions (legal or otherwise, the so-called policy advice) are obligatory in Portugal (this obligation is valid for a period of three years before the assignment has commenced) and in Spain (here the statement includes two

28 These issues are regulated by: Act no 64/93, of 26.08.1993 r., and the decree No 196/93 of 27.05.1993.

29 The 29 January 2004 Act on Public Prorement, (published in Dziennik Ustaw, No 223, item 1655 with amendments) Article 17 (1) states that officials who assist in the procedure to award public orders are to be excluded from the proceedings:

If they are competing for this particular public order,

if they are related to executors competing for the order, their deputies or members of executive or managing bodies engaged in the order. An official is to be excluded if he/she is a spouse, is related by decent or affinity relations, is related as a cousin up to the second degree, is associated with an executor as a guardian or a warden.

If, in the period of three years before initiating the procedure of granting the public order, an official was engaged by the job contractor or was a member of managing or administrative bodies of an executor of the order,

if an official is engaged in legal or any other contracts, which can raise reasonable doubt concerning the impartiality of the official,

if an official has been found guilty of the crime connected to granting the public orders, bribery, crime against economic turnover, other crimes committed to gain property.

30 C. f. also Art. 24 and 25 of the Polish Code of Administrative Procedure.

years before taking up public office). They refer to political and elective posts in the local government bodies (in Portugal such declarations for local government officials are optional). In Germany, declarations of this kind are obligatory only for the elective posts in local government. In the UK, this obligation is imposed on all public officials, who have to present such a statement every time there is a possibility that a private interest could be perceived as fostering impartiality and favouritism (similarly to the declarations analysed above; in such statements, British officials have to include family members' interests or those of close relations) (Demmke at all, 2007: 321).

In France, Hungary, Latvia, Italy and Poland (similar to the above) these kinds of declarations are formal in character but only accompany the decision-making process (in administrative proceedings). In the case of a conflict of interests, or if there is a reasonable suspicion that a public official could act in a biased and partisan fashion, there is an obligation to declare any private interest connected to the proceedings, in order to instigate a procedure of exclusion. In Poland, there is an obligation to exclude a member of the local government from the voting, if voting in the council or in a commission concerns his/her legal interests. This obligation takes the form of a blanket regulation.[31]

The restraints imposed on the officials and the members of their families concerning the stocks and shares of companies are another important instrument of prevention. Such regulations implementing restrictions for all public officials are used in France, Latvia, Portugal, Spain and the UK. In Italy, such limitations concern local representatives of the national government, in Poland they concern administration officials of national, state and local government[32]; in Germany and Hungary such restrictions have not been implemented (Villoria-Mendieta, 2006: 16).

The instrument to prevent a potential conflict of interest (in the form of disposition of stocks and shares or instituting a custodian for them), apart from the Canadian regulations, also exists in many European countries' regulations e.g. in the UK, France and Spain (Villoria-Mendieta, 2006).

It seems justifiable to claim that the initiators of the bans and limitations on the financial and property interests of public officials aim at creating clear barriers to impede the misuse of their personal position to gain illegitimate benefits from public assets (B. Kudrycka, P. J. Suwaj, 1998), but also at maintaining legal control of relations between the private and public sectors.

In order to do so, the legislators have introduced a system of bans and requisitions which limit the economic freedom of public officials, so as to reduce any

31 Art. 25a of the Local Government Act.

32 e.g. Art. 4 (5) of the Act on Limitations of Conducting Business Activity by Persons Performing Public Functions, states that persons enumerated in Art. 1 and 2, while holding offices or performing public functions, listed in the act, cannot own more than 10% of the shares of the commercial law companies, or more than 10% of the company stock.

temptation and circumstance that encourages the pursuit of personal gain at the expense of public assets. It is reasonable to claim that these types of regulations, which also exist in Polish law, protect (or at least are meant to protect) the integrity and ethical behaviour within the government and public administration system on one hand, and protect the public assets from temptations of its misuse on the other.

We wish to sustain the thesis expressed in 1998 by B. Kudrycka and P. J. Suwaj, that public services cannot be utilised for personal gain by public officials, other than that stipulated by the acts on obligations and responsibilities of persons who hold managerial posts within public administration, as well as members of parliament and senators. Hence, the officials who perform public services obtaining salaries and other benefits, which are guaranteed by law. Those benefits are clearly listed in the internal acts and regulations of different administrative offices. The benefits, the amount of which is defined by legislators and other state authorities, should represent sufficient payment for the engagement in public activities, regardless of an official's own evaluation of the amount and range of this engagement (these are specified by the legislator and the authorised bodies).

The quantity and scope of these reimbursements are likely to be challenged by interested parties; however the rule is that public officials cannot define for themselves the benefits for holding a public post or performing a public function. The property restrictions imposed on the public officials mean treating a public post as the sole means of income for appointees. This principle is also in compliance with the 1994 Constitutional Tribunal's resolution which states that:

> "citizens appointed to public posts must consider the further limitations of the law and their freedom, compared to other citizens (…) and as the imposed limitations are consciously and freely accepted by them, there is no possibility of breaching their constitutionally guaranteed rights and freedoms. The aim of such regulation is to prevent the engagement of public officials in situations that could not only question their personal objectivity and integrity, but also undermine the authority of the state's constitutional institutions, and lessen the voters and public opinion's trust in the proper functioning of those institutions.[33]"

3. Disclosure of interests and declarations (P. J. Suwaj)

Disclosure of any types of declarations and statements of all groups of public officials is typical of British, Spanish, Portuguese, Bulgarian, Romanian and Latvian regulations whereas, for example, in Poland only some declarations submitted to

33 The 13 April 1994 Act, W 2/94, OTK No 1.

local governments are subject to disclosure (another example are high ranking policemen who are obliged to submit a declaration of income and assets and these declarations are open to the public). For example, in Sweden, the disclosure is facultative and dependent on the public official's will. Lack of regulations in this matter is characteristic of, for instance, French and Hungarian solutions.[34]

It is worth attempting to generally consider the approach of the EU countries to the disclosure of interests and declarations submitted by public officials. As the authors of the report on the research of regulations concerning conflict of interests in the EU countries said, "During the last years, disclosure policies have become one of the most important instruments in conflicts of interest policies." (Ch. Demmke et al, 2007: 67). As indicated above, almost all European countries introduce an obligation to declare the private (including financial) interests of the officials. In this matter, however, it is worth noting that there are different approaches of the legislatures to the disclosure (or its lack) of different types of declarations, as well as their placement (or lack) in the appropriate registers. Whereas in some countries public officials are obliged to submit declarations of financial interests, in most of the countries an "accompanying" duty is also imposed upon officials, which concerns the disclosure of additional activities (e.g. employment, honorary membership in institutions of any type, public appearances etc.) in the registers publicly available.

The popularity of public disclosure, as G. Carney observes, "…seems due in part to the ease of implementation and the clear message it sends of a commitment to transparency in government." (Carney, 1998) Additional obligations of the public submission of declarations of private interests in the legal regulations contributes to creating a more open and transparent public sector, which is the key to the growth in society's trust in public institutions.

In spite of the popularity of implementing these instruments, authors of the report on the research of regulations concerning conflict of interests in the EU countries point out that discussions on the pros and cons of such obligations, as well as the duty of registering financial interests, are held in the European countries and their institutions. Among the pros is the fact that, for example, public officials (including parliamentarians and judges) should serve the public interest and not private interest, and this is a key argument. What is also pointed out is the fact that being a public official is nowadays a full-time job, which, in turn, implies a fixed high level of remuneration. It is underscored that the remuneration resulting from a public office should result in the lack of a need for involvement in additional activities, for these always have (more or less) influence on the performance of the public office and sooner or later lead to conflict of interests. Consequently, private interests cause a change in approach to the exercise of public interest. Another argument for the creation of registers and disclosures of declarations and additional activities is

34 Ch. Demmke, M. Bovens, T. Henökl, K. van Lierop, T. Moilanen, G. Pikker, A. Salminen, op. cit., Annex III, p. 157 and the following pages.

reference to the electorate. It is emphasised that the electors have a right to know what the elected do, how much they earn, who and on what grounds provides them with profits and whether political decisions result from private interests. What is also emphasised is a need for openness and transparency in public administration activities as basic and key elements of democracy. The summing up of the arguments propagating the idea of public disclosure of private interests is the observation that it is the best form of control and inhibits public officials. It also a means of monitoring the way they use their mandate, since self-determination (establishing self-restricting rules) does not work in many cases. The importance of external control is also underscored.

Arguments against the disclosure are of a different character and refer to both specific and general issues. For example, it is emphasised that these restrictions should not be applicable for legislators because they are not officials. However, the most frequent view, which seems justified, is that a too specifically regulated requirement of public disclosure of private interests infringes upon fundamental rights (e.g. right to privacy). Moreover, experience provides evidence that registers do not fulfil their functions sufficiently. In fact, the media are interested in the registers but this has no bearing on the interest of public opinion since the public are often not interested in politics, politicians or the media. Among the cons there are also observations that the implementation and monitoring of registers results in superfluous bureaucracy, additional activities which do not necessarily cause conflicts of interests, and public disclosure of declarations does not contribute to reducing conflicts of interests. It is also pointed out that additional activities enable public officials to keep contact with "reality" and their previous occupations, whereas the obligation of the disclosure of interests may have a negative influence on the activities which require confidentiality (e.g. the profession of barrister performed before the assumption of the public office). As far as legislators and councillors are concerned, it is emphasised that they do not need to perform their duties full-time. The best conclusion of this group of arguments may be reference to the statement that too much transparency can harm civil liberties, and the evaluation of the elected should be the domain of the voters and not the registers (Demmke et al, 2007: 67–68).

The major criticism of declarations of interests in registers refers to the method, often very simplified and general, of informing about these interests. An interesting example shown by authors of the above mentioned study is the comparison of financial declarations submitted by European Commission members and members of the European Parliament. Whereas the commissionaires are obliged to submit quite detailed declarations, almost all members of the EP generally refer to the interests declared (or simply place a note: "Nothing to declare."[35] A similar fault may also be found in declarations submitted by public officials in accordance with the

35 Ch. Demmke, M. Bovens, T. Henökl, K. van Lierop, T. Moilanen, G. Pikker, A. Salminen, op. cit., Annex IV, Conflict of Interest profiles of EU Institutions, p. 325 and the following pages.

requirements of the Polish Act on Limitations of Conducting Business Activities by Persons Performing Public Functions. Despite several amendments of the regulations, the aforesaid act still contains serious errors, which have already been noted, for example not pointing at the institution to which the President of the Regional Chamber of Auditors (RIO) should submit a property declaration or pointing at a wrong institution obliged to submit a declaration (instead of the President of the Local Appeal Board (SKO), the Act commits the Chairperson of the Local Appeal Board: Act 6; Article 10 (1)] and a wrong addressee of this declaration (the chairperson of the Local Appeal Board submits a declaration to the chairperson of the Provincial Assembly (*sejmik wojewódzki*) according to the article aforesaid. NB – such an institution has not existed since January 1, 1999).

Thus, it seems that the instruments such as declarations and their registers will be efficient inasmuch as the requirements concerning what should be declared are clear and comprehensible. Second, there should be effective mechanisms of control of these declarations and registers which guarantee independence. Finally, effective sanctions for the infringement of the aforementioned responsibilities seem indispensable. The lack of these apparently indispensable conditions results in difficulties in detecting and sanctioning wrong acts, misunderstandings or limited fulfilment of the responsibility imposed. On the other hand, the policy concerning disclosing public officials' private interests and the registers of benefits should envisage such collection, storage and management of the collected data, which will not result in new conflicts of interests (P. A. Borowska, P. Sitniewski, P. J. Suwaj, 2007). The requirement of both submission and disclosure of statements, information and declarations of officials should be treated as one of the most important premises for honest administration and as a guarantee of honest public service performance. As pointed out above, such a requirement, also in the light of Polish legal regulations, may result in a conflict with the constitutional right to privacy of Article 47 of the Constitution of the Republic of Poland and the freedom of not disclosing information concerning private affairs of a particular person, as in Act 1, Article 51 of the Constitution of the Republic of Poland.[36] My position, however, is that this conflict should be solved in favour of declarations, since depriving a part of 'privacy' is an inseparable element of the public person status and a guarantee of honest performance of these offices.

As already pointed out, these difficulties affect particular countries and their legislatures constructing different degrees of specificity of declarations and addressing the requirement of their submission to different groups of recipients (including public officials' families), since it is easy to see that in certain countries detailed requirements concerning the data in the registers are not accepted on the grounds that the registers evoke a conflict with elementary civil rights.

36 Act of April 2, 1997 (Dz. U. No 78, item 483).

In addition to the above mentioned differences in the requirements concerning the subject of declaration, there are also differences in the degree of declaration openness and the wide, public or just internal accessibility, as well as the degree of legal consequences in the case of failure to submit the declaration or a late submission. The last visible difference in legal solutions concerning private interest declarations is the time envisaged for the declaration submission (before the assumption of the position or office, during the performance of the public service, or thereafter) as well as the period it embraces (the period before the assumption of the position or during its performance).

Table 5 demonstrates the occurrence of benefit registers in the EU member countries concerning a vast group of public officials, whereas Table 4 specifies requirements concerning declarations of the officials of EU institutions.

Table 5

Disclosure requirements in the EU institutions

Institution/ EU body	Duties to declare	Specification
EU Commission	**Outside activities (honorary, unpaid posts in political, cultural, artistic or charitable foundations or similar bodies and in educational institutions. The declaration must include honorary posts held over the last ten years and must distinguish between posts held before the Member of the Commission took up office and those which will continue after that point.** **Any financial interest or asset** which might create a conflict of interest. Any form of individual holding in company capital. Shares, holdings – (convertible bonds or investment certificates – units in unit trusts, which do not constitute a direct interest in company capital, do not have to be declared) Any **property** owned either directly or through a real estate company must be declared, with the exception of homes reserved for the exclusive use of the owner or his/her family **Other property** the possession of which could create a conflict of interest, especially from a tax point of view, must also be declared A declaration of the **professional activities of their spouses (**nature of the activity or the title of the position held and, if applicable, the name of the employer). The declaration shall include **any holdings by the Commissioner's spouse** which might entail a conflict of interest	**Professional activities: According to their Code of Conduct, Commissioners may not engage in any other professional activity, whether paid or unpaid** Financial interests: Yes Property: Yes Assets: Yes Loans/Liabilities: No Spouse's activities: Yes Spouse's financial interests: Partly

EU Parliament	MEPs must declare their professional activities and activities or functions which have been remunerated	Professional activities: Yes Financial interests: No 83 Property: No Assets: No Loans/Liabilities: No Spouse's activities: No Spouse's financial interests: No
Court of Justice	No register	None
Court of Auditors	**Outside activities** (honorary, unremunerated offices in foundations or similar organisations in a political, cultural, artistic or charitable sphere or in educational establishments) The **financial interests** that must be declared include **any form of individual financial participation** in the capital of an enterprise. They include shareholdings, but also any other form of participation such as, for example, convertible bonds and investment certificates. Declarations must also include the total amount of all other financial interests **which do not exceed 50,000 Euros** **Land and property must be declared** **Other assets which do not exceed 50,000 Euros.** **Spouse's professional activities must also be declared**	Professional activities: Yes Financial interests: Yes Property: Yes Assets: Yes Loans/Liabilities: No Spouse's activities: Yes Spouse's financial interests: Not clear
Central Bank	Executive Board Members shall submit to the President a written statement about the patrimony, source of wealth and the prospective management **of their personal assets** during their term of office	Professional activities: No Financial interests: Yes Property: Yes Assets: Yes Loans/Liabilities: No Spouse's activities: No Spouse's financial interests: No
Investment Bank	The President and the Management Committee must declare **outside activities** (posts in foundations or similar bodies currently held and held over the last 10 years and posts in educational institutions currently held and held over the last 10 years), **spouse's professional activities** (other than academic or unpaid), **financial interests** (stocks and shares, insurance policies and bank deposits), **assets** (real estate and other property) and **loans or liabilities.**	Professional activities: Yes Financial interests: Yes Property: Yes Assets: Yes Loans/Liabilities: Yes Spouse's activities: Yes Spouse's financial interests: Yes

Source: Ch. Demmke, M. Bovens, T. Henökl, K. van Lierop, T. Moilanen, G. Pikker, A. Salminen, op. cit., p. 84

4. Other corruption-prevention instruments (P. J. Suwaj)

Besides the above-mentioned numerous restrictions and duties imposed upon public officials so as to prevent conflicts of interest, the legal systems of EU member countries also implement others, such as, for instance, regulations concerning the employment of relatives, disposal and protection of information as well as regulations concerning exclusions (withdrawing).

Officials of all European countries are obligated to keep the confidentiality of the information acquired through their public function. France, Hungary, Poland and Spain are countries where rules of information access have been established and where sanctions have been levied for not obeying them.

The institution of exclusion from participation in the proceedings occurs in the regulations of all EU member-countries. All the persons acting on behalf of a public administration body, participating in issuing an administrative act or preparing an agreement, in the case of a potential conflict of interest, should restrain themselves from action. Specific solutions concerning the procedures of exclusion are envisaged in Polish, French, German and Spanish regulations (P. J. Suwaj, 1999).

The Polish Code of Administration Proceedings (C.A.P) statutes the assurance of exclusion from determining the case by the person, who induces doubts in the field of impartiality under any circumstances, to secure the most possible impartiality of a case resolution. C.A.P. indicates three types of exceptions: derogation of an agency employee, an administrating body and a member of a collective body. The derogation of an employee (administrating body or a member of collective body) means that the employee (administrating body or a member of collective body) should abstain from any actions except those of the utmost urgency in the public interest or important interest of the party.

In the Polish administrative proceedings, there are two groups of derogation causes: relations of an official (a member of a collective body) to the parties and relations to the case.

According to the regulations relevant to relations to the party, an official or a member of a collegial body, pursuant to the law, is subject to derogation in the following cases:

1. if there exists a legal relation between him/her and one of the parties of the case that the result of the case can influence his/her rights or duties;
2. his/her spouse; while the causes of derogation persist after termination of the marriage, his/her relatives and relations by affinity up to the second degree
3. the person related by adoption, custody and guardianship, while the causes of derogation persist after dissolution of the adoptive relationship, custody and guardianship;

4. if he/she was or still is a representative of one of the parties, or if the representative was a spouse or relative or person related by affinity up to the second degree or the person related by adoption, custody and guardianship;
5. if one of the parties is a person remaining in official superiority.

The occurrences of relations to the case differ from a case which involves the official as the party, if the possibility of influence in the first instance results in the participation in a single action of the conduct. Thus, the official or the member of the collective body is derogated from the case pursuant to the law, if:

- he/she is the party in the case;
- he/she was a witness or an expert in the case;
- he/she took part in the problem decision-making process at a lower instance;
- there was instituted against the official an investigation: disciplinary, official or criminal by reason of the case.

The provision of C.A.P. also establishes the exception of a public administration agency from the settlement of a case, which means the excepted agency is neither eligible to make an administrative decision in the case nor excluded from the conduct – in other words, is unable to undertake any procedural activities in the case. The exception of the administrative agency equally binds both collective and single-person agencies. The exception of an agency occurs in the situation related to the proprietary interests of:

- the director of the agency or his/her spouse; while the causes of derogation persist after termination of the marriage, his/her relatives and relations by affinity up to the second degree, as well as the person related by adoption, custody and guardianship – in such an occurrence, the case is settled by the higher level agency directly above the excepted one;
- the person in the managerial position in the directly higher level agency and his/her spouse, relations by adoption, custody and guardianship – in such an occurrence, the case is settled by the higher level agency directly above the one employing the person appointed at the managerial position.

The institutions of derogation (withdrawal) of an official (a member of a collective body) and exception of an agency, unless similarly constructed – relate to different situations and their application has adverse affects. If the official is derogated from the case, the case itself remains under the competencies of the same agency – only the person exercising the conduct has changed. If the agency is excepted, it loses the competence to settle and decide the case. In the first example, the breach of the regulation rarely affects substantial procedural results, whereas in the second case, the breach of the provision of exception concludes the invalidity of an administrative decision.

Chapter 5
Detection and Investigation

A. Androniceanu, P. J. Suwaj

Introduction (P. J. Suwaj)

Measures for the detection of and enquiry into conflicts of interests usually involve the establishment of an authority which coordinates and observes public life (a watchdog), mechanisms disclosing unethical behaviour (a whistleblower hotline) along with programmes to protect individuals who disclose unethical behaviour of their co-workers, as well as efficient co-operation by prosecutors and sufficiently specialised judicature, inspectors, auditors etc. The legislative solutions on this matter, which exist in several legal systems, are considered by this section of the study.

1. Whistleblowing (P. J. Suwaj)

There is no single definition of the term **whistleblowing**. Various terms exist for this concept (such as in the case of conflicts of interests) as a means to detect, inter alia, malpractice in public administrations across the world. This instrument, introduced in the USA, Canada, Australia, New Zealand and South Africa as a measure aimed at the disclosure of unethical behaviour, may also be found in the regulations of some European countries (i.e. France, Holland, Belgium and Hungary). M. P. Miceli and J. P Near's definition of *whistleblowing* (M. P. Miceli, J. P. Near, 1996: 507–526) appears to be the most accurate.

By *whistleblowing* they mean the disclosure by an organisation member (a former or a present one) of illegal, immoral or unlawful actions that take place in the organisation (it also applies to the actions undertaken by employees with the employer's consent). Such disclosure means informing those people or organisations, with the power to affect the indicted persons conduct.

The term *whistleblower* derives from the practice of English *bobbies*, who would blow their whistles when they noticed the perpetration of a crime. This way

they alerted those who infringed the law and the general public of a potential threat or danger.

A *whistleblower,* in other words, is a person who sounds the alarm or frustrates a plot, which makes him/her a victim of repression. A *whistleblower* takes it upon him/herself to alert the public about embezzlements, acts of corruption or law infringements in the apparatus of public administration he/she works for. This is a phenomenon of a specific denunciation, involving the reporting (to those responsible for ethical and disciplinary issues) of dishonesty, unreliability or a violation of the ethical code or law by other employees[37]. This phenomenon is often connected to intimidation, as the people who report misconduct (sometimes called "signallers") face problems in their work environment or are quite often persecuted and humiliated by their co-workers. Special institutions to protect whistleblowers are created[38].

In certain countries there are differences, both in the introduction of this type of instrument into the legal system and in the legal protection of people reporting unethical behaviour by their co-workers. As previously mentioned, only five European countries have implemented such regulations. In the UK, the components of whistleblowers' protection are stipulated in the 1998 Public Interest Disclosure Act[39], which introduced the system of protection against accusation in criminal proceedings and dismissal. In the United States of America the term '*whistleblowers*' is understood both as internal (the institution's staff) and external whistleblowers (public administration clients and entities that are entitled to audit)[40].

As a process to disclose wrongdoing, *Whistleblowers* have as many supporters as opponents; therefore there is a certain resistance, in certain European countries, to its implementation into their legal systems. Systemic reforms in that area have been introduced in the UK as well as in France, Holland and Belgium. Amongst the new member states of the EU, only Hungary has implemented them into their system, along with the special protection of people who report on malpractice in public administration[41]. European legal regulations also refer to the protection of

37 Cases of "famous" whistleblowers include Jeffrey Wigand, who disclosed the so-called Big Tobacco Scandal; Frederic Whitehurst, who reported on malpractice in FBI laboratories, as well as Paul van Buitenen, who disclosed unethical proceedings in the European Commission. In 2002, Time magazine awarded female workers of FBI, Worldcom and Enron with the title "Person of the Year" for similar activism.

38 e.g. in USA it is the National Whistleblower Center.

39 Coming into force in July 1999, the Combined Code on Corporate Governance 2003 is the supplement to the British Public Interest Disclosure Act (PIDA), http://www.expolink.co.uk/whistleblowing-hotline/legislation.htm.

40 C. f. The Sarbanes-Oxley Act of 2002, http://www.expolink.co.uk/whistleblowing-hotline/legislation.htm.

41 C. f. French Commission nationale de l'informatique des libertes (CNIL), Dutch Code Tabaksblat of 2003, amended in 2006, or Belgian Private Data Protection Law of 8 December 1992, http://www.expolink.co.uk/whistleblowing-hotline/legislation.htm.

whistleblowers[42]. Whistleblowing, as a practical instrument, will be discussed in the next section of the book.

2. Institutional solutions (A. Androniceanu, P. J. Suwaj)

The **institutional** solutions in regard to the disclosure malpractices are also different in certain countries. The countries, however, share the difficulty of establishing an independent institution.

It may be assumed that with the introduction of ethical rules and standards into legal systems, public officials are disciplined at the same time as any action is undertaken.

The principle *nemo iudex in causa sua* (which expresses the fundamental value of a fair trial, the separation of powers, and the participation of the court in the application of law) seems only to be recognised by those outside state sector professions and institutions. The adoption of this principle results in the widely held view that internal regulation on ethical issues is not an appropriate procedure and that an external audit is needed instead (Demmke et al, 2007: 85).

The establishment of an **independent and external authority which controls** wrongdoing concerning civil servants in European states, happens only infrequently due to the fact that in most of the cases, the various institutions of the public sector undergo (if there is any) internal regulation. Current practice is inadequate, especially due to the reason that external and independent authorities are more suited to the understanding of the complexity of relationships between different interests, and for monitoring the observance of the rules on how to avoid conflicts of interests in an objective and impartial way. External bodies are also thought to be more competent in reaching objective and impartial decisions. Independent institutions (due to the lack of obligations on allegiance – either personal or political) protect public officials' rights and enforce obligations arising from the law in a more consistent way. The restoration of society's trust in public institutions and the saving of officials' time (officials would not have to analyse and evaluate the provisions on conflicts of interests) are examples of beneficial outcomes by the establishment of external, controlling authorities.

The research confirms the general reluctance by public officials to introduce external institutions to monitor the observance of conflict of interests rules and to disclose certain cases where the rules have been infringed (Demmke et al, 2007: 85). It does not mean, however, that the EU member states and their institutions are unwilling to establish any form of control. In fact, the EU member states often agree with the arguments mentioned above and introduce different forms of inter-

42 C. f. Directive 95/46/KE (Data Protection Directive) and the opinion to Art. 29 Working Party, www.cbpweb.nl/downloads_int/Opinie%20WP29%20zoekmachines.pdf, also Directive 2002/58/KE (ePrivacy Directive) and Directive 2006/24/KE (Data Retention Directive).

nal regulation, along with the internal evaluation and monitoring systems. Despite present practice, recent experience displays a subtle trend towards the introduction of institutions as well as external mechanisms geared towards the disclosure of conflicts of interests.

Table 6
Differences between self-regulation and independent authorities disclosing conflicts of interest

Internal authorities	Independent external authorities
Members are officials who hold either political or clerical (permanent) posts.	Members are independent experts.
Authority members verify *inter alia* that their conduct is in accordance with binding laws and ethical codes.	Members examine the entirety of public officials' conduct in the light of legal provisions.
They may form a bureau, an ethical commission or another unit operating within the public institution.	Independent authorities with their own budgets, usually controlled by Parliament.
Duties may involve: counselling co-workers on conflict of interests and highlighting the dangers of transgressing the provisions on conflict of interests.	Duties may involve: training in ethics; an investigation into a complaint about unethical behaviour or *ex officio*; imposing sanctions for breaches; giving opinions; receiving and analysing statements and declarations.
In most of the EU countries and European institutions.	A pure model does not exist. Independent authorities have been introduced in the USA, Canada, partially in Ireland, the UK, Latvia and Poland.

Based on: Ch. Demmke, M. Bovens, T. Henökl, K. van Lierop, T. Moilanen, G. Pikker, A. Salminen, op. cit., p. 86

Control of conflicts of interest legislation in Estonia differs from Latvia and Lithuania. There is no special body to deal with these kinds of ethics-violation situations in Estonia, whereas in the two other countries, special agencies are responsible for the implementation of anti-corruption and anti-conflict of interests' legislation. The Prevention and Combating of Corruption Bureau, the Constitution Protection Bureau and the Prime Minister, together with the head of a State or Local Government authority, are in charge of the implementation of the Latvian Law on Prevention of Conflict of Interest in Activities of Public Officials (section 5, 20 and 28). The Latvian State Revenue Service controls the execution of the Latvian Law on Prevention of Corruption (section 30–33). The independent Chief Official Ethics Commission, together with heads of central or municipal institutions or their authorised representatives are charged with controlling the implementation of the Lithuanian Law on the Compatibility of Public and Private Interests in Public Service (article 22–23). Corruption prevention is in the hands of the Special Investigation Service,

Chief Official Ethics Commission, Government and other institutions (article 12). As research conducted by M. Villoria-Mendieta shows, the Latvian Bureau for the Prevention and Combat of Corruption enjoys a high level of independence and has a broad range of rights in regard to investigating and charging people (Villoria-Mendieta, 2006: 16). A similar right is granted to the Polish Central Anti-corruption Bureau, although its independence and utility for the disclosure of conflicts of interests is questionable.

In Mendieta's opinion, among European countries, only the Portuguese Constitutional Tribunal is a solely independent institution; however it is controversial that a judicial institution has the remit to disclose incidents of conflicts of interest. As a consequence, most European countries find this unacceptable. He also underlines the fact that in most EU contemporary legal systems, the constitutional tribunals concentrate on resolving legal questions which arise from the application of the constitution, or on making decisions with reference to the compliance of particular provisions or whole acts with the constitution. It is believed that due to the multitude of such cases, the tribunals would not manage to cope with expanding the workload for inquiries on conflicts of interests (Villoria-Mendieta, 2006). Unfortunately, little is known about the powers and functions of those authorities (particularly internal ones) whose task is to disclose existing conflicts of interest in European countries. So far, legal comparative studies show that EU member states establish such authorities for counselling; only a few of them are empowered to investigate and to impose sanctions for transgressions. Other significant differences refer to the authorities' budgets and their rights to collect and analyse statements submitted by public officials. Little is also known about the actions undertaken by these authorities, the obligatory procedures and their operational styles, as the information provided by these authorities is considered "relatively unclear" (Demmke et al, 2007: 86). In comparison, in the United States of America, both Congress and the judicature have various ethical committees; additionally such authorities (with different number of members and various powers) have also been established in thirty-six states. "Their budgets oscillate between $5000 in Michigan and $7 million in California" (D. C. Menzel, 2006: 135).

Some countries task superiors (direct or indirect) with the disclosure and investigation of existing conflicts of interest cases, making an administrative hierarchical structure responsible for the monitoring and the disclosure of conflicts of interests. It is achieved by internal monitoring and by imposing sanctions for transgressions (e.g. in a disciplinary procedure). Such initiatives are enshrined in law in Germany, Poland and Hungary. In addition, control measures are supported by the Commissioner for Civil Rights Protection, the Supreme Chamber of Control, and the Central Anti-corruption Bureau or tax office inspectors who examine property declarations in local government.

There is, in fact, no special authority in the UK entitled to monitor and evaluate the regulation on conflicts of interest. However, the role of the National Audit Office, which monitors and examines cost effectiveness and the efficiency of government expenditure, may be highlighted here. The Office also inspects local level expenditures; but the conduct of local public officials is supervised by other subjects: the Standards Board for England and their relevant institutions in Scotland and Wales which started functioning in 2002 (Demmke et al, 2007: 86; Villoria-Mendieta, 2006: 17). *The British Committee on Standards in Public Life*, which published the tenth report on the implementation of *Seven Principles in Public Life*, seems to be the closest in comparison to the Portuguese initiative. On the contrary, its American equivalent (the American Commission evaluates the conduct of executive public officials) is only to monitor and evaluate Members of Parliament's conduct. According to D. Saint-Martin (2006), the Australian Independent Commission against Corruption (ICAC) is the most powerful authority, as it has jurisdiction over cases of unethical behaviour by all public officials at both national and local levels.

France cannot boast an independent authority which would examine conflicts of interest cases, however, the Commission for Transparency in the Financing of Political Activities (*Commission Nationale des Comptes de Campagne et des Financements politiques – CNCCFP*)[43] charged with controlling property declarations, was established in 1990. Moreover, there are also three professional ethical commissions in France, which monitor the subsequent employment of public officials in the private sector (along with the business activities of former civil servants). In Italy, on the other hand, there are many authorities equipped with similar roles, which results in a lack of transparency in the system. A*utorita' Garante della Concorrenza e del Mercato*[44] and *Autorita' per le Garanzie nelle Comunicazioni*[45] (empowered to investigate the cases of conflict of interests in the press and media), are subordinate to Parliament, and are authorised to disclose and investigate conflicts of interest among the members of the government. Whilst conflicts of interest concerning officials are disclosed and subsequently subjected to appropriate procedures within public institutions, the officials' superiors are responsible for undertaking procedures aimed at disclosing and evaluating malpractice by officials. Additionally, the institution of *Alto Commissario*[46] was established to disclose and conduct certain procedures with reference to conflict of interest. Finally, a special authority was instituted in Spain in 2007, to deal with conflict of interest cases and engaged to

43 www.cnccfp.fr

44 Act No. 287/1990 (Article 6), http://www.agcm.it/index.htm

45 Act No. 249/1997, http://www.agcom.it/eng/eng_intro.htm

46 www.anticorruzione.it

monitor the affairs of public officials holding political posts[47]. In contrast, cases of conflicts of interest in respect to both civil servants and local officials are disclosed under internal procedures within the framework of every public institution.

3. Investigation (P. J. Suwaj)

Procedures of inquiry over malpractices in European countries are basically conducted under the provisions of criminal law and criminal procedure. For example, in Portugal in 2004, a Strategic Analysis Unit was established within the Judicial Police's Central Directorate for Combating Corruption, Fraud and Economic and Financial Crime *(Direcção Central de Investigação e Combate à Criminalidade Económica e Financeira DCICCEF*), which performs its activities in co-operation with the relevant local authorities, the Court of Auditors, as well as the Public Prosecutor's Office[48]. In Spain, a special anti-corruption bureau, which has been operating since 1995 within the framework of the Prosecution Office, is empowered to conduct proceedings in corruption cases.

Ministerial inquiries in the cases of conflict of interests are provided for in the legal systems of all European countries. The cases are usually conducted by the aforementioned authorities, with the jurisdiction to disclose conflicts of interest. In Latvia, the Bureau for Prevention and Combating Corruption conducts inquiries into corruption cases and those cases where the provisions on conflicts of interest have been transgressed. It has access to bank accounts, business transactions and tax authorities' data. The Central Anti-corruption Bureau[49] and police[50] are authorised respectively to do so in Poland. In Hungary, the Bureau for Monitoring on Property Declarations conducts investigations over corruption and conflicts of interests, which have been passed on by other authorities. It has access to bank accounts, business transactions and, as with Latvia and Poland, its respective bodies have access to tax authorities' data[51]. In Germany and Poland, tax inspectors may conduct investigations into conflicts of interest, whereas in Germany such control is restricted to financial malpractice; the inspectors have access to bank account data. In France, the Commission for Money Laundering is authorised to support inquiry bodies for cases of recorded offences. The Italian authorities have the power

47 The Act amending The Act on Public Prosecutor's Office, 24/2007 (BOE, No. 243), cited by GRECO report, adopted on 34 plenary session in Strasbourg, 16–19 October 2007, the Internet source: www.coe.int/t/dg1/greco/evaluations/round2/GrecoRC2(2007)10_Spain_EN.pdf.

48 C. f. GRECO report, adopted on 24 plenary session in Strasbourg, 27 June – 1 July 2005, the Internet source: www.coe.int/t/dg1/greco/evaluations/round1/GrecoRC1(2005)2_Portugal_EN.pdf.

49 The Act on the Central Anti-corruption Bureau of 9 June 2006 (Dz. U. 2006 No. 104 item 708 with subsequent amendments).

50 The 6 April 1990 Police Act (uniform text Dz. U. 2007 No. 57 item 390).

51 Compare M. Villoria-Mendieta, op. cit., p. 18.

to conduct inquiries over conflicts of interest involving members of the government; however access to bank accounts and tax office data is on the condition of the court's consent.

In all European countries, procedures for the disclosure of conflicts of interest incidents are formed both of legal procedures (in the case where the perpetration of a crime is suspected) and disciplinary procedures (undertaken in the cases in which a given infringement is classified as subject to such a procedure).

Chapter 6

Extraordinary Instruments of Resolving Conflicts of Interests (Overview of Selected Solutions)

P. J. Suwaj

The analysis conducted so far has shown a variety of solutions adopted by specific European countries in relation to counteracting and combating conflicts of interest. It should be emphasised, however, that these countries also worked out special, characteristic solutions which are both unique and innovative. The observations concerning these differences will be presented, based on the results of research into the legal regulations of specific countries published in 2006 (Villoria-Mendieta).

The approach to regulating conflicts of interest, as seen by the British, differs from others presented by European countries, especially that the conflicts of interest are included in general standards of public life. And although in the United Kingdom there is not one unified law covering the issues discussed, there are "Seven Principles of Public Life" which have been accepted by subsequent governments and now are a point of reference and important instrument to estimate the functioning of public institutions. They have become a foundation to prepare the detailed codes of ethics for each category of public officials, including Members of Parliament, civil servants and people employed in independent agencies, the so called *quangos*[52]. *The British Committee on Standards in Public Life* examines compliance with these principles by all public officials at each administrative level, including any business connections and financial affiliations in additional forms of activity by public officials. The task of this committee is to advise on potential changes or transformations of these affiliations to ensure the highest level of compliance with the binding standards in public life.

The solution of this kind of characteristic of the United Kingdom is the requirement of disclosing sources of income and assets by public officials and their

52 The issues have been broadly discussed by B. Kudrycka, Neutralność polityczna urzędników, Wyd. Sejmowe, Warszawa, 1998; also compare the guidelines to the standards placed on the website of the Committee on Standards in Public Life,

http://www.public-standards.gov.uk/about_us/the_seven_principles_of_life.aspx

family members, and of publishing the statements containing the information. Although the binding provisions do not provide for this obligation and the reason for a lack of these restrictions is to avoid interference into private life, this kind of conduct and requirement is suggested to public officials. The essence of the British approach is the assumption that each person holding a public office should declare their financial and non-financial interests, which could be perceived as affecting the performance of their public duties (this is an attempt to avoid the real conflict of interests). The transparency and accountability of public officials for the actions undertaken during the performance of their public duties are the key issues in the current regulations and expectations concerning public officials in the UK. Here, we might ask the question: How does it work if it is not imposed by the mandatory provisions of law? It seems that the answer to this question does not lie in the effectiveness of the norms ordaining these requirements in the formal sense (in the form of mandatory rules referred to before), or in the effectiveness understood as usefulness of these norms. Under the Polish conditions, and as a still young democracy, it may seem that the problems related to our public life are connected, in the first place, with the insufficiently tight, incomplete and faulty legislation. Whereas the faith and belief that introducing newer and better legal regulations shall establish universal perfection and well-being, which view, as M. Safjan claims, is cynical and may bring dangerous consequences (2007: 23). He also emphasises the issues concerning ethics in the country of law and the way of interpreting the democratic standard to say that "it is not possible to talk sense about the shaping of this standard in a society whose members, and first of all its elites, have serious problems in understanding what law is, what purpose it serves, in which way its functions are executed, and where public officials of different levels cannot use it in a reasonable way" (Safjan, 2007: 32) Also, there is a strong conviction amongst politicians that if the rule of law does not set forth some ideas explicitly and literally, then there is complete independence and freedom in this sphere. Also, civil passivity, characteristic of our society – that is the passivity and indifference to a variety of pathological situations in our public life – is not conducive to the development of awareness that it is good to be honest. Perhaps that is why relatively young democracies produce numerous legal regulations imposing on public officials even more bans and restrictions, whereas the British solutions presented above are able to guarantee the same (or even better) result without the necessity of introducing any mandatory laws. A lack of public awareness concerning democracy, its assumptions and also the need of ethics in public life, both on the part of citizens and on the part of country representatives, is made up for by a number of restrictions introduced, which (as in the case of Polish law regulations) may be interpreted as a kind of confession on the part of the law-making body that there are no better (less restrictive) ideas and solutions, and even if we had them, it is too early to introduce them.

An interesting idea is a kind of impediment adopted by the Portuguese law, in which a public official or their closest relative is in possession of 10 % of shares or

stocks. In such cases, the company may not apply for state contracts or contracts of other public institutions.

However, a unique solution on the European scale – the solution adopted by the Portuguese legislation – is empowering the Constitutional Tribunal to examine and detect conflicts of interest. Providing the Tribunal with competences of a detective and investigative nature is definitely a peculiarity on a European scale. The comprehensive control of the so-called *incompatibilitas* and other impediments in holding public office is a key element of declarations submitted by a public official subject to the Tribunal's scrutiny. This kind of declaration, including detailed information showing there are no impediments and incompatibility of the prohibited offices, should point to all offices, functions and other professional areas of activity as well as the financial assets possessed. The declaration should be filed with the Tribunal within 60 days of holding a public office. The Constitutional Tribunal controls the declarations and, if necessary, imposes sanctions envisaged by law, for the infringement of provisions concerning the incompatibility of offices and other impediments resulting in the actual conflict of interests. In the case of failing to submit a proper declaration, the Tribunal should inform a public official of the prolonged term for filing the declaration, which is an additional 30 days, otherwise a public official loses his/her mandate or is deprived of the public office he/she occupies. The increase in the effectiveness of solutions discussed is to be ensured by the obligation imposed on public officials' secretarial offices (internal office units where they perform their public duties) which concerns the obligation to notify the Tribunal of surnames of public officials in a specific office as well as the dates of commencing certain functions by them. [53]

Latvia is a country which, just like Poland, is regarded, for example by Transparency International, as a country with a high level of corruption [54]. To decrease this level and successfully join the member countries, the Latvian government prepared and enacted a large scale strategy to prevent and combat corruption. What makes Latvia different from other countries is the position and tasks ascribed to the Corruption Prevention and Combating Bureau (*Korupcijas Novërsanas un Apkarosanas Birojs*)[55]. The Bureau was founded based on the Hong Kong ICAC[56]. What

53 C. f. Art. 233 Constituição da República Portuguesa, which became effective on April 25, 1976, the Internet source: www.portugal.gov.pt/Portal/PT/Portugal/Sistema_Politico/Constituicao/, ordaining the Tribunal's competences, also: Ch. Demmke, M. Bovens, T. Henökl, K. van Lierop, T. Moilanen, G. Pikker, A. Salminen, op. cit., p. 287.

54 Latvia scored 4.8 points for the year 2007 and Poland 4.2; Internet source: http://www.transparency.org/policy_research/surveys_indices/cpi

55 the Internet source: http://www.knab.gov.lv/en/

56 the Internet source: http://www.icac.org.hk/en/home/index.html

characterises this authority are its broad powers[57], with its relatively modest human resources and a lack of full independence (the head of the Bureau is appointed for the position for a five–year tenure, but may be dismissed by Parliament before their office expires at the request of the Cabinet of Ministers; also the heads of central and regional departments are appointed and may be dismissed by the head of the Bureau according to similar principles).

A specific solution, adopted by the French legislation is a regulation concerning the conflict of interest by civil servants[58]. France probably introduced the best regulations amongst the European countries related to the issue of post–employment (Villoria-Mendieta, 2006). In addition, the French regulations are characterised by quite a restrictive approach to the incompatibility of public offices. The control and detection of *incompatibilitas* violations as well as post–employment issues lie within the internal procedures binding the specific public institutions. Also, there are three professional ethics commissions (one for the officials at the central level, another for the regional and local level and a third one for the health service), which should be consulted about the possibility of employment in the private sector before leaving public office. The committees may institute proceedings in the case of infringement in these matters and the committees' opinions are then sent to a relevant authority empowered to consider the case. The committee may find that the suggested new office may conflict with the previous one, may not be in conflict at all or may not be in conflict but only under certain conditions. Another interesting solution characteristic of the French regulations mentioned before is the existence of an offence related to the conflict of interests, which is "unlawful interest". Each public official may be charged with committing this offence if they accept the offer of employment in a company that had been a subject of their control in the last five years. It is also illegal to have interests and benefits from a company which is currently supervised by the public official. In M. Villoria–Mendieta's opinion, the specific legal regulations concerning the conflict of interests binding in France have a form of guidelines, so it is suggested that the system of control and detection of law infringement be improved (Villoria-Mendieta, 2006: 22).

57 involving, for example, preparation of national strategies and programmes to combat corruption, coordination of activities between institutions related to the implementation of strategies and programmes, control over compliance with the law on counteracting the conflicts of interests, analysis of the declarations filed by public officials, holding them accountable before administrative authorities for the infringement of the above provisions or prosecuting them in the cases of purported offences, investigations and operations to detect corruptive offences, monitoring of political parties funding.

58 The principles related to the counteracting of corruption in France come basically from two normative acts. The first of them is the Declaration of the Rights of Man and of the Citizen from August 26, 1789 and its Art. 14–16 as well as the *Statut de la Fonction publique* adopted in 1946 and amended in the years 1983–1984; the information comes from the report by OECD SIGMA from May 2007, the Internet source: www.sigmaweb.org/dataoecd/18/34/39303834.pdf.

The Hungarian system is marked by a definite juristic approach in the sense that it is the binding law regulations that refer to the prevention and combating of corruption. The analysis of Hungarian regulations leads to the conclusion that this solution is, to a high degree, modelled on the solutions adopted in France. For instance, it is permitted to hold elective offices in local governments and have a parliamentary mandate. In 2004, in Hungary, an advisory body called "Public Life without Corruption"[59] was established, which has similar tasks to the French *Service Central de Prévention de la Corruption* (SCPC)[60]. Also, the mode of regulating the principle of incompatibility of offices in Hungary seems very interesting. Since the legal system provides for three separate categories of public officials, for each category there are separate legal regulations concerning *incompatibilitas.* However, a lack of coherence and contradictions between these regulations seem problematic. The weakness of Hungarian regulations is also a lack of separate regulation in reference to the conflict of interests, as well as the lack of an independent body to detect and conduct inquiries related to the conflict of interests (Villoria-Mendieta, 2006: 22).

In relation to the specific character of Polish regulations, it should be pointed out that they seem to be incomplete. The Polish Parliament, as well as subsequent governments, beginning from the year 1990, introduced broad regulation into the Polish system (see the Anti-Corruptive Strategy introduced in 2002) as well as the protective measures related to the conflict of interests in specific regulations, both in the commonly binding law (laws, internal administrative regulations, the Code of Administrative Procedure regulating the instrument of recusal, or finally the law on limiting the involvement in business activity by holders of public offices), as well as the internal laws (for example, the civil service code of ethics)[61]. However, despite the allegedly complete character of the system of law, the studies of the Polish system show mainly how ineffective the Polish law regulations are (Villoria-Mendieta, 2006). The reasons for this state of affairs are perceived by two factors. The first of them is a lack of an effective system of implementing the current law regulations (it encompasses a lack of coherence of particular legal acts, differences in the protective measures undertaken for different groups of public officials, and sometimes "over-regulation" ascribed to, for instance, the bans on public officials at the local level, and sometimes a lack of sanctions for the infringement of earlier formulated bans and limitations), and another is the often emphasised absence of a totally independent body entitled to detect and conduct investigative activities into the conflicts of interest. Perhaps the reason for this state of affairs is also a lack of general approval for the negative consequences of the conflict of interests which, as emphasised before, if not observed in time, may transform into corruptive practices. It seems that public opinion and public officials in Poland are still pre-occupied with corruption

59 C. f. www.oecd.org/dataoecd/39/34/34918600.pdf.

60 See www.batory.org.pl/doc/jpbueb-prezentacja2.ppt.

61 11 October 2002 Ordinance No. 114 by the Prime Minister on the Civil Service Code of Ethics (M. P. from 2002, No. 46, item 683).

and the actual problem and potential conflicts of interests seems to be ignored as, according to the penal nomenclature, those of "insignificant social harm".

The German solution relating to the issues discussed seems to be simple. Basically, it involves the assumption that each public official, and especially one engaged in the decision-making process, should declare any private interests which may have an impact, or may be perceived by others as having an impact upon the activities undertaken in the course of administrative proceedings. Only the superior of a public official may decide whether a person who has declared a conflict of interests should be recused from the proceedings or not. Even in the case of being recused from administrative proceedings in a specific case, a person recused shall not take part in any proceedings which could have an impact upon the decision made as a result of this proceeding. Apart from that, three additional and important aspects in the German approach should be emphasised, as shown by M. Villoria–Mendieta (2006: 23).

Firstly, the German legal system deserves particular attention. It is not possible to understand this model without taking into consideration the concept of German "country of law" (*Rechtstaat*). All the policies created in Germany must be based in the binding system of law, and the most essential principle of the German law is the principle of legality. The relations between the public administration and citizens are subject to the general obligation imposed on the administration to support the country's citizens to realise their basic rights.

Second, just like in the British system, in Germany it seems to be essential to avoid factual or potential conflicts of interest, also not to create the "impression" that a conflict of this kind exists, or may exist (real conflict of interests).

Third, all disputes resolved by the public administration bodies – if they infringe the rights or freedoms of citizens – must be justified. The grounds for a specific decision must take into consideration the motives of making the decision. It is connected with the function of self-control by the public administration bodies.

Just like in the Polish law, the German solutions also provide for the detailed regulations concerning the instrument of recusal. Detecting conflicts of interests in the German system is by internal control or as a result of a complaint lodged by a citizen. The result of challenging an administrative act in the situation of a conflict of interests is the revoking (in the Polish system the act shall be deemed invalid) of this act (Villoria-Mendieta, 2006: 24). The consequences of violating the rules concerning the conflict of interests may also involve penal and disciplinary liability in the case of intentional infringement, or if it is a result of negligence.

Italy is probably the most obvious example of negative consequences resulting from the fact that the complex legal regulations concerning conflicts of interest have not been introduced, although there exists solutions in this sphere, both for the civil

service and the elective public official at the local level.[62] However, a lack of a regulation of this kind in reference to members of the government, including the Prime Minister, caused numerous and serious "irregularities" in the Italian democracy.[63] The fact which revealed these problems was the appointment of the richest man in Italy, and owner of the most significant communications holding, to the position of Prime Minister. As a result of long and numerous debates among politicians and public opinion, on September 2, 2004, the law came into force regulating the conflict of interests' issue with regard to the political function and different forms of activity undertaken by a person holding a political office. [64]

The characteristic feature of Spanish laws in the sphere of a conflict of interests is quite a detailed regulation concerning the instrument of recusal. As with the German solutions, public officials in Spain must declare a potential conflict of interests in administrative proceedings and their superiors are entitled to make decisions about their potential recusal. A public official, who fails to declare a conflict of interests, when the latter is determined, shall be subject to disciplinary proceedings. Based on the French solutions, the Spanish model of regulating the discussed issues also contains a detailed list of duties, cases of infringement and disciplinary consequences regarding civil servants, and the very conflict of interest is a subject of the provisions of the civil service law (*Estatuto de la Función Pública*).[65] Under the Spanish system, the regulation concerning top level officials and members of government are also included in two legal acts: the Code of Good Governance[66] and Bill on the Conflict of Interests[67] currently prepared by Parliament. Another solution currently discussed by the parliament of the autonomous region of Catalonia is the introduction of a special, modelled on the European OLAF[68], office for counteracting fraud and corruption.

62 E.g. the Civil Service Code of Conduct introduced by the decree of November 28, 2000 by the minister for public administration matters.

63 The specific nature of Italian solutions is a relatively late enforcement of this regulation.

64 previously mentioned the so – called Frattini law No. 215 of July 20, 2004.

65 Interenet reference: www.leyesvenezolanas.com/lefp.htm; see also: Jefatura del Estado (BOE n. 89 de 13/4/2007), LEY 7/2007, de 12 de abril, del Estatuto Básico del Empleado Público,Internet reference: www.boe.es/g/es/bases_datos/doc.php?coleccion=iberlex&id=2007/07788.

66 adopted on March 7, 2005, Internet source: www.coe.int/t/dg1/greco/evaluations/round2/GrecoRC2(2007)10_Spain_EN.pdf.

67 Bill on Conflict of Interest, compare M. Villoria-Mendieta, op. cit., p. 26.

68 European Anti-Fraud Office, Internet source: ec.europa.eu/anti_fraud/index_en.html.

Chapter 7
Prosecution

A. Hermaniuk, P. J. Suwaj

Introduction (A. Hermaniuk)

Prosecution as a result of both detection and investigation is the "final" part of the legal framework of the fight against corruption. It has a significant influence on integrity. What is the role of prosecution in this matter?

First of all, prosecution applies to situations where an offence of corruption has been detected and investigated, and there is evidence that it has been committed. Doubtless, prosecution is a type of "penalty", preceding a court judgement. It has legal and other consequences. First, this can be information in the media that a well-known public officer or a company is being prosecuted for corruption, which may completely destroy their reputation. Second, prosecution has a preventive role, which effectively helps to build and support acting with integrity. It is created by an awareness that certain actions are criminal and for which entities can be prosecuted. Prosecution is necessary to deter offenders; however, this has to be accompanied by vigorous programmes to prevent corruption before it happens (Grabsky, Larmour, 2000).

Prosecution is linked to regulations of criminal liability. However, according to the provisions of civil law, individuals, as well as companies involved in corruption can be sued and found liable to compensate any loss caused by a committed illegal act. They may also face an administrative procedure.

1. **Organs responsible for prosecution** (A. Hermaniuk)

Generally, enforcing legal sanctions for corruption involves investigations carried out by the police and prosecution through a national level system. For example, in the USA, the federal effort to combat corruption through the prosecution of elected and appointed public officials at all levels of government is overseen by the

Public Integrity Section of the Criminal Division Attorney's Office in the Department of Justice. This section has exclusive jurisdiction over allegations of criminal misconduct on the part of federal judges and also monitors the investigation and prosecution of elections and conflict of interest crimes. Section attorneys prosecute selected cases against federal, state, and local officials, and are available as a source of advice and expertise to other prosecutors and investigators. Since 1978, the Section has supervised the administration of the Independent Counsel provisions of the Ethics in Government Act.[69]. Next, the cases are tried through the federal court system, subject to appeal in the federal circuit courts, with final recourse to the United States Supreme Court. Results of the Section's work are analysed in an annual report, which includes statistics of nationwide federal prosecutions of corrupt public officials in 2007, as outlined below: [70]

Federal Officials	State Officials	Local Officials	Others involved	Total
Charged: 426	charged: 128	charged: 284	charged: 303	charged: 1141
Convicted: 405	convicted: 85	convicted: 275	convicted: 249	convicted: 1014
awaiting trial: 116	awaiting trial: 65	awaiting trial: 127	awaiting trial 179	awaiting trial: 487

In the Australian legal system, after investigation, cases are prepared by the Director of Public Prosecution and are heard before the federal court. In Latvia, prosecution is carried out by the Prosecution Office of Latvia (Latvijas Republikas Prokuratura). The Crown Prosecutor's Service is responsible for prosecuting criminal cases investigated by the police in England and Wales. Regarding corruption, it is stated on the CPS official webpage[71]. *"Bribery and corruption are extremely serious offences, which strike at the heart of public confidence in administrative and judicial affairs. This factor alone will weigh heavily when considering the public interest in prosecuting and a prosecution will be expected unless exceptional factors apply."*[72]

Some countries such as Italy, Spain and Romania have established specialised anti-corruption prosecution offices. For example, in Romania, the specialised prosecution services for corruption – the National Anti-Corruption Department (DNA) – has been established throughout the country. This body is responsible for high-profile cases with the indictment of well-known and influential public figures.

69 http://www.usdoj.gov/criminal/pin

70 Report to congress on the activities and operations of the public integrity Section for 2007/ http://www.usdoj.gov/criminal/pin/docs/arpt-2007.pdf

71 www.cps.gov.uk

72 http://www.cps.gov.uk/legal/a_to_c/bribery_and_corruption/#P23_725

In addition to combating the offence of corruption, prosecutors are usually supported by the activity of other bodies responsible, rather than for prevention and investigating corruption rather than prosecution.

Poland has had in place since July 2006, a Central Anti-corruption Bureau (CBA), which is a special service of the Polish government that combats corruption in both the public and private sectors, especially in State and self-government institutions, as well as fights against any activity which may endanger the State's economic interests.

The Corruption Prevention and Combating Bureau (KNAB) is the leading specialised anti-corruption authority of Latvia. Its aim is to fight corruption in Latvia in a coordinated and comprehensive way through prevention, investigation and education. KNAB was established in October, 2002 and has been fully operational since February, 2003. KNAB is an independent public administration institution under the supervision of the Cabinet of Ministers. KNAB is also a pre-trial investigatory body and has traditional police powers. KNAB is in charge of detecting criminal offences related to corruption committed in the public service and relating to the financing of political parties, as determined in the Criminal Law of the Republic of Latvia. In this area, KNAB carried out criminal intelligence and investigation. It has jurisdiction over violations relating to corruption e.g. exceeding a public official's authority, using an official position in bad faith, or a public official's failure to act, i.e. a public official fails to perform his or her assigned duties, intentionally or through negligence and thus causes harm to a state authority, its rights and interests.[73]

In Lithuania there is the Special Investigation Service (STT) which carries out intelligence activities in detecting corruption-related crimes; conducts interviews and preliminary investigations; collects, stores, analyses and sums up the information about corruption and related social and economic phenomena and jointly, with other public bodies and civil society organisations, implements crime control and prevention measures and anti-corruption education programmes. The legislation of the Republic of Lithuania grants general and special rights to the STT officer facilitating prevention and investigation of corruption.[74]

The option of introducing an anti-corruption agency is considered by many other countries. They are established in France, Slovenia and Montenegro as agencies, councils or commissions. Their main tasks usually cover the collection of information, assistance to other governmental authorities and preparation of analyses and policy recommendations. However, the establishment of the new service should be preceded simultaneously with the necessary reforms in the three branches of the judiciary, which are the courts, the prosecution and the investigation.

73 http://www.knab.gov.lv/en/knab/

74 www.stt.lv

2. Penalising malpractices (P. J. Suwaj)

The offences resulting from "inadequately managed conflicts of interests" are provided for in the regulations of nearly all European countries.

Latvian regulations provide that the breach of provisions with regard to the conflict of interests, if related to the infringement of public interest, may lead to sanctions in the form of a penalty of deprivation of liberty for a term of up to 5 years. For providing false information in the declarations submitted, Polish local government Acts refer to the solutions set forth in the Penal Code, which inflicts a penalty of deprivation of liberty for a term of up to 3 years[75]. In the United Kingdom, Members of Parliament, as well as local authority members, may be held responsible for the non-disclosure of interests in the relevant statement and failure to recuse from any matters in which there is a conflict of interest. In Italy, members of the government may be held liable for failing to submit a declaration or providing false information (at the request of authorities mentioned hereinabove to detect conflicts of interests). The French regulations even provide for a special offence, which is unlawful interest, for which the Penal Code inflicts a penalty of deprivation of liberty for a term of up to five years and a fine of 75,000 Euros. In France, it is also illegal to infringe the regulations concerning post–employment when a public official is employed in a private company in return for financial gain. The sanction for an offence of this type is a penalty of deprivation of liberty for a term of up to 2 years and a fine of 30,000 Euros. German law provides for an offence in the form of acceptance of gratification: in § 331 of the German Penal Code, it encompasses all kinds of benefits, whereas the ministerial structures mention the most important instances:

- money and other pecuniary benefits (e.g. vouchers)
- jewellery
- all kinds of machinery and appliances for private use (e.g. electronic devices)
- price reductions for private use
- discount interest rates on loans
- unjustified high salary for an officially approved additional employment
- employment of civil servants' relatives
- tickets, travel vouchers and expensive meals
- unjustified and unexpected accommodation
- gifts
- special remuneration
- invitations to exclusive events
- sexual benefits (Villoria-Mendieta, 2006: 18)

75 C. f. Art. 241 of the Commune Local Government Act and Art. 233 (1) of the Penal Code respectively.

The administrative sanctions for public officials, and especially regular professional public officials, are provided for in the majority of European countries. In Poland, local government Acts provide sanctions for failing to submit a property statement in due time, for example in the form of a loss of allowance or remuneration until the statement is submitted and information disclosed[76]. Similar regulations apply to British public officials. Resignation or dismissal from public office or functions is the most serious administrative sanction imposed by most European countries (a solution of this kind is provided for in, for instance, French, Hungarian, Latvian, Polish, Portuguese and Spanish regulations). Other administrative penalties involve fines and moral sanctions (e.g. revealing to the public information about a person violating the provisions of the law and a type of infringement) as well as a ban from public office and forfeiture of property illegally acquired.

3. Criminal liability (A. Hermaniuk)

Generally, most jurisdictions provide for criminal liability for corruption, for both individuals and companies. However, the principles stated below will apply in a number of jurisdictions. In most jurisdictions, punished criminal offences of corruption are regulated as active and passive bribery, extortion, fraud, money laundering and conflicts of interest. The manner in which liability may be incurred for such offences will differ according to the jurisdiction. However, the following principles may apply in a number of jurisdictions.

First of all, regulations of criminal law provide penalties for individuals and for companies. The former covers individuals convicted of corruption and may include fines, imprisonment or prohibition of exercising a profession. The latter apply to companies convicted of corruption and may include the imposition of fines and seizure of all monies that are shown to be proceeds of the crime.

Criminal liability for individuals

An individual who is directly involved in committing a corruption offence may be liable for the offence. Prosecution for corruption may be faced by an individual who is indirectly involved in committing a corruption offence, as well as for example, he/she has used another person, organisation or institution to commit the corrupt act on his behalf. **Prosecutions may also include persons** guilty of aiding, abetting or an equivalent offence which has somehow facilitated, aided or assisted in the committing of the offence.

76 see Art. 24 k of the Commune Local Government Act.

Criminal liability for companies

In many jurisdictions, companies may be prosecuted for criminal offences committed by the acts of its officers or employees, the acts of its agents, the acts of its related companies or business partners or "turning a blind eye" (wilful blindness). In the last situation, both corporate and personal criminal liability may be incurred where a party in authority, an officer, as well as a manager of a company, suspects corruption in relation to a business transaction in which the company is involved, but does not make any further inquiries or take the necessary preventive actions, closing his eyes to the circumstances. Common law provides a rule in this matter, that "where a company is prosecuted, in order for the acts to be considered those of company, the person or persons who stand accused of the acts should hold a position of sufficient responsibility in order to be identified as controlling officers."[77]

Ex-territorial prosecution

Second, prosecution may be carried out in the offender's home country as well as abroad. Many countries have extra-territorial jurisdiction in relation to bribery, extortion and fraud offences. All OECD countries, as a result of the OECD Convention against Bribery, have laws which enable their companies and nationals to be prosecuted at home for a bribe paid overseas. The OECD Anti-Bribery Convention (officially *OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions*) is a convention of the OECD, aimed at reducing corruption in developing countries, by encouraging sanctions against bribery in international business transactions carried out by companies based in the Convention member countries. The convention came into effect in February 1999. As a result of this Convention, all countries which have ratified Convention[78] have made it a crime for their companies and individual nationals to bribe a foreign public official abroad. This means that such companies and individuals may be prosecuted for bribery in their home countries, in addition to prosecution in the country where the bribery took place (oversees bribery).

Individuals and companies should always familiarise themselves with the relevant laws of both their home country and of the country in which they are working. For example, if a company, through its employees, commits bribery or fraud in a foreign country, it is quite possible that the company and its employees could face prosecution both in their respective home countries and in the country in which the bribery or fraud was committed. For example, Siemens Company agreed to pay a record $1.34 billion in fines in December, 2008 to American and European authorities to settle charges that it routinely used bribes and slush funds to secure huge public works' contracts around the world. Siemens was investigated for serious bribery, involving e.g. the former chief financial officer, ex-Chairman

77 www.cps.gov.uk.

78 As of June, 2007 thirty-seven countries have ratified the convention.

and a former management board member. The investigation found questionable payments of roughly €1.3 billion, or $1.9 billion, from 2002 to 2006 that triggered a broad range of inquiries in Germany, the United States and many other countries. In May, 2007 a German court convicted two former executives for paying about €6 million in bribes from 1999 to 2002 to help Siemens win natural gas turbine supply contracts with Enel, an Italian energy company. The contracts were valued at about €450 million. Siemens was fined €38 million. The company also pleaded guilty in federal court in Washington to charges that it violated a 1977 law banning the use of corrupt practices in foreign business dealings.

Criminalisation of the offence of bribery as an example of criminal liability for corruption

Bribery is one of the most serious and common forms of corruption. Generally, criminal responsibility for this offence reflects how the problem of bribery as a crime of public office is treated by jurisdictions in a particular country. Of course, penalties provided by the criminal codes for both active and passive bribery, are very different. However, in most legal systems, two main stipulated punishments are fines and imprisonment**.**

The most common forms of bribery are both gifts and hospitality. They may be corrupt, used to facilitate corruption, give the appearance of corruption. Gifts are usually cash or assets given as presents, and political or charitable donations. Hospitality covers meals, hotels, flights, entertainment or sporting events. To counter the risk of gifts and hospitality being corrupt, or being perceived to be corrupt, an organisation should either institute a total prohibition of gifts and hospitality, **or** should allow these under strict control. As a bribe can be given/taken, this can also include a promise of a non-cash favour or advantage, e.g. a future contract.

The prosecution for the common law offence of bribery can proceed with the following rules. In addition to common law offences, corruption offences are found in at least 12 statutes. The main ones are The Public Bodies Corrupt Practices Act 1889 and the prevention of Corruption Act 1906 as supplemented by the Prevention Act 1916 and Anti-Terrorism. The former act makes it an offence for any person alone, or in conjunction with others, to corruptly solicit or receive, or agree to receive for him/ herself, or for any other person, any gift, loan, fee, reward or advantage, etc. as an inducement to, or reward for, or otherwise on account of any member, officer, or servant of a public body, doing or forbearing to do anything in respect of any matter or transaction whatsoever, actual or proposed, in which a public body is concerned (Section1(1)). The Act provides for a similar offence in respect of anyone who corruptly gives, promises, or offers any gift (Section 1(2)). Offences under the 1889 Act require the consent of the Attorney General.

In the latter act, basic definitions are laid down very broadly. According to this, it is a crime committed by an agent. An agent is anyone employed by or acting

for another, whether in the public or private sector. Section 1 of the 1906 Act also creates offences relating to other corrupt transactions, by and with agents, in relation to their principal activities, including making false statements or knowingly giving false documents to an agent, intending to mislead their principal. Agents, in the 1906 Act, include Crown Servants, but do not include councillors in local government, so those cases should be dealt with under the 1889 Act. Corrupt, in the 1906 Act, does not mean dishonesty, but means a deliberate offering of money or other favours with the intention to corrupt.

The prosecution does not have to prove that the defendant actually demonstrates favours as a consequence of having received a gift, as long as he received the gift as an inducement to show favour. Offences under the 1906 Act require the consent of the Attorney General.

In case of prosecution, the overlap between the two principal Acts, where the agents of public bodies are involved, should be based on defining the status of the agents. In practice, for example, according to the 1906 Act, Councillors in local government are not considered to be agents and this means that corruption of such councillors cannot therefore be dealt with. Likewise, the Crown is not a public body, so Crown servants cannot be dealt with under the 1889 Act. Trial offences, contrary to section 1 of the 1889 Act and section 1 of the 1906 Act, are triable either way. The common law offence of bribery is triable only on indictment.

Prosecution may take place for a presumption of corruption provided by The Prevention of Corruption Act 1916. According to this Act, if a person gives a gift to an employee of the Crown, a government department or a public body, and that person, or their principal, holds or seeks to obtain a contract from the Crown, a government department, or a public body, that gift shall be presumed to be corrupt unless the accused person can prove otherwise. This regulation reverses the burden of proof in prosecution.

According to the presented regulations, the formulation of the offence of bribery is defined very generally and broadly. Bribery, as well as attempted bribery, where there is an offer to bribe, even if the offer is not taken up, is qualified as a common law offence punishable by imprisonment or a fine, or both. It is committed when a bribe is given or offered to induce a public official to fail to act in accordance with his duty.[79] The offence of bribery is also committed by the person who receives the bribe. However, it is possible that receipt of the bribe can be charged as a common-law offence *of misfeasance in public office*. Because of the wide scope of this offence, consequently, the category of persons who may be bribed is extensive. It includes a person who is tasked with carrying out a public duty, for example, a jury member, a coroner or a member of the armed forces.[80] It is also interesting that the mental ele-

79 *R v. Whitaker [1914] 3 K. B. 1283.*

80 *Archbold 31–12).*

ment can be upheld to include the intention to produce an effect on the decision of a public officer.[81] Specifying the issue, case law suggests that entertainment and treats, when of small value, are not prohibited because they cannot be regarded as having been conferred in order to influence a person, or influence him to act contrary to the known rules of honesty and integrity.[82]

Please note that as practice shows, common law bribery will not often be charged. The reason for this is a substantial overlap existing between this offence and the statutory offences relating to corruption. It is obvious that if, in the case, the facts amount to bribery as well as to corruption, prosecutors should prosecute only for one or the other of the statutory offences.

According to German criminal law, being prosecuted for accepting a benefit *(Vorteilsannahme)* (of which the scope is broad) and accepting a bribe (*Bestechlichkeit),* as Crimes in Public Office defined in the Criminal Code, can be two basic categories of the perpetrator. In the former are public officials or a person with special public service obligations, who can be punished with imprisonment from six months to five years if he/she attempts to or demands, allows him/herself to be promised or accepts a benefit for him/herself or for a third person in return for the fact that he performed, or would in the future, perform an official act, and thereby violate or would violate his official duties. However, in less serious cases, the punishment can be imprisonment for no more than three years or a fine. There is also a parallel special regulation, which only applies to a judge or an arbitrator who, accordingly, can be punished with imprisonment from one to ten years. This is an example of regulations where judges and arbitrators can be prosecuted under other special provisions than a public official.

There is a very important regulation which gives the right to prosecute the perpetrator who demands, promises or accepts a benefit in return for a future act, if he has indicated to the other his willingness to violate his duties by the act or to the extent the act is within his discretion, to allow himself to be influenced by the benefit in the exercise of his discretion. It is even criminal for a public official to accept an advantage ex post facto for services rendered. It need not consist of money or other material goods; even satisfaction of the public official's ambition is sufficient (Schönke, Schröder, 2001).

In summary, it should be mentioned that as the result of prosecutions, in 2000, German criminal courts adjudicated:

- 169 public officials for passive bribery (including all cases of aggravated bribery), 121 of whom were convicted,
- 239 persons for active bribery of public officials, 201 of whom were convicted,

81 R v. Gurney (1867) 10 Cox CC 550.

82 Woodward v. Maltby [1959] VR 794.

- 33 persons for active or passive bribery in business relations, 26 of whom were convicted (Statistisches Bundesamt 2000, 2001)

Offences of corruption in Switzerland are threatened with punishment as provided by the Criminal Code, which states, in its 18 and 19 title measures, against:

- abuse of public office: Members of authorities abusing their power are fined or sentenced to prison for a maximum 5 years.
- active bribery of a Swiss officer: officers are judges, public translators, publicly appointed experts, arbitrators, army officers, any other administrational authorities.
- passive bribery of a Swiss officer: officers defined as above.
- active granting of an undue advantage to an officer: The difference to bribery is that the person who grants the undue advantage grants the advantage to an officer respecting the officer's job, but not in exchange for a particular issue. This is the provision applying to exaggerated presents, such as e.g. leisure weekends to a major without asking for a particular favour in return, but just for general goodwill. Whether an advantage is "undue", is defined by the code of conduct or internal reglementation of the concerned administrative authority in question. There are usually quite strict limits, such as presents of a value of above CHF 80 for e.g. police officers in the Canton of Zürich. Through this provision, penal law punishes offences against internal codes of conduct, while all public entities are required to establish corresponding codes of conduct.
- passive granting of an undue advantage: same as above, but vice versa, the provision to punish the officer accepting an undue advantage.
- active and passive bribery of foreign officers: in addition to the definition of officers above, co-operators of international organisations are also regarded as officers.

Many bigger companies establish internal codes of conduct providing measures against unethical behaviour. They set out specific rules on e.g. what type of present has to be refused or whether employees may have a sexual relationship with executives etc. However, offences against such codes of conduct only result in disciplinary measures and have no legal consequences, with the exception of the codes of conduct of public authorities as described above. Briefly, corruption in the private sector in Switzerland is not seen as a crime, but rather as an infringement of the shareholders' rights.

In Poland, corruption is a criminal offence under several provisions of the Criminal Code, namely articles 228 through 231. The Polish Criminal Code makes a clear distinction between active and passive bribery. Article 228 of the Criminal Code deals with passive bribery in relation to the performance of public functions.

The Polish Criminal Code defines the term "a person performing public functions" as a public official, a member of local government authority, a person employed in an organisational unit which has access to public funds, unless this person performs exclusively service-type work, as well as another person whose rights and obligations within the scope of public activity are defined or recognised by the law or an international agreement binding for the Republic of Poland. These persons can be prosecuted for passive bribery under article 228 of the CC.

Moreover, the Criminal Code makes a distinction between five different forms of passive bribery: basic, minor, bribery and aggravated types such as those committed in connection with violation of the law, and aimed at obtaining a material or personal benefit and those aimed at obtaining material or personal benefit of a substantial value.

All types of passive bribery apply to persons performing public functions for foreign States or International Organisations.

Active bribery is criminalised under Article 229 of the Criminal Code, which makes the distinction between four different types of active bribery: basic, of lesser significance and aggravated types: giving material or a personal benefit to a person performing public functions in order to induce him to disregard his official duties and providing material or personal benefit of substantial value. Active bribery does not cover the promising, offering or giving of a non-material personal advantage to a third party. Article 229 also covers cases of bribery of foreign public officials or public officials of International Organisations.

Offences involving paid patronage and malfeasance in office are also covered by the Criminal Code. Sanctions range from 6 months to a maximum 12 years' imprisonment in the case of active bribery and from 6 months to a maxixmum10 years' imprisonment in the case of passive bribery. A public official who, exceeding his authority, or not performing his duty, acts to the detriment of public or individual interest can be prosecuted and subject to the penalty of deprivation of liberty for up to 3 years. If the perpetrator commits the act with the purpose of obtaining a material or personal benefit, he/she can face a penalty of deprivation of liberty for a term of between 1 and 10 years. If the perpetrator of the offence acts unintentionally and causes essential damage, he/she shall be subject to a fine, the penalty of restriction of liberty, or deprivation of liberty for up to 2 years.

In 2000, the Police instituted 1353 preliminary proceedings in cases involving malfeasance in office, bribery and abuse of power 1. This figure is 47 % higher than that for 1992. At the same time, during the year 2000, compared to 1992, the number of offences brought to trial increased by 81 %; the number of suspected persons by 38 %; the number of indicted persons by 49 % and the number of arrests by

217 %. The entire number of disclosed bribes increased almost tenfold, compared to 1992, and in 2000 it amounted to 2,924,059 Polish zlotys.[83]

French criminal law provides for the prosecution of a person holding public authority or discharging a public service mission or a person holding a public electoral mandate for passive bribery, who can be punished by ten years' imprisonment and a fine. The broad scope of criminal penalties, applicable to natural persons, also include deprivation of civil, criminal and family rights, professional restrictions, a ban on performing a public function or professional or social activity in connection with which the offence was committed, confiscation and the posting or publication of decisions. According to French law, prosecution of legal persons under the Criminal Code is possible when the following requirements are met. The offence must first have been committed by one or more natural persons constituting either a body or a representative of the legal person and the offence must have been committed on behalf of the legal person. Legal persons can be fined of up to 5 times the maximum amount of the fines for individuals but also punished by a ban on directly or indirectly performing the professional or social activity in connection with which the offence was committed, placement under judicial supervision, closure of one or more of the establishments of the enterprise used to commit the acts, exclusion from public procurements, ban on public appeals for funds, ban on issuing cheques other than certified cheques and those drawn to withdraw the maker's funds on deposit, ban on the use of payment cards and confiscation and posting or publication of the posting or publication of decisions.

Analysing the regulations of both the new EU members, Bulgaria and Romania, it can be seen that they do not provide financial punishment for public officials who committed the offence of bribery, but stipulates an extremely high punishment of imprisonment. According to the Bulgarian Criminal Code, the punishment for bribery can be imposed on an official who accepts a present or any other property benefit whatsoever, which is not due, in order to perform or not, an act on business or because he has or has not performed such an activity. For a bribe of particularly large size, representing a particularly serious case, the punishment is imprisonment of ten to thirty years, confiscation of the whole or a part of the property of the culprit and revoking of rights.

Likewise, a high penalty of imprisonment is provided by the Romanian Criminal Code. Those prosecuted can be a public servant who, either directly or indirectly, for him/herself or for another, claims or receives money or other undue benefits, or accepts the promise of such benefits or does not reject it. Prosecution for taking bribes can bring from three to twelve years of imprisonment and an interdiction of certain rights. If the bribe-taking resulted in extremely serious consequences,

83 First Evaluation Round Evaluation Report on Poland Adopted by GRECO at its 8 Plenary Meeting, (Strasbourg, 4–8, March (2002) http://www.coe.int/t/dg1/greco/evaluations/round1/GrecoEval1(2001)11_Poland_EN.pdf.

the penalty shall be severe detention from fifteen to twenty years and the prohibition of certain rights. The money, values or any other goods that were the object of the bribe-taking are confiscated, and if they cannot be found, the convicted person is obliged to pay their equivalent in money. These regulations cover employees or persons carrying out activities based on a work contract or other persons exercising similar prerogatives, in a public international organisation to which Romania is a Party, members of parliamentary assemblies of international organisations to which Romania is a Party, employees or persons carrying out an activity based on a work contract or other persons exercising similar attributions, in European Communities, persons exercising judicial offices in international courts, the competence of which is accepted by Romania, as well as public servants from the clerk's offices in these courts, employees of a foreign State and members of parliamentary or administrative assemblies of a foreign State.

A study carried out in the Ministry of Justice for the period 1990–2001 for corruption cases shows the following:

No.	Year	Total number of convicted persons for corruption
1	1990	186
2	1991	140
3	1992	215
3	1993	268
4	1994	372
5	1995	429
6	1996	548
7	1997	636
8	1998	534
9	1999	381
10	2000	298
11	2001	343

Source: Report on fighting corruption in Romania, Alina Dorobant, Revue internationale de droit pénal, Rapports individuals Vol. 74 2003/1–2

4. Civil liability and other consequences of corruption (A. Hermaniuk)

In order to combat against corruption effectively, different methods and integrated strategies are required at the same time. The fight against corruption also involves provisions set out in civil law. Civil liability and other legal consequences of corruption will often be provided simultaneously with criminal liability. The use of

possibilities of damages in the fight against corruption and the use of the possibility of damages can be promoted through international co-operation, although these principles cannot be implemented without the establishment of national civil law.

The scope of civil liability depends on the particular legal jurisdiction. However, the function of civil law is compensation whereas the function of criminal law is punishment. Regulations of civil law provide claims for damages caused by an offender who acted illegally for corruptive purposes. Claims for damages for losses incurred as a result of corruption may be made under a contract or otherwise. Civil liability may also include disciplining by professional bodies. In such cases, individuals may be disciplined by or suspended from membership of any professional associations to which they belong. Individuals may also be dismissed. Loss of employment may be carried out by companies if the individual was acting contrary to the ethical policy of the company. This could include claims for lost tender costs and termination of project contracts: A project owner may terminate a contract which it discovers has been awarded on the basis of corruption with consequent claims for compensation by all affected parties. Even if the contract does not expressly contain termination provisions, many countries' legal systems provide that contracts procured by a corrupt act can be terminated.

Companies involved in corruption may be forbidden to participate in future projects with other companies, institutions or organisations. Some of them (e.g. banks) have procedures under which they do not co-operate in projects, financed by themselves, with companies found to have been involved in corruption. This deterrent can be temporary as well as permanent. Also, the ethical organisations may be reluctant or refuse to co-operate when a company convicted, or even investigated for corruption, is involved. Finally, the destroyed reputation of a company involved in corruption usually brings about a loss in share value. The administrative procedure is designed to establish facts rather than to prosecute. Unlike criminal proceedings, the administrative procedure treats disciplinary action in confidence, since it is considered a private matter between the employer and employee.

Conclusion

Summarising, corruption is defined and regulated by legal regulations, which stipulate sanctions to deter people from committing an offence. This aim may be achieved if the sanctions provided by law are effective. It is only possible if they are simultaneously sufficient, enforced and respected. Prosecution is a part of the enforcing process. Broadly speaking, the prosecution service must be effective to gain the credibility of integrity, not only in the public service, but also with the public at large.

Chapter 8
From Legal Framework to Practical Instruments

F. Popa

1. Instruments for the prevention of fraud in the field of public acquisition

Procurement of goods, works and other services by public bodies alone amounts on average to between 15 % and 30 % of Gross Domestic Product (GDP), and in some countries, even more. Few activities create greater temptation or offer more opportunities for corruption than public sector procurement. Damage from corruption is estimated at normally between 10 % and 25 % and, in some cases, as high as 40 to 50 %, of the contract value (Transparency International, 2006).

Public procurement procedures are often complex. Transparency of the processes is limited, and manipulation is hard to detect. Few people becoming aware of corruption complain publicly, since it is not their own, but government money, which is being wasted.

Public Procurement is where the public and private sectors do business. Mention the subject of corruption in Government and most people will immediately think of bribes paid or received in the awarding of contracts for goods or services or, to use the technical term, procurement.

Few activities create greater temptations or offer more opportunities for corruption than public sector procurement. Every level of Government and every kind of Government organisation purchases goods and services, often in large quantities and involving much money. Procurement, in many countries, is seen as one of the most common forms of public corruption, partly because it is widespread and much publicised.

"Procurement" refers to the acquisition of consumption or investment goods or services, from pencils, bed sheets and aspirin for hospitals, gasoline for government cars, the acquisition of car and truck fleets, equipment for schools and hospitals, machinery for use by government departments, other light or heavy equipment

or real estate, to construction, advisory and other services (from the construction of a hydroelectric power station or expressway to the hiring of consultants for engineering, financial, legal or other advisory functions) (TI, 2006). "Public procurement" refers to all contracts between a government (government department, publicly owned corporation and other types of agencies) and companies (public or private) or individuals.

1.1 Actors in corrupt deals

Corrupt deals require the involvement of different actors depending on the form of corruption used. Bribery and facilitation payments require a giver and a taker, often a "facilitator" and, depending on the amount, someone providing a safe haven for the money or to facilitate a money laundering scheme (TI, 2006). Below are a few notes on corrupt deals' participants.

Official (representing a public authority, a government department) is usually called the **Employer** or the **Principal**. The Employer either takes the criminal initiative and extorts a bribe from the bidders before making official decisions in their favour, or is the recipient of a bribe initiative originating from one or more of the bidders and accepts a bribe in exchange for such a favourable decision.

Bidders (Suppliers, Contractors, Consultants) and Sub-contractors

Economic operators wishing to do business with the government, supplying goods or services, either take the initiative of offering/giving a bribe or any advantage to a government decision-maker in order to obtain a favourable decision, or give in to extortion demands from a corrupt official.

Agents, other Middlemen, Consultants, Joint Venture Partners, Subsidiaries

Economic operators wishing to manipulate a government decision-making process often refrain from committing the criminal acts directly themselves but utilise agents, "consultants", "contractors", other local middlemen, or local subsidiaries or joint venture partners for the actual bribe activity. The contract with the agent usually is vague as to purpose, control, disclosure, accountability, success factors etc. and often provides for payment into numbered accounts in tax havens, giving thus a clear indication of the criminal intent of the contract.

High Share of Managers (as distinguished from lower level staff)

Experience in industrial countries shows clearly that – apart from facilitation payments – the majority of corrupt people (both on the private and the government side) are not junior or subordinate staff, but people in the higher echelons, including many senior Managers.

Politicians

Politicians (especially at municipal level) often have a double political-administrative function (e.g. City Councillors) that results in a complex legal position as regards corruption (i.e. whether they are regarded as "officials" under the penal code or not) (TI, 2006).

Financial Safe Havens

Corruption would be much more difficult if opportunities to hide its benefits or to launder corrupt money didn't exist.

Witnesses

All those who have information about corruption have the power to stop it, and keeping silent is close to participating in it. Increasingly, whistleblower motivation and protection mechanisms, anti-corruption hot lines and other systems aim at making it easier for people who want to see things change (TI, 2006).

1.2 Principles of fair and efficient procurement

Procurement should be economical and based on the principle of "value for money". It should result in the best quality of goods and services for the price paid, or the lowest price for the acceptable quality of goods and services; not necessarily the lowest-priced goods available; and, not necessarily the absolutely best quality available, but the best combination to meet the particular needs.

The process should be transparent

Procurement requirements, rules and decision-making criteria should be readily accessible to all potential suppliers and contractors, and preferably announced as part of the invitation to bid. The opening of bids should be public, and all decisions should be fully recorded in writing.

The procurement process should be efficient

Procurement rules should reflect the value and complexity of the items to be procured. Procedures for small-value purchases should be simple and fast, but as purchase values and complexity increase, more time and more complex rules are required to ensure that principles are observed. "Decision-making" for larger contracts may require committee and review processes. Bureaucratic interventions, however, should be kept to a minimum.

Accountability is essential

Procedures should be systematic and dependable, and records explaining and justifying all decisions and actions should be kept and maintained.

Competence and integrity in procurement

Competence and integrity encourage suppliers and contractors to make their best offers and that, in turn, leads to even better procurement performance. Purchasers who fail to meet high standards of accountability and fairness are quickly identified as poor business partners. Clearly, bribery and corruption need not be a necessary part of doing business. Experience shows that much can be done to curb corrupt procurement practices if there is a desire and a will to do so. In order to understand how best to deal with corruption in procurement, it helps to know first how it is practised.

1.3 How corruption influences procurement decisions

Contracts involve a purchaser and a seller. Each has many ways of corrupting the procurement process at any stage. Suppliers can:

- Collude to fix bid prices;
- Promote discriminatory technical standards;
- Interfere improperly in the work of evaluators; and
- Offer bribes.

Before contracts are awarded, the purchaser can:

- Tailor specifications to favour particular suppliers;
- Restrict information about contracting opportunities;
- Claim urgency as an excuse to award to a single contractor without competition;
- Breach the confidentiality of supplier offers;
- Disqualify potential suppliers through improper prequalification; and
- Take bribes.

The most direct approach is to contrive to have the contract awarded to the desired party through direct negotiations without any competition. Even in procurement systems that are based on competitive procedures, there are usually exceptions where direct negotiations are permitted, for example:

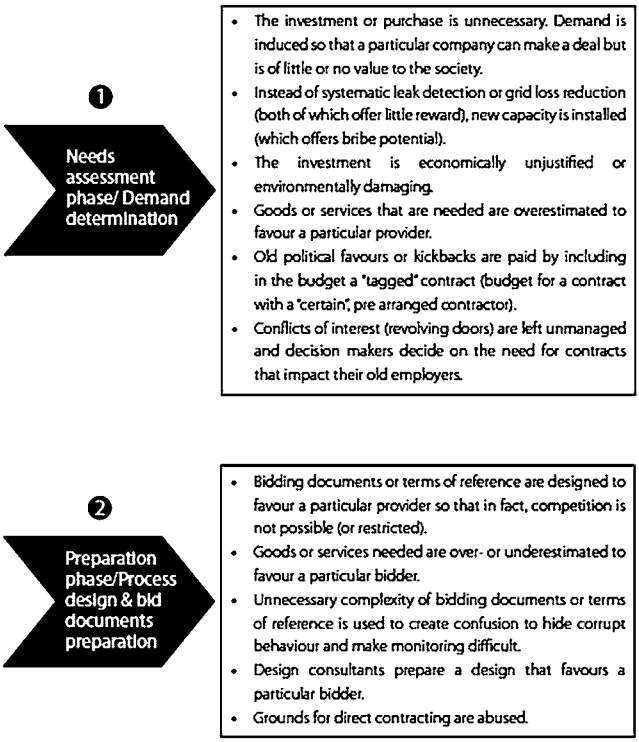
- In cases of extreme urgency because of disasters;
- In cases where national security is at risk;
- Where additional needs arise and there is already an existing contract; or
- Where there is only a single supplier in a position to meet a particular need.

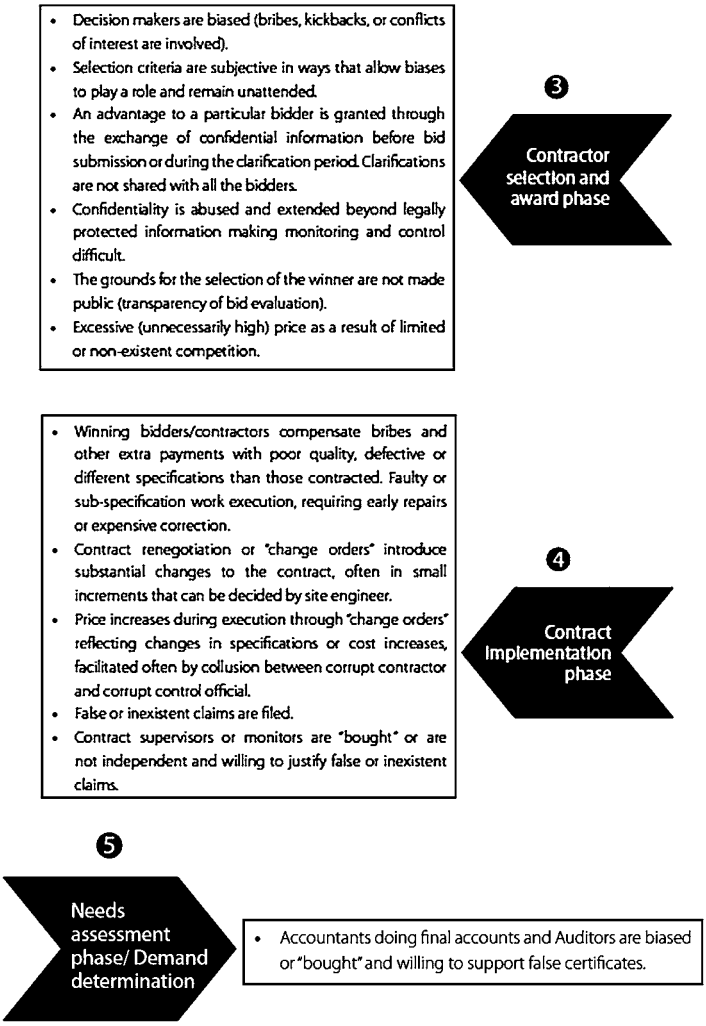
Corruption and corruption risks can take place along the entire cycle of public procurement. The cycle includes the following most common phases:

Figure 8
Cycle of Public Procurement

The following are some examples of the most usual manifestations of corruption and corruption risks at each stage:

Figure 9
The most usual manifestations of corruption and corruption risks at each stage of public procurement





Source: Transparency International, 2006

1.4 Manipulation by the purchaser: how to make a favoured party win

Even if there is competition, it is still possible to tilt the outcome in the direction of a favoured supplier. If only a few know of the bidding opportunity, competition is reduced and the odds improve for the favoured party to win.

Improper prequalification requirements

Bidder competition can be further restricted by establishing improper or unnecessary prequalification requirements, and then allowing only selected firms to bid. Again, prequalification, if carried out correctly, is a perfectly appropriate procedure for ensuring that bidders have the right experience and capabilities to carry out the requirements of a contract. If the standards and criteria for qualification are arbitrary or incorrect, however, they can become a mechanism for excluding competent but unwanted bidders (United Nations, 2004).

Tailored specifications

Persistent but unwanted parties who manage to bypass the hurdles mentioned can still be effectively eliminated by tailoring specifications to fit a particular supplier. Using the brand name and model number of the equipment from the preferred supplier is a little too obvious, but the same results can be achieved by including specific dimensions, capacities and trivial design features that only the favoured supplier can meet. The inability and failure of competitors to be able to meet these features, which usually have no bearing on critical performance needs, are used as a ploy to reject their bids as being "non-responsive."

Breach of confidentiality

Competitive bidding for contracts can work only if the bids are kept confidential until the prescribed time for determining the results. A simple way to predetermine the outcome is for the purchaser to breach the confidentiality of the bids, and give the prices to the preferred supplier who can then submit a lower figure. The mechanics are not difficult, especially if the bidders are not permitted to be present when the bids are opened.

Invention of new criteria

The final opportunity to distort the outcome of competitive bidding is at the bid evaluation and comparison stage. Performed responsibly, it is an objective analysis of how each bid responds to the requirements of the bidding documents and a determination of which is the best offer. If the intention is to steer the award to a favoured bidder, the evaluation process offers almost unlimited opportunities: if necessary, and unless prevented from doing so, evaluators can invent entirely new criteria for deciding what is "best", and then apply them subjectively to get the "right" results. They are often aided in the process by issuing bidding documents that are deliberately vague and obscure about what requirements must be met and how selection decisions will be made. Such techniques are only a brief outline of some of the ways in which a purchaser is able to corrupt the procurement process (United Nations, 2004).

It would be a mistake to think that the buyers are always the guilty parties: just as often, they are the ones being corrupted by the sellers, although perhaps without undue resistance.

The most serious and costly forms of corruption may take place after the contract has been awarded, during the performance phase. It is then that the purchaser of the goods or services may:

- Fail to enforce quality standards, quantities or other performance standards of the contract;
- Divert delivered goods for resale or for private use; and
- Demand other private benefits (trips, school tuition fees for children, gifts).

For his or her part, the unscrupulous contractor or supplier may:

- Falsify Quality or Standards certificates;
- Over-invoice or under-invoice; and
- Pay bribes to contract supervisors.

If the sellers have paid bribes or have offered unrealistically low bid prices in order to win the contract, their opportunities to recover the costs arise during contract performance. Once again, the initiative may come from either side but, in order for it to succeed, corruption requires either active co-operation and complicity or negligence in the performance of duties by the other party (United Nations, 2004).

1.5 Measures to combat corruption in procurement

Public exposure

The most powerful tool is public exposure. The media can play a critical role in creating public awareness of the problem and generating support for corrective actions. If the public is provided with the unpleasant and illegal details of corruption: who was involved, how much was paid, how much it cost them, and if it continues to hear about more and more cases, it is hard to imagine that the people will not come to demand reform.

Once support is developed for the reform of procurement practices, the problem can be attacked from all sides. Usually the starting point will be the strengthening of the legal framework, beginning with an anti-corruption law that has real authority and effective sanctions.

Criminalise bribery

Only the United States has had a Foreign Corrupt Practices Act, since 1977, that specifically makes it a crime under its domestic laws to bribe foreign officials to gain or maintain business, even when those events take place abroad. The OECD Con-

vention, directed at outlawing international business corruption involving public officials, aims, in essence, to internationalise the US approach.

The next legal requirement is a sound and consistent framework establishing the basic principles and practices to be observed in public procurement.

Unified procurement code

The code can take many forms, but there is increasing awareness of the advantages of having a unified procurement code, setting out the basic principles clearly, and supplementing them with more detailed rules and regulations within the implementing agencies. A number of countries are consolidating existing laws that, over many years, have developed haphazardly into such a code (United Nations, 2004).

Transparency procedures

Beyond the legal framework, the next defence against corruption is a set of open, transparent procedures and practices for conducting the procurement process itself. No one has yet found a better answer than supplier or contractor selection procedures based on real competition.

- The complexity or simplicity of the procedures will depend on the value and nature of the goods or services being procured, but the elements are similar for all cases:
- Describe clearly and fairly what is to be purchased;
- Publicise the opportunity to make offers to supply;
- Establish fair criteria for selection decision-making;
- Receive offers (bids) from responsible suppliers;
- Compare them and determine which is best, according to the predetermined rules for selection; and,
- Award the contract to the selected bidder without requiring price reductions or changes to the winning offer.

For small contracts, suppliers can be selected with very simple procedures that follow these principles. However, major contracts should be awarded following a formal competitive bidding process involving carefully prepared specifications, instructions to bidders and proposed contracting conditions, all incorporated in the sets of bidding documents that are usually sold to interested parties. Such documents may take months to prepare. Procurement planning must be sure to take these time requirements into account, and start early enough to ensure that the goods and services will be ready when needed. Any pressures for "emergency" decisions should be avoided (United Nations, 2004).

2. Instruments for prevention of fraud in the field of judiciary

The major focus of anti-corruption efforts should be to strengthen integrity, educate judges about the nature and extent of corruption, and establish adequate accountability structures.

Assessment of the problem of judicial corruption

As with other anti-corruption measures, efforts to combat judicial corruption should be based on an assessment of the nature and scope of the problem. As many of the measures pertaining to judges must be developed, maintained and applied by the judges themselves, the assessment should also consider the capacity of the judiciary to undertake such functions.

An objective assessment of the full range of corruption types and the level and locations of courts in which they occur should be examined. All parties involved in anti-corruption efforts within judicial institutions should be asked about possible remedies. Data should be assembled and recorded in an appropriate format and made widely available for research, analysis and response (United Nations, 2004).

Consultations

Judicial independence precludes the imposition of reforms from external sources, which means that any proposals for judicial training and accountability must be developed in consultation with judges, or even developed by the judges themselves, with whatever assistance they may require. Consultations with other key groups, such as the bar associations, prosecutors, justice ministries, legislatures and court users are recommended. Lawyers, for example, are a source of information concerning problems about which judges may be unaware. In many countries, judges are drawn from the ranks of the legal profession, as well as in consultation with the practicing bar. In some cases, bringing together different groups to discuss issues informally may prove productive. Based on the consultation process, a specific plan of action could be drafted to set out the proposed reforms in detail, establish priorities and implementation sequence, and set targets for full implementation.

Judicially established measures

To protect judicial independence, self-regulation structures should be developed wherever possible. In other words, based on consultations and other sources of information, judges should be encouraged and assisted in the development and maintenance of their own accountability structures. With this in mind, the establishment of bodies such as judicial councils, in which judges themselves hear complaints, impose disciplinary measures and remedies, and develop preventive policies, will be required. Views about the extent to which training can be required without compromising judicial independence vary; it is preferable, however, for training pro-

grams in such areas as anti-corruption to be developed by, or in consultation with, judges to the fullest extent possible. That avoids the debate about independence and is likely to increase the effectiveness of the training (United Nations, 2004).

Judicial training

The focus of the subject matter of judicial training should be to assist judges in maintaining a high degree of professional competence and integrity. Possible subject matter could include the review of codes of conduct for judges and lawyers, particularly if they have been revised or reinterpreted, and a review of statute and case law in key areas such as judicial bias, judicial discipline, the substantive and procedural rights of litigants and corruption-related criminal offences. Less structured options, such as informal discussions, could be used to explore difficult ethical issues among judges.

A judicial code of conduct

Codes of conduct for judges could be developed and applied. Judicial independence does not require that such codes be developed by judges themselves, provided that specific provisions do not compromise independence. Judicial participation is, however, important both to the development of suitable provisions and the subsequent adherence of judges to them. The application of a judicial code of conduct to individual judges alleged to have breached its provisions does, however, raise independence concerns, and the power to apply such codes should be vested in the judges themselves. For that reason, key provisions of a code would stipulate that judges connected in any way with a complaint should not participate in any disciplinary or related proceedings. Once a code is established, judges should be trained in its provisions when they are appointed and, if necessary, at regular intervals thereafter. Transparency and the publication of a code are also important to ensure that those who appear before judges, plus the media and the general population, are educated about the standards of conduct they are entitled to expect from their judges. As part of the consultation process, representatives of bar associations, prosecutors, justice ministries, legislatures and civil society in general should be involved in setting standards. Those involved in court proceedings also play an important role in identifying complaints and assisting the adjudication of those complaints (United Nations, 2004).

The quality of judicial appointments

The objective in selecting new judges should be to ensure a high standard of integrity, fairness and competence in the law, and processes should focus on selecting for those characteristics. Several measures can assist in ensuring that the best possible candidates are elevated to the bench. Transparency with respect to the nomination and appointment process and to the qualifications of proposed candidates will al-

low close scrutiny and make improper procedures difficult. Consultations with the practicing bar can be used to assess competence and integrity where the candidates are lawyers. The appointment process should, as much as possible, be isolated from partisan politics or other extrinsic factors, such as ethnicity or religion. As a group, judges should generally represent the population at large, which means that appointments to senior or national courts may have to take into account factors such as ethnicity or geographic Background. They should not, however, be allowed to interfere with the search for integrity and competence.

The assignment of cases and judges

Experience with judicial corruption has shown that, in order to improperly influence the outcomes of court cases, offenders must ensure not only that a judge is corrupted in some way, but that the corrupt judge is assigned the case in which the outcome has been fixed. Procedures should thus be established to make it difficult for outsiders to predict or influence decisions about which judges will hear which cases. Features, such as randomness and transparency, can be incorporated into the assignment process, although transparency will inform outsiders which judge will hear which case. Such a situation will also occur in major or appeal cases, where judges may hear preliminary matters or be asked to review written evidence and arguments well in advance of hearing the case.

The establishment of local or regional courts or judicial districts and the regular rotation or reassignment of judges among those courts or districts can also be used to help prevent corrupt relationships from developing. Factors such as gender, race, tribe, religion, minority involvement and other features of the judicial officeholder may also have to be considered in such cases (United Nations, 2004).

Transparency of legal proceedings

Wherever possible, legal proceedings should be conducted in open court, a forum to which not only the interested parties but also the media and civil society, have access.

Public commentary on matters, such as the efficacy, integrity and fairness of proceedings and outcomes, is important and should not be unduly restricted by legislation, judicial orders or the application of contempt-of-court offences. The exclusion of the media or constraints on their commentary should be limited to matters where it is demonstrably justifiable, for example protecting children and other vulnerable litigants from undue public attention, and only to the extent that such an interest is served. Media may be permitted to attend proceedings and report on the facts and outcome of a case, for example, but not to identify those involved. *Ex parte* proceedings, excluding one or more of the litigants, should be permitted only where secrecy is essential, and should always be a matter of record. Neither litigants nor

legal counsel should have any communication with a judge unless representatives of all parties are present.

The review of judicial decisions

The primary forum for reviewing judicial decisions is the appellate courts. Appeal judges should have the power to comment on decisions that depart from legislation or case law so radically as to suggest bias or corruption. They should also be able to refer such cases to judicial councils or other disciplinary bodies, where appropriate. Such bodies should have the power to review but not overturn judgments where a complaint is made or on their own initiative, for example where concerns are raised through other channels such as media reports.

Transparency and the disclosure of assets and incomes

The potential corruption of judges, like other key officials, can be approached on the basis of unaccounted-for enrichment while in office, using requirements that relevant information must be disclosed, and investigations and disciplinary measures undertaken where impropriety is discovered. Powers to audit or investigate judges affect judicial independence if they are specific to a particular judge or enquiry. Thus, while routine or random audits could be performed by other officials, provided that true randomness can be assured, any follow-up investigations should be a matter for fellow judges (United Nations, 2004).

Judicial immunity

By virtue of the nature of their office, judges generally enjoy some degree of legal immunity. Immunity should not extend to any form of immunity from criminal investigations or proceedings; nevertheless, improper criminal proceedings or even the threat of criminal charges can be used to compromise the independence of individual judges. Where criminal suspicions or allegations emerge, it may be advisable to ensure that they are reviewed not only by independent prosecutors but also by judicial councils or similar bodies. Where an investigation or criminal proceedings are under way, the judge concerned should be suspended until the matter has been resolved. A criminal acquittal, however, should not necessarily lead to reinstatement as a judge, particularly as the burden of proof is higher in criminal than in disciplinary proceedings. For example, a judge may be dismissed where there is substantial evidence of wrongdoing but not enough for a criminal conviction; or there may be discovery in a case of misconduct not amounting to crime but inconsistent with continued office as a judge, for example the failure to disclose income or conflict of interest.

The protection of judges

Experience suggests that, as judges become more resistant to positive corruption incentives, such as bribe offers, they are more likely to be the targets of negative incentives such as threats, intimidation or attacks. Protection of judges and members of their families may thus be necessary, particularly in cases involving corruption by organised criminal groups, senior officials or other powerful and well resourced interests.

Dealing with judicial resistance to reforms

Resistance to reform by judges can arise from several factors. Legitimate concerns about judicial independence can, and should, make judges resistant to reforms imposed from non-judicial sources. In such cases, there is the risk that efforts to combat judicial corruption, even if successful, may set precedents that reduce independence and erode basic rule-of-law safeguards. Resistance of that nature can best be addressed by ensuring that reforms are developed and implemented from within the judicial community, and that judges themselves are made aware of that fact and of the need to support reform efforts. Resistance may also come from judges who are corrupt, and fear the loss of income or other benefits, such as professional status, that derive from corruption or the influence it enables them to exert. Those involved in past acts of corruption may also face criminal liability if such behaviour is exposed. The benefits of reform to such judges, if any, tend to be long-term and indirect and therefore not seen as compensation for the shorter-term costs of ceasing corrupt activity and embracing reforms (E. Buscaglia, M. Dakolias, 1999).

To redress the imbalance, it may be possible, in some cases, to ensure that early stages of judicial reform programmes incorporate elements that provide positive incentives for the judges involved. For example, reforms promoting transparency and accountability in judicial functions can be accompanied by improvements in training, professional status and compensation and tangible incentives, such as early retirement packages, promotions for judges and support staff, new buildings and expanded budgets.

Another factor that may diminish judicial resistance is a poor public perception of the judiciary and the resulting pressure on courts and judges. Where corruption is too pervasive, the basic utility of the courts tends to be eroded, leading members of the public to seek other means of resolving disputes, and the popular credibility and status of judges diminishes. Crises of that nature can graphically demonstrate the extent of corruption and the harm it causes, reduce institutional resistance and generally provide a catalyst for reforms.

The reform of courts and judicial administration

Court reforms intended to address corruption problems will often coincide with more general measures intended to promote the rule of law and general efficiency and effectiveness (United Nations, 2004). Reforms include:

- ***Adequate resources and salaries.*** Ensuring that courts are adequately staffed with judges and other personnel can help reduce the potential for corruption. Officials who are adequately paid are less susceptible to bribery and other undue influences; systems that deal with such cases quickly minimize the opportunities for corrupt interference or for officials to sell preferential treatment or charge "speed money".
- ***Court management structures.*** Management structures can set standards for performance, and ensure transparency and accountability by, for example, ensuring proper records are kept and cases are tracked through the system. Where feasible, computerisation or the use of other information technologies may provide cost-effective ways of implementing such reforms.
- ***Statistical analysis of cases.*** The analysis of statistical patterns with respect to how cases arise, how they are managed and assigned to judges and their outcomes can help to establish norms or averages and identify unusual patterns that may be indicative of corruption or other biases. Where misconduct is suspected, the records of specific judges could be subjected to the same analysis.
- ***Public awareness and education.*** Efforts should be made to educate the public about the proper functioning of judges and courts in order to raise awareness about the standards that should be expected. That usually generates other benefits, such as increasing the credibility and legitimacy of the courts and increasing the willingness of outsiders to participate in or cooperate with judicial proceedings.
- ***Alternative dispute resolution.*** Alternatives, such as mediation between litigants, can be used to divert cases from the courts. Such a step may allow litigants to avoid a forum suspected of corruption, although the alternative method may be just as vulnerable, if not more so. Such options do reduce court workloads and conserve resources, and are often available for impoverished litigants or for small cases where a judicial trial is out of reach.

3. Instruments for prevention of fraud in the field of local public administration

Anti-corruption programmes at the municipal or local level can be seen as a miniature version of similar efforts at the national level. In developing countries, decentralisation has increased citizen participation in local decision-making. Elected local governments face increasing responsibility for the construction and mainte-

nance of basic infrastructure, delivery of basic services and social services, with the entire concomitant financial, managerial and logistical challenges. That local responsibility has advantages and disadvantages for the control of corruption. Decentralisation and greater local autonomy can isolate local activities from centralised monitoring and accountability structures that deter and control corruption. If well managed, however, and provided that they can be mobilized to identify and eliminate corruption, they can also place local activities under closer and more effective scrutiny from local people. The following specific actions can either be adapted as "tools" and incorporated into local anti-corruption programmes or used as a guide to modify elements of programmes being adapted for use at the local level.

Local anti-corruption programmes will generally deal with the following issues:

Identifying the political will and capacity to execute local reforms

It is important to identify local leaders with the will and ability to press for better governance in general and anti-corruption measures in particular [United Nations, 2004]. Often, local in civil society sources, such as the media, can assist in this effort.

The assessment of local corruption, the institutional framework for actions and other factors

As most corruption has some local component, those active at the national or international levels must bear in mind that local planning will usually have to be flexible enough for local circumstances for effective implementation to take place. Much assessment, particularly of local institutions and political conditions, can be carried out using action-planning meetings. Other information, such as assessments of the local nature and extent of corruption and general public concern about it, may have to be obtained using more detailed and specific measures, such as public surveys. While assessment should precede the development and implementation of action plans, it should also take place during and upon completion of the process to assess progress and adjust actions as necessary.

Issues raised by local anti-corruption action plans

Action planning meetings and the resulting local anti-corruption programmes will generally deal with the following issues:

Identifying the political will and capacity to execute local reforms

It is important to identify local leaders with the will and ability to press for better governance in general and anti-corruption measures in particular. Often, local civil society sources, such as the media, can assist in this effort.

The assessment of local corruption, the institutional framework for actions and other factors

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The use of local anti-corruption commissions or committees

The establishment of commissions or committees to develop, implement and monitor anti-corruption efforts. Specific mandates for local committees could include the following elements:

- Development of a municipal strategy or action plan combining elements of the national programme with those generated or modified by local needs;
- Translation of national and municipal anti-corruption policies into specific plans of action for the local level;
- Preparation of municipal legislation, where needed;
- Dissemination of information, generation of local support and momentum;
- Monitoring of the implementation of the local programme; and,
- Providing local information and feedback to national, regional, and local anti-corruption entities.

Related tools

Most public services are delivered at the municipal or local level; thus, that level is where most petty and administrative corruption is likely to occur. For municipal anti-corruption initiatives to succeed, additional initiatives also need to be launched (United Nations, 2004). Specific tools that may form elements of local programmes or be used in conjunction with such programmes include:

- Tools that increase public awareness, such as media campaigns, that increase awareness of and resistance to corruption while fostering awareness and support of anti-corruption efforts;

- Tools supporting consultations and the development of strategies, and action plans that reflect local problems and priorities, such as the holding of action-planning or similar meetings;
- Tools involving assessment of the nature and extent of corruption as well as local perceptions and reactions to the problem and efforts to combat it. Tools in this category assist in developing "baseline" information against which later progress can be assessed, ongoing assessments as to whether goals have been achieved and modifications or adjustments to ongoing strategies or actions;
- Tools that develop and establish standards, such as codes of conduct, are often used to provide the basis for efforts at the local level and to generate appropriate expectations from service-users;
- Tools supporting transparency;
- Tools supporting institutional reform, such as the creation of performance linked incentives for officials, the reduction of official discretion, and the streamlining or simplification of procedures; and
- Tools supporting accountability, such as inspection or audit requirements, disclosure requirements, complaints mechanisms, conflict of interest measures, disciplinary rules and discretion.

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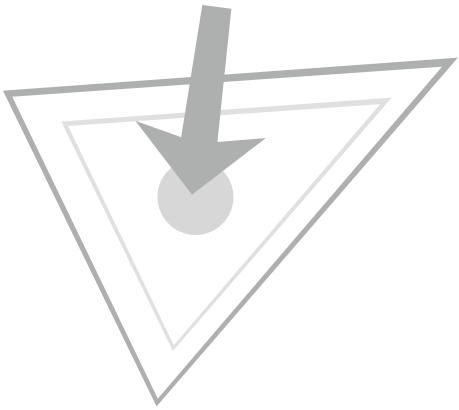

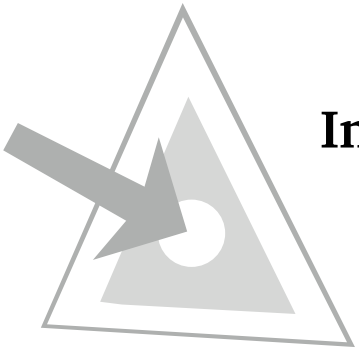

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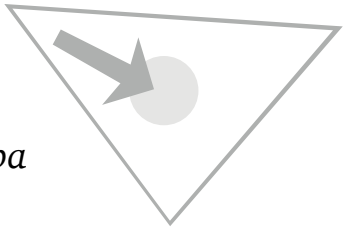


Ani Matei

Florin Popa

Chapter 1
Instruments concerning the public function

1. The civil servant's career

Career management consists of career planning and management succession. Career planning shapes the progression of individuals within an organisation in accordance with assessments of organisational need and the performance, potential and preferences of individual members of the organisation. Management succession takes place to ensure that, so far as possible, the organisation has the managers it requires to meet its future business needs (National Agency of Civil Servants, 2008).

The career management represents the process of design and implementation of the goals, strategies and plans that could allow public institutions to meet the needs of human resources, and individuals to fulfil their career goals. The career management is planning and shaping the progress of individuals in a public institution in accordance with the organisational needs evaluation, and also with the performances, the potential and individual preferences of its members (National Agency of Civil Servants, 2008).

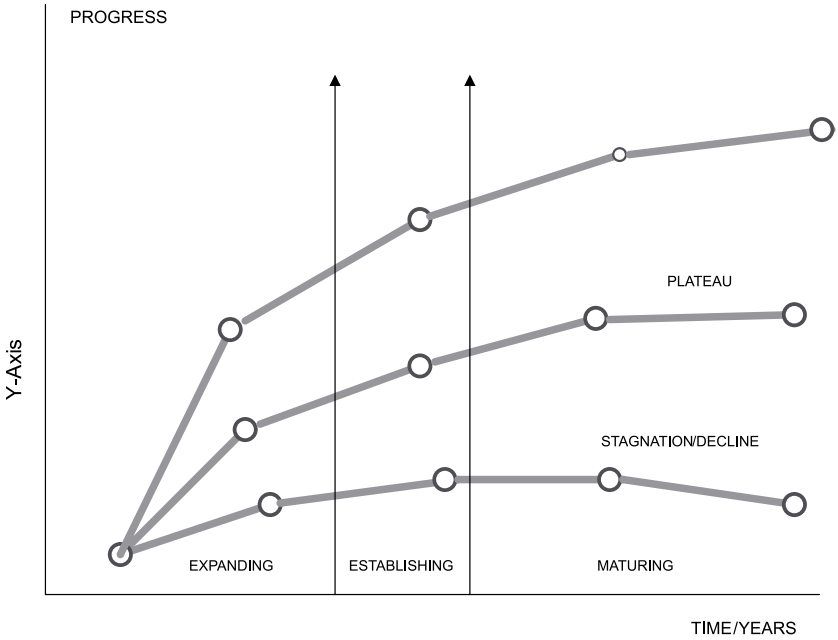
Career development has three overall aims.

- To ensure that the organisation's need for management and other staff succession are met.
- To provide men and women with a potential sequence of training and experience that will equip them for whatever responsibility they have the capacity to reach.
- To give individuals with potential the guidance and encouragement they need to fulfil their potential and achieve a successful career with the organisation in line with their talents and aspirations.

Career dynamics

The following figure illustrates the ways in which career progression proceeds through stages.

- Expanding – new skills are acquired, knowledge is growing rapidly, and competencies are developing quickly.
- Establishing – skills and knowledge gained in the expanding phase are applied, tested, modified and consolidated with experience.
- Maturing –individuals are well-established on their career paths. They proceed in accordance with their abilities, motivation and opportunities.



CAREER PROGRESSION CURVES

Source: National Agency of Civil Service, 2008

In the context of this chapter, the name "the public officer career" shall mean: vertically promoting, salary progress and horizontal and geographical mobility.

Internal promoting

Regarding internal promotion, member states may be divided into two groups, depending on how they practise the career system or the different structural characteristics system. Member States which are part of the first group put in place well-defined systems of promotion in which the official is promoted on the basis of the conditions settled and on the periodic increase in wages. In this system, the professional development is treated extensively (Bossaert et al, 2001).

In Finland, The Netherlands and **Sweden**, which are countries that have a system with different structural characteristics, promoting during the career is not organised according to a system fixed in advance. **In Austria**, there are nine groups of remuneration involving seven groups each (Verwendungsgruppen).

In the system of the categories of employment (Dienstklassen system) there is a possibility of promotion within the categories from a level (Dienstklasse) at an immediately higher level, after finishing a waiting period and depending on the benefits provided. With the advancement system (Vrückungssystem) which is applied in parallel, advancing from one grade to another takes place only once every two years.

In Belgium, there are five levels of employment involving 13 ranks. Promotion is carried out by either rising from one rank to another, the immediately higher rank at the same level and either from one level to another, immediately superior. A career development through promotion to a higher level is not possible other than through examination of access. Advancement in rank is subject to examination success. **In France**, a promotion is regulated by the general statute and by the special statute of the body of officials. The promoting choice takes into account the age and also the agent's merits. The officials seeking promotion must participate in a contest or in an internal selection procedure. Among other things, advancing from one level or higher rank may be based on the results obtained, the length of service or the services provided (Bossaert et al, 2001).

In Germany, the items for promotion are usually announced at an internal level. Promotion is granted on the basis of professional performance and on the budget items available. The officer is always promoted to an immediately higher degree of career, which includes a degree of access, a promotion degree and a superior degree. In general, the officer remains in one of the four categories – Einfacher, Mittlerer, gehobener or Höherer Dienst – but, equally, there is the possibility of access to a career of superior categories. For this, officials must follow a course or a complementary specific training and participate in a regulated advancement procedure.

In Greece, advancing to a higher degree depends on the benefits provided, on the seniority and evaluation of the officer. The decision is taken by a ministerial committee (five members, of which three belong to the category A). This commit-

tee selects lower personnel and heads direction. A special ministerial committee chooses the heads of general directorates, among university applicants who already have experience as a chief of division.

In Ireland there is no regulated system of promotion, but seniority is part of the criteria considered. In terms of advancement in the ministries, we can say that the internal promotion varies from one ministry to another and that a procedure can have as an objective the direct assessment of the eligible staff in the ministries or of a formal competition that allows reuniting qualified candidates groups. This interministerial contest is held to ensure the promotion of a number of posts, to the principal. Almost all vacancies at the upper management level are announced throughout the entire public function and are awarded internally (Bossaert et al, 2001).

In Luxembourg, promotion is possible at all levels of career: the lower, average and higher career – after 3, 6 and 10 years of service, but success is linked to a specific examination for advancement. **In Portugal**, promotion follows the principle of seniority. A promotion in a rank directly superior may be granted only if the officer has obtained a "good" qualification in the past three years. For the two higher technical categories: technical and technical-professional, promotion is subject to a "good" qualification for the past five years or "very good" for the past three years. **In Spain**, promotion is possible only through participation in an opposition or a contest-opposition and a group of top administration or from one class to another. A promotion to a higher rank always involves participation in an open competition. **In the UK**, the issue of advancement has been delegated to ministries and agencies, which must establish their own rules in compliance with the civil service's code of management. The basic principles are the evaluation and selection of all candidates according to an order of merit determined on the basis of the benefits provided. Selection is made by the General Committees of promotion which are based on an annual assessment of certain aspects of behaviour and on the general ability of the candidate who holds an office of higher rank. The current tendency is to suppress the general committees for promotion in favour of a system of individual promoting to specific posts.

Mobility

The general context of modernisation

As we speak of the general evolution of the European civil service, we observe a trend towards a greater decentralisation, on the one hand, and an increased importance of the European dimension, on the other. The process of decentralisation involves the transfer of powers from central to regional administration. This involves the transfer of officials from central administration to regional entities (Belgium, Ireland, Spain, and Italy) (Bossaert et al, 2001). The increased influence of the European dimension represents another key element. This influence is seen particularly in the European exchange programmes for officials from the Member States. How-

ever, it should be noted that in two of the new Member States, Austria and Finland, the mobility is very rare, compared to other EU Member States and other European institutions. Moreover, the EU adherence imposes high demands on public administration and the other public services play an increasingly decisive role in choosing the economic operators when deciding the localisation of their activity.

The legal principles and objectives of mobility

All major forms of mobility (geographical, professional and/or functional) can be seen in various public functions. But often the distinction is made between voluntary and compulsory mobility. In general, mobility is encouraged for the following reasons:

- In terms of administration, mobility represents a means to increase the ministry's, office's or agency's flexibility of operation;
- From the official's point of view, mobility allows familiarity with other fields of work, developing new skills, expanding horizons, and professional progress.

Regarding the various legal foundation of mobility, we can distinguish between temporary mobility and permanent transfer:

- In the case of temporary change, **France** and **Germany** have set up a series of instruments aimed at promoting flexibility in the management of human resources (ex. French tools making available and deployment and German tools of Abordnung and Zuweisung);
- In the **UK** the number of temporary departments (voluntary) is high, and the instruments used for this purpose, classified as mobility, stem largely from the various ministries and authorities.

Among others, in **The Netherlands**, there were various instruments designed and implemented to promote temporary mobility. As an example, we include:

- Project teams, groups of officials who are affected for a short time to special projects. Then, these officials return to their posts (Belgium has resorted to this technique);
- Structural co-operation with interim work agencies;
- Co-operation agreements between ministries in the exchange of specially trained or redundant personnel.

Regarding the permanent move, **Ireland** has used an interesting tool. For appointing to a higher degree, the candidates are selected on a competitive basis. Grades are identical in all ministries, which allows inter-mobility.

Italy has developed a solution worthy of interest to the reassignment of personnel as a result of restructuring. Italian officials have the opportunity to present at their pleasure, candidature for vacancies in the civil service which are published on

a list. These officials move on the basis of a list prepared by the host administration. If officials are declared redundant and did not request a return, they are reclassified by the office on the basis of a list of items remaining, despite voluntary mobility.

In The Netherlands they created centres of mobility to help surplus staff to find jobs elsewhere. **In Belgium, Finland, France, Luxembourg and Spain**, transfer opportunities are generally limited, and often an exchange is possible only for a short period. [Danielle Bossaert, Christoph Demmke, Koen Nomden, Robert Polet, 2001]

In Finland they introduced a system of staff rotation which allows officials to hold different positions for 6 or 12 months without changing their employer. Recently, **Austria and Germany** began to promote the mobility of officials in the networks involved in careers between different departments.

In France, the various forms of mobility of public servants are considered as a tool that allows the administration to adopt its new career systems. However, transfers take place, in particular, on demand, in the interest of the official. Geographic mobility can be made through the movement; this form of mobility concerns about 3 % of officials every year. On the functional mobility plan, there are various possibilities:

- Through provision, in which the officer can work in a state administration for three years i.e. in a public institution, an institution or a body providing services of general interest, or in addition to an international organisation, continuing to collect compensation corresponding to the previous job;
- Deployment, throughout which officials can work in central government agencies, in public institutions and public enterprises, in addition to a local or regional community, in international organisations, enterprises, private institutions or associations that provide general services. These legal persons pay their officials, but they preserve their rights for advancement and promotion in the administration of origin.

Spain authorises transfers if the request of an official is related to an assessment or a specific contest, or if it is linked with the nomination of the most senior officials. There is an officio transfer, if the old post of the officer was abolished following a restructuring. The officio transfers to an international organisation or specific tasks carried out temporarily, while the permanent transfer to another department is the official's decision.

In Austria, the law concerning the public function stipulates various ways to ensure mobility, but it provides promoting geographic and occupational mobility in a career. **In Germany**, a change of career is public in the interest of a service without the official's approval being necessary. Among others, the official may be charged

with tasks (possibly of a lower rank) which do not correspond to his office, for a maximum period of 2 years.

In Denmark, Ireland, Italy, The Netherlands and Portugal, Sweden and Britain, geographical or professional mobility, with or without a change of employer, is common and easily achievable. In this group of countries, mobility options are numerous. Transfer from one department to another is common. **In Denmark**, the liberal or multilateral trade system was introduced among the different ministries, institutions, etc. and, in some cases, between the public and private sectors. **In Ireland**, officials may be forced, in terms of service regulations, to occupy their functions anywhere in the country, but in practice, active staff, for general levels of service (which mean, common service levels in all departments) are not forced to change their position. For average staff, mobility may take any form. In the recruitment of Trainees University, officials who have an administrative officer degree must pass each year to another minister, for a period of three years after being hired in the civil service (Bossaert et al, 2001).

In Italy, all forms of mobility are possible, either at the request of the officials or ex officio by Dipartimento della funzione pubblica.

In the structural reform of the civil service, **The Netherlands** has begun promoting the mobility of officials. For high-level posts, a change of posts and spheres of responsibility is a condition for advancement.

In Portugal, officials can be transferred ex officio, but there are many ways to consider their interests and desires in terms of mobility.

In Sweden, there was no stipulated decision relating to mobility, but generally, it is widely practised in accordance with directives set by departments, responsible agencies; professional mobility being supported and encouraged by the remuneration system of the Swedish civil service, in which wages are determined from case to case. Here, mobility between different segments of the labour market is desired, which explains the fact that the same value is given both to the professional experience gained in the private sector, and with the civil service.

In the UK, some officials, in general officers holding a superior post to that of clerical officer, and who exercise their functions with full norm, can change positions in the national territory and, in some cases, also overseas. A permanent change of a post accessible from home or a temporary move may be required by all officials. In principle, professional mobility is encouraged especially for senior posts. The change of the employee is not only possible in various ministries and/or agencies, but also between the public and private sectors.

Mobility flows

In Ireland and Spain, the state decentralisation led to a large geographical mobility. **In Germany** we have a strong temporary increase in geographic mobility due to the transfer of the Federal Government from Bonn to Berlin.

In Belgium, the posts of the higher degrees were open to candidates from all federal ministries and bodies or agencies to increase functional mobility. Spanish experience demonstrates the danger of excessive mobility.

In Spain, excessive occupational mobility is regarded as ineffective because it was found that the need to constantly change position entailed a decrease in professionalism.

The obstacles against mobility

In many countries with a career system, we will find obstacles from the number and complexity of regulations and procedures. Equally, we should mention other types of obstacles:

- Emotional or psychological obstacles: fear of losing work, resistance to change;
- Obstacles related to exercising the functions that require professional skills and techniques.

Several states now simplify mobility conditions, in order to remove psychological barriers; some countries began to actively use mobility as a tool for personal development (Denmark, Finland, and The Netherlands).

In Ireland, progress has been made to remove the barriers between the general administration and the technical services. Whatever the profile or specialisation are, all officials from the sectors concerned may apply for vacancies on the two echelons of the public function (Bossaert et al, 2001).

Other efforts have been undertaken to remove barriers against mobility:

- **France** implemented an inter-departmental competition to create access to vacancies;
- **Spain** has also introduced inter-ministerial contests, but only to affect redundant staff;
- **The UK** has multiplied the number of measures referring to vacancies;

Measures in favour of mobility

In most countries, there is no formal link between mobility and evaluation procedures for officials. However, it has often been found that mobility is regarded as being one of the many factors of the evaluation procedures. Most countries associate mobility as a possibility for obtaining additional training, especially for pre-

paring redundant staff for new employment opportunities, but also to allow, after the move, the transmission of knowledge necessary for the implementation of new functions. Among others, it reports the fact that mobility was taken into consideration in career progress. From this point of view, Britain stresses the danger of confusion between job rotation with career development.

2. Meritocracy

Represents a term widely discussed in the six-seven decades in philosophical language, sociology and journalism, and it covers the situation where social positions and the rewards associated with them (income, power, prestige, privileges, etc.) are not inherited, but acquired by individuals on the basis of their qualities and personal merits.

Discussions about meritocracy fall in the wider issues of social inequality, regarded as unequal opportunities for social advancement and as the perpetuation, in one form or another, of the influence of social origin (uneven) of individuals over the social statuses acquired during their lifetime.

Meritocracy is considered a symptom of democratisation, permeability and equalisation of opportunities for social advancement. At one point, the continuing growth of indices of social mobility, the apparent weakening of the mechanisms for prescribing in favour of those of social status acquisition and the more pronounced conditioning of this level by the level of education, have created the illusion that the advanced industrial societies were in an "era of meritocracy" (M. Young, 1961).

To sociologists, meritocracy describes a social system (ideal) that would have the property in which the influence of the social origin over the status to be fully conveyed through education (and not the other way round: inheritance, privilege, etc.). G. Carlsson has called this type of social system "society without any delayed effects" (1958) and R. Boudon "a meritocratic society" (1973). Such an approach allows the application of a statistical treatment based on a formalised definition: a social system with three characteristics – the origin, the school level, the status – is meritocratic, if and only if the probability that an individual who is at a school level Sj could achieve a status Ck, is independent from the position of origin Cj. On the other hand, there are measurable comparisons between the actual and the ideal situations. Such comparisons have shown that developed societies cannot be assimilated to the meritocratic model, because they are placed at larger or smaller distances from this model. C. A.

In sociological literature, the meritocratic distribution is defined, by default or implicitly, by the principle: if a person has a higher level of education, the higher his/her social status should be. The distribution of people in line with this principle is possible in a closed system only under the very restrictive condition in which,

at appropriate levels of education and status, the number of people is equal to the number of positions[1].

One of the French proverbial sayings, promoted in their characteristic pre-eminence for the fight for social affirmation, is: "Traiter chaqu'un selon son merit." In the United States the term "merit system" is consecrated both in socio-political literature, and in the practice and the organisation laws of public administration. The "U.S. Civil Service" – traditional American institution, adopted this merit system by affirming it in terms of "hiring and promotions based on merit confirmed by examination".

"Merit" means, in general, intelligence plus effort, (disposition) having the obligation to identify early on (for each person), the capacity of both these qualities to be formed selectively by promoting an educational system designed to encourage and impose those merits as soon as possible, so as to configure them as an elite prepared to assume governance. In addition, all functions and hierarchical positions (social or political) should be obtained (with this conception) only on merit and on the virtue of the idea that, anywhere you get (on the social level), at the top of the pyramid or at its base, that is where you have to be (and you can achieve it or exceed it throughout merits). Meritocracy was characterised as a promoter of certain rules (of social ascent) by social status and not by social class, which are distinct from the rest through systematic unequal privileges. This requires a society providing equal opportunities and a great mobility to change the person's social position, achieved by a continuous selection (based on the rise by merit). Many people see meritocracy as a distinctive feature of modern governance and, accordingly (as the views of each), some are eulogising it seeking to impose, others are combating and others are ignoring it.

3. The motivation of civil servants

Before we begin exploring ways to tackle motivational problems, let us first discuss some of the telling signs of an unmotivated staff:

Telling Signs

It is clear that unmotivated staff is more than just lazy staff. They are not proactive and are afraid to make decisions [National Agency of Civil Service, 2007]. The following are some remarks that typically reflect these symptoms:

1 Boudon writes "X can be called a meritocratic society: if a high social position is available, it is most likely that will be occupied by an individual who has a high level of education". Similarly, in this empirical analysis of the occupational careers, Tachibanaki uses the probabilistic frame in debating meritocracy. However, this approach seems to complicate the definition of a concept inherent deterministic according to whom the meritocracy results in precise fulfillment of certain rules of distribution.

"The more you work, the more mistakes you make. So don't do anything unless you have to. And even then, you do as little as possible."

"We just do our job, play it safe. We are not paid to make our own judgements. It is perfectly alright to seek and follow the boss's instructions every time."

"Why bother making suggestions? Let's check how the job was done last time and follow suit."

Are these symptoms commonplace in the civil service? If so, how can we turn them around? Let us reflect on the following questions:

- What prevents us from becoming motivated?
- What motivates staff?
- What are the characteristics of motivated staff?

What Prevents Civil Service Employees from becoming Motivated Employees?

The common responses are the following:

- Office politics
- Repetitive, simple tasks all the time
- Unclear instructions
- Organisational vision, mission and values not clearly communicated
- Vague and contradicting instructions
- Unnecessary rules
- Unproductive meetings
- Unfairness
- Lack of information
- Discouraging responses
- Tolerance of poor performance
- Over-control
- No recognition of achievements by the community

What Motivates Staff?

Money is not the magic solution to motivation. There are many other effective tools to motivate staff. [National Agency of Civil Service, 2007] When junior and middle managers attending management training programmes are asked about their civil service career, they remember vividly the times when:

- they are assigned a challenging job which gives them a sense of achievement, responsibility, growth, enjoyment and a promising promotion prospect;
- their efforts are recognised and appreciated by the management and the public;
- they receive the trust and full support of their supervisors;

- they can complete a job by themselves; and
- they are placed in a harmonious working environment.

Characteristics of a Motivated Staff

- Reflected through their actions are some of the following behaviours:
- Energetic and full of initiative
- Committed to serving the community
- Practise the mission of the organisation
- Want to think for themselves
- Appreciate recognition and challenges
- Seek opportunities to improve their capabilities
- Take proactive and positive actions to solve problems
- Believe that they could contribute to make a difference
- Set their own challenging and achievable work targets

Worthwhile Work

People are motivated because they know that their work is worthwhile or when they see their work as meaningful. There are, in fact, many ways to let our staff experience the meaningfulness of their job:

- Delegate tasks that challenge and stretch the skills and abilities of staff.
- Instead of assigning part of a task, let staff be responsible for the whole task from beginning to end to produce a visible outcome.
- Let staff understand why they are needed.
- Let staff understand how the result of their work has a significant impact on the well-being of other people.
- Explain to staff the vision, mission and values of the department, and how their work aligns with them.
- Promote ownership of problem solving.
- Empower team member.
- Involve staff in making management decisions.

The Power of Acknowledgement

Motivation comes also from an act of recognition, a word of encouragement, or a sense of respect. It is the power of acknowledgement that brings enthusiasm to worthwhile work. In addition, the good news is that every manager has an unlim-

ited supply of such power (National Agency of Civil Service, 2007). Use this power constructively:

- Encourage the worst staff and praise them when they do something right.
- Give TRUE congratulations – Timely, Responsive, Unconditional, Enthusiastic.
- Celebrate what you want to see more often.
- Cheer any progress, not just the result.
- Tell people what a great job they have done or present them with an award, and make their achievements known to the community.
- Catch people doing things right, not just doing things wrong.
- Give positive feedback when you spot performance improvement.
- Recognise quality performance of individual team members and thank them personally.
- Give credit to team members for their assistance to your achievement.
- Appreciate the value of risk-taking and mistakes.

Your Personal Credibility

Supervisors must provide a stimulating and open environment in which their employees feel comfortable to make suggestions. They should work with their employees to refine a rough idea or even draft a totally new suggestion for improvement. When this pervades, loyalty and commitment from employees will be achieved (National Agency of Civil Service, 2007). Therefore, as a leader, in order to motivate your people, you personally have to:

- abide by civil service core values:
  - commitment to the rule of law;
  - honesty and integrity above private interests;
  - accountability and openness in decision-making and in its action;
  - political neutrality in conducting official duties;
  - impartiality in the execution of public functions;
  - dedication and diligence in serving the community;
- be a role model for team members.
- be motivated manager yourself.
- be brave enough to admit when you are wrong
- be able to speak positively all the time.
- be organised yourself.

- be open-minded to suggestions and opinions.
- be attentive to team members' emotional needs, be a human leader.
- be accountable, so team members feel secure enough to take risks.

Working Through People

The basic principle underpinning motivation is that if staff are managed effectively, they will seek to give of their best voluntarily without the need for control through rules and sanctions – they will eventually be self-managing.

Managers sometimes slip into the habit of:

- Always give orders and instructions, allowing no disagreement.
- Always expect staff to give twelve hours of output for eight hours' time and pay.
- Thinking training is unnecessary.
- Staff are workers – their job is only to follow orders.
- Staff are not supposed to know the details; they are classified and need not know more than their boss's orders.
- The essence of staff management is control – the supervisors' only responsibility is to catch wrong behaviour and to avoid repetition by punishment and discipline.

Do you want our staff to work in a demotivating environment? If not, what can we do? How can we achieve results through people? The following are some suggestions (National Agency of Civil Service, 2007):

- Value individuals as persons.
- Address your staff as "team members" instead of subordinates.
- Be result-oriented; disseminate the purpose and objectives of tasks.
- Give people work that demands their best and allow them to learn and move ahead into uncharted territory.
- Keep team members informed of new developments.
- Encourage problem solving instead of faultfinding.
- Never say, "You're wrong" when you disagree with them.
- Deal with errors constructively; be helpful at all times.
- Be ready to coach team members.
- Recommend inspiring training courses for team members.
- Go to team members' places instead of asking them to come to your office all the time.

- Encourage team members' involvement in management decisions.

4. Definition of Whistleblowing

A good definition can help work out strategies for coping better with the reality. Therefore a definition has to be seen as a function and with an intention to function in a particular way. Richard Calland and Guy Dehn, who also quote dictionaries and other official sources for the same purpose, start their more comprehensive coverage of the topic with a usefully broad definition as "the options available to an employee to raise concerns about workplace wrongdoings." Of course, it is further specified by the authors, but not in the sense of a closed definition (European Parliament, 2006).

A definition that only includes prescribed paths of communication would not help in this environment. The previous sections of this chapter showed, by way of approximation that Whistleblowing grows out of internal risk communication i.e. where there is a perceived necessity to report a risk, be it for legal, ethical or practical reasons. The risk management cycle is by definition open to any type of relevant information at virtually any time and from any source.

Whistleblowing shall then be described as:

- insider disclosure of what is perceived to be evidence;
- illegal conduct or other serious risks;
- out of or in relation to an organisation's activities including the work related activities of its staff.

Note should be taken that this definition does not contain any motives or elements of individual ethics. In a broader sense, there are two access points through which the individual side may enter:

- the "perception" of something as evidencing certain (risky) circumstances and
- the inherent "reason to believe" (also a "perception") that using prescribed paths would not make the necessary difference.

It does not preclude other explanations but functions mostly to alleviate the whistleblower of otherwise existing burdens of proof, thus guaranteeing that the information will reach a place where it will be processed. The absence of subjective elements additionally distinguishes Whistleblowing from complaints and grievances (European Parliament, 2006).

For similar reasons, the prerogative of a duty to disclose or even a responsibility to make such a disclosure is not included in the definition, as it would raise the burden and would hinder an adequate flow of information. This can be differenti-

ated in the rules on Whistleblowing – but should not be excluded from the basic definition. Whether or when Whistleblowing requires special protection, e.g. where it happens outside the prescribed internal paths of reporting, cannot be part of the definition but instead of the (legal) consequences. Whether at a later stage certain types of Whistleblowing should be promoted and/or others prohibited, is a point for discussion when setting up rules.

The focus on risk communication and its functions means that it particularly requires such protection where it is addressed, not to the supervisor or other immediately responsible person, but to another person or institution that is capable of stopping or remedying the illegality or managing the risk.

This would be the case where there is reason to believe that prescribed paths would not lead to someone willing or able to address the perceived risk constructively. In these cases, the risk information carries two important additional messages: the risk management system needs to be checked for efficiency and there may be a personal risk for the whistleblower that needs to be taken care of (European Parliament, 2006).

Whistleblowing is an area of conflicting duties, loyalties, interests, perceptions, cultures and interests. This area of conflict shall be called the risk communication dilemma. There are mainly three parties (actors or subjects) involved in this dilemma:

- the whistleblower,
- his organisation, including its management,
- other stakeholders (the "public").

Their relationship is not linear but could best be depicted by three partly overlapping spheres. Similarly there are three objects to which the subjects relate each in a specific manner, depending on their role and the approach chosen. These objects can be defined as:

- the information,
- the disclosure,
- the consequences.

No matter which of the subjects or objects an approach chooses as the pivot, each of the others will be affected. When we look at the conceivable approaches, we therefore simultaneously have to look at the parties and their activities as potentially appropriate points of intervention (European Parliament, 2006).

The basic forms of Whistleblowing

a) Internal/External

Clearly, from an organisational point of view, it does make a difference if accusations and dissent can be kept internal. Any debate obviously changes its character depending on the participants – and, once a disclosure has been made to the public, there will be new participants with different interests. It does make sense therefore to differentiate between internal and external whistleblowing, without even mentioning questions of privacy and confidentiality.

b) Un-/Authorised

Rather closely related to this first possible distinction is the question of whether the disclosure was specifically authorised or if it was according to the rules. As we have seen previously, there is a general obligation to make certain internal disclosures and there may even be an explicit one, as is the case in the EU Commission. However, in many situations, there will be rules gagging a disclosure. For the whistleblower, this differentiation makes sense, if he can expect to be rewarded – or at least not to suffer from reprisals – for dutiful behaviour.

c) Public/Private Interest

It is important to know whether a disclosure is made in "the Public Interest" or if it is for private reasons and whether it harms other private interests. If, in either case, rights and values will be damaged, the protection of the public interest will have to be balanced against damages to private interests.

Serious irregularities and criminal acts always work against the public interest, since the established rules, including Criminal Law, express the public interest and what is seen as good order. In the case of the EU, it may be open to argument whether the interest of "the Communities", as in Article 11 Staff Regulation, can differ from the public interest in the observance of the laws and the physical integrity of all citizens. Were this interest of the Communities to be understood as the (self) interest of the administration, this would designate a typical example of private interest.

In some regulations, a largely equivalent distinction is made as to whether the whistleblower made his disclosure "only with public interest in mind" or whether perhaps also for other motives (European Parliament, 2006).

d) Personal Involvement/Detachment

Sometimes there may be a whistleblower who was, or is, personally involved in what he wants to disclose. Reporting from the workplace and from his own observations, he may have become involved quite innocently; it may be a question of proximity, or for reasons of inter-relatedness of tasks, or knowing, without fully understanding

the implications, or fully understanding but later regretting them, suddenly becoming aware of unforeseen and entirely unwanted consequences.

There may still be a chance to prevent further damage. Even at a very late stage of the investigations, it may be important to obtain the information from such a source to help analyse the structural problems and prevent a re-occurrence. Involvement or detachment does not predetermine the value of the information – or of the disclosing person.

e) Crime/risk as an object of a disclosure

Defined narrowly, only "organisational wrongdoing," which might even exclude private acts committed at the workplace, would be admitted as an object of disclosure. An even narrower definition would include only "serious" or otherwise specified crimes or other degrees of misconduct committed by employees, while a much wider one takes in any sort of risk arising from, or relating to, the activities of the organisation and its staff. The advantage of the risk focus is the avoidance of blaming and shaming and the orientation on future potential, including learning from previous errors. The risk approach, with a connotation of uncertainty and not of damage, suits today's environment, where one strategy is perceived as fitting today but as a failure under tomorrow's circumstances (European Parliament, 2006).

f) With/Without retaliation

There have been attempts to provide a certain amount of protection after disclosures, but only to persons who previously have been harassed as a consequence of the disclosure. In one particular organisation, part of their definition of a "whistleblower" included prior harassment, officially acknowledged by the organisation. Protection, only after the damage is done, seems particularly ineffective. Since organisations do not tend to link harassment with an act of whistleblowing, such a definition will tend to turn into a circular argument: no protection, unless you have been harassed; but if you have been harassed, that was probably not because you are a whistleblower – and again: no protection.

g) Whistleblower from inside/outside

The position of the whistleblower in relation to the organisation and other staff might also be a basis for discernment: All known definitions seem to regard the whistleblower as someone close enough to the organisation to potentially suffer retaliation. This clearly includes every employee, with the possible exception of top management. Top management will usually be excluded, because they are seen to be in a position to affect the necessary changes themselves. However, this is not necessarily the case, and reprisals are certainly conceivable from different sides. Retired and contract personnel are potential whistleblowers. So are job applicants, although they may have less contact with any evidence and have more difficulties in proving harassment caused by their Whistleblowing (European Parliament, 2006).

Persons periodically working inside an organisation, which is not their employer (modern type of outsourcing), may have typical whistleblower knowledge and deserve protection. Since external contractors are usually not included in the definition of whistleblowing, these workers need protection through special agreements between their employer (the contractor) and the beneficiary (e.g. the EU Commission), providing for a right to disclosure to the beneficiary and protection against harassment both from the side of the beneficiary as well as from the employer. In this type of situation, it will also be appropriate to protect the external contractor from harassment (e.g. loss of contract etc.). Obviously there needs to be a lot of thought put into an adaptive solution, when setting up any corporate rules on this.

h) Who is by-passed?

Similar to the argument regarding top executives, there is usually no situation, where a middle manager would be perceived as "blowing the whistle" on one of his subordinates. He ought to have the capabilities and the responsibility personally to take care of any perceived work-related problem in which they may be involved. While "mobbing" against a superior is not exceptional, this type of "disclosure" is generally excluded by definition.

i) Others

There have also been differentiations along the lines of "Unbending Resistors, Implicated Protestors and Reluctant Collaborators." The substantial content of such descriptions seems to be included in the above points. The language of such descriptions sounds more judgemental than is useful in finding a common understanding in this context. If they add anything new, it might be situative in the sense that they refer to different phases of dissent at the workplace, out of which the whistleblower would make his disclosure; or in that they refer to the degree of emotional involvement. While it may be true that high degrees of personal or emotional involvement co-relate with the likelihood of harassment and can also become an impediment to communication, there seems to be no apparent reason to value the information from a highly involved whistleblower less than from one with little involvement. Equally, there is no justification for harassment and all good reason to protect such persons. As will be discussed in the further course of this study, early disclosures should be encouraged.

Protection of the Whistleblower

The worldwide legal situation can be fully described by three levels of whistleblower protection:

- Common Law countries with some specific, statutory whistleblower protection,

- Roman Law countries with unspecific but not insignificant statutory protection,
- Other countries, with or without statutory protection, but without structures to warrant minimum standards of protection.

In comparative law it is not sufficient to compare individual sections and articles of law. The functions in the entire system have to be assessed, although little more can be done than to line up models against each other, because anything else would be the famous comparison of apples and pears (European Parliament, 2006).

Roman Law Tradition Approaches

In all European countries, there are systems that permit or even demand disclosures, and grant from time to time a certain level of protection. The downside to this is the fact that all of these systems are limited to certain parts of the workforce, certain types of disclosures, or do not explicitly provide for protection against reprisal.

To take just one example, there has been a lively debate in France over the appropriateness and legality of the Sarbanes-Oxley type of rules on Whistleblowing in companies operating in France, candidly refused e.g. in the National Anti-Corruption Agency (SCPC) 2004 Annual report,40, whose director, Mathon, has seen the issue basically as that of avoiding inadvertently introducing systems based on US American values, thus neglecting ones own culture.41 Reporting is, however, not entirely foreign to the French business culture. There are even obligations for companies to report, for example, in the plea-bargaining procedures set up by the Conseil de la Concurrence (Fair Competition Authority) with leniency and settlement procedures as well as in the legal obligation to report suspicions to the TRACFIN, authority on money laundering. Members of specific professions (Court of Auditors, Banks) may also be obliged to report irregularities or suspicions to TRACFIN or the judiciary.

Civil Servants have to report corruption under Article 40 of the Code of Civil Procedure to the public prosecutor (European Parliament, 2006).

France even has statutes explicitly demanding "external" disclosures. Examples concern such disparate topics as money laundering and child molestation. Internal reporting of serious risks is the rule. This is not surprising, since no system can survive without such self-regulating information. This is not so much a matter of culture than of necessity. Of course, French organisations are not interested in tolerating collusive behaviour against the interests of the organisation. The problem starts when risk information by-passes superiors. Clearly, this sort of information is highly sensitive, and to be in a position of having to disclose such information is not desirable anywhere in the world. There may be cultures which regard "saving face" so highly that an employee might kill himself rather than disclose anything about

his patron – with the patron ending up having to kill himself, when eventually the disaster becomes public. This seems to have been the case in Far-Eastern societies. Even there, rules addressing external disclosure and protecting whistleblowers have been introduced now. France – as well as Central and Eastern European countries and even Spain, Italy and Germany for that matter – are countries that have strong, historically founded fears about defamation. That notwithstanding, they have always had and still do have a duty to report.

Resistance movements, supposedly intrinsic to a national anti-whistleblower culture, could not have existed if everyone had always adhered to internal lines of reporting. Even then, responsibility meant having to and also being able to, "answer for."

It is paradigmatic and helpful to understand fully the stance of the French Commission on Information (European Parliament, 2006).

Technology and Liberty (Data protection agency, CNIL) on Sarbanes Oxley type of technical Whistleblowing systems. The CNIL:

- stresses the due process rights of incriminated employees
- recommends not to encourage anonymous reporting and
- advises against a (general) duty to report, which might be illegal,
- warns against relying on whistleblowing instead of reasonable internal auditing.

Otherwise, the CNIL announces its support for measures that conform to Sarbanes Oxley and acknowledges the necessity for whistleblowing, as such, as well as support and protection for whistleblowers. The Dutch Data Protection Authority had a hearing on the related subject of cross-border exchange of personal data in 2004. In its session of 31 Jan – 1 Feb, 2006, the careful stance of the CNIL has been adopted by the so-called Article 29 Data Protection Working Party of the EU in a yet unpublished document: "Opinion 1/2006 on the application of EU data protection rules to internal whistleblowing schemes in the fields of accounting, internal accounting controls, auditing matters, fight against bribery, banking and financial crime." The requirements of the EU Data Protection Directive 95/46/EC in whistleblower hotlines were summed up by the Working Party as follows:

- The scope of application and the persons against whom a report can be filed must be limited according to the purposes (risk management, crime prevention).
- Those making a disclosure should be assured that their identity will be kept confidential. Anonymous reports should not be encouraged under ordinary circumstances.
- Only data necessary for further investigation of the report may be processed.
- Within two months after closing the investigation, the data should be deleted. Only in cases which require further legal steps, may the data be saved for a longer period.

- The indicted person must be informed of the report (disclosure) as soon as there is no more risk of loss of evidence. The name of the disclosing person should normally be given to the accused, only when the disclosure was maliciously wrong.

Germany has seen a 2003 Federal Labour Court decision, which detailed under which conditions an employee could disclose to investigators evidence of criminal acts committed by his superior.

Ever since a Federal Constitutional Court Decision of 2001, it has been accepted that an employee has the right to such disclosures to the prosecutors. The Labour Court upholds this right in so far as the employee shows he was not motivated to injure the employer with the disclosure. This was immediately criticised and is not likely to stay, since it effectively voids the Constitutional Court decision. In effect, it would make whistleblowing impossible: no one will ever be able to prove non-existing motives. This means that although the German constitution provides a fairly wide and protected right to disclosure, in practice its extension is unclear. As anywhere else, people in Germany have an explicit right, and occasionally a duty, to report under certain administrative laws, which extend even further for members of the public service. The general principle of protection from unreasonably discriminatory or harassing measures is spelled out in § 612a BGB (Civil Code). Additional regulations to protect the whistleblower are in the process of discussion, with more and more large corporations adopting private whistleblower policies, occasionally employing an interesting electronic system to facilitate a dialogue with anonymous whistleblowers (European Parliament, 2006).

It is not surprising that the new EU Member States all seem to have a duty for public officials to disclose fraud, which, if breached, is occasionally even a criminal offence. They had to comply with international conventions and treaties before accession. Hungary is one of the few countries with a criminal law provision (Article 257 of the code) protecting whistleblowers against "taking a disadvantageous measure against the announcer because of an announcement of public concern," and punishable with imprisonment of up to two years. In all candidate countries it seems to be difficult in practice to disclose, collect and manage risk information effectively, whereas everywhere, dismissal from work for whistleblowing is illegal. The study by Nuutila deplores that, in practice, there is no protection against dismissal. Any reason can be made up and will usually be sufficient – and it assumes that the disclosure processes are even less satisfactory in the old member States – with the following exception.

Common Law models

The UK Public Interest Disclosure Act 1998 (PIDA) covers all "workers" in a broader sense and provides for disclosure to a number of prescribed bodies in circumstances set out in the Act. As in business and charitable organisations, any public

administration is required to have a whistleblowing procedure in place. Detailed guidance on raising matters under this Act and the Civil Service Code is set out in the Directory of Civil Service Guidance. The groundwork was laid by the Parliamentary Commission on Standards in Public Life (CSPL), whose "Seven Principles of Public Life" form a basis for all public officials, upon which the various departments have developed specific codes, training plans etc.

The latest remarks of the CSPL on whistleblowing are documented completely in Annex IV of this study. It emphasises that the PIDA "is a helpful driver, but must be recognised as a 'backstop' which can provide redress when things go wrong, not as a substitute for cultures that actively encourage the challenge of inappropriate behaviour." As a backstop, PIDA delimits the minimum of what should be expected in proper risk communication from the organisation and managers, as well as from staff, and outlines a minimum of whistleblower protection. This is complemented by various other rules, particularly in the Labour Law, some of which are statutory, e.g. the Civil Service Code for the public sector.

A disclosure (not a whistleblower!) is "protected" under the PIDA, if it relates to specific subject matter (breaches of law, environmental, health and safety issues or a cover-up of such matters) (European Parliament, 2006).

The PIDA then contains something like a reasoned escalation manual directing staff:

- first to seek confidential advice, then to
- blow the whistle within the internal hierarchy, or
- with another responsible person (Level I: internal disclosure).
- Depending on the degree of evidence supporting the disclosure, it also protects:

Whistleblowing to designated authorities (Level II: regulatory disclosure) or even wider disclosures (Level III) where evidence and/or circumstances justify it.

On the third level, there must also be a reasonable expectation of a cover up or harassment of the whistleblower, or a failure to react to the concern. Extraordinary seriousness of the matter is also sufficient, as long as it is reasonable to make the disclosure at a chosen point, and the whistleblower has acted in good faith, believing the facts to be substantially true. The escalation procedure takes into account a weighted measure, whereby it must be reasonable to address the particular recipient of the disclosure, according to its seriousness, or particular concerns of confidentiality on the one hand, and for example, past experiences with the employer's risk management culture, to transfer more and more of the burden of proof to the whistleblower in exchange for a wider right of disclosure.

The PIDA motivates employers to set up improvements in the risk communication culture without making any particular demands on them. It does not even

grant whistleblowers any extraordinary protection, however it does permit them to choose how far they want to go in making external disclosures, depending on how strong the evidence is and how inadequately internal risk communication is managed. The Act sends out the message: if you really don't think you can make your important disclosure internally, it will be better to make it to some relevant external institution rather than not at all (European Parliament, 2006).

The employer can expect to experience the undesirable consequences of external whistleblowing if he has not been able to show that a serious and reasonably well-supported concern will be acted upon responsibly in the enterprise. It is therefore not primarily the exercise of free individual expression that eventually motivates organisations under the PIDA to make the necessary adjustments.

It is in their own self-interest to listen to what may be well supported information on serious risks. The management is then free to choose solutions for the communicative process that suit its situation, as long as it addresses the risk and does not persecute the messenger. The employee is free to choose where he wants to make the disclosure as long as the requirements of the respective level are met.

The PIDA system automatically enforces an internal reporting system as a prerogative, because the disadvantages for the employer who cannot demonstrate the installation and efficacy of such a system are considerable (protected external disclosures and further consequences). While there are no statutory punishments as protection against reprisals, the remedies and rewards awarded under the PIDA seem, on average, are considerable enough to thwart obvious harassment.

What distinguishes the PIDA from other legislation?

- It covers virtually any employee. In the public service, the security related services had been promised an equivalent solution. Since this seems not to have happened, there is now a movement to also include these groups under PIDA.
- An honest and reasonable suspicion will mean the whistleblower is protected, as long as he carries the suspicion only to his manager or his employer. "Honest and reasonable" means that the disclosure cannot be malicious and against better knowledge.
- If the whistleblower additionally believes that the information is true, he may go to an outside body – but only to certain prescribed bodies – usually the respective regulator.
- If, additionally, the risk is exceptionally serious or the whistleblower has reason to believe he would have to face reprisal, or if there is really no one else to turn to, the whistleblower can make his disclosure to virtually any recipient, as long as this seems reasonable.

It will seem reasonable if that recipient is so selected as to be able to effectively address the risk, and reasonable interests of confidentiality are considered.

- Protection means "full compensation" in case there has been a reprisal – i.e. normally reinstatement or monetary compensation to the extent that the whistleblower is materially in the same position as if no reprisal had happened. It is important to note that an interim injunction may be granted to continue on the job for the time of any judicial proceedings.
- Inasmuch as the above conditions are met, contractual agreements on confidentiality (gagging clauses) or other agreements prejudicing these rights are void. The Official Secrets Act prevails over the PIDA.

The CSPL has explicitly adopted recommendations to assure that:

- employees know about and trust the disclosure mechanism;
- employees have realistic advice on the implications of disclosure;
- the practice is continuously monitored for the efficiency of the rules; and
- employees are routinely informed of the disclosure channels available to them.

The Australian situation has some parallels with the situation in the U.S.A. (next section below), which is to be discussed next, in that it is dissected into diverse regimes in the different states, in addition to one at the national level. Furthermore, it was found to be generally not working well by a National Integrity Assessment, some of the reasons being:

- a vague description of the covered subject matter,
- a limited personal coverage,
- a limited protection from reprisal,
- no independent body as a point of disclosure.

New Zealand's Protected Disclosures Act of 2000 offers a more consolidated picture than that in the different regions of Australia. The rules in New Zealand can be summed up this way: any employee in the widest sense has a right to make a disclosure to the Ombudsmen who would also take up investigations as necessary. This generally includes officers in the security services, to whom some additional special rules apply. Usually, someone should first try internal disclosures, but disclosures direct to the Ombudsmen are also permissible immediately. However, a complaint to the Ombudsmen over improper internal handling of a disclosure in the private sector (appeal) seems to be impossible. That means there is an incentive in the private sector to go to the Ombudsmen directly. The threshold for disclosures in the private sector is that of a serious risk, whereas where public funds are involved, any irregularity will suffice. Reasonable belief that the information is true or even likely to be true is sufficient. As a way of protection, Sec. 18 of the PDA offers immunity from civil and criminal proceedings for the whistleblower. Possible reprisals are

illegal but would have to be dealt with under regular labour law jurisdiction. The identity of the whistleblower and his actions are to be kept confidential, unless exceptionally, the investigation or a number of other reasons (natural law, procedural fairness) dictate otherwise. The rules and pathways seem generally simple and clear. Amendments are sought from practical experience to provide for a guidance and assistance function to whistleblowers in the Ombudsmen's Office. The low level of usage was attributed to inconsistencies in the application and lack of trust in the protection of the identity of the whistleblower.

South Africa has a Protected Disclosure Act modelled after the PIDA but with some serious drawbacks in comparison with PIDA, which have been highlighted by a Government Commission discussion paper (European Parliament, 2006).

Canada adopted a new regime late in 2005 after years of careful evaluations and monitoring of the 2001 policy on Internal Disclosures of Wrongdoing in the public sector. It seems that the recommendations of another Government Commission will lead to further improvements, increasing the scope of personal and subject matter coverage, timeliness of response and of access to information in the foreseeable future. The Recommendations dwell on fortifying a statute on whistleblowing with a separate value statement (Code of Conduct).

The United States of America

This leads to the picture revealed in the forerunner country of whistleblowing legislation – the USA. The situation there is graphically described by one of the founder activists and legal scholars, Tom Devine, stating that Whistleblower Laws had continuously undermined protection against retaliation.

Since 1983, a maze of whistleblower protection legislation has spread from the federal to the state level and back. The common denominator is a First Amendment (Freedom of Speech) based protection for the individual. The first obstacle is the patchwork of different provisions, all of them with their specific outline of protected individuals, procedures to be followed, statutes of limitation etc.

The statutes typically focus not so much on the disclosure, but on the person of the whistleblower and the act of retaliation, having their reasoning in the Freedom of Speech Amendment to the Constitution (European Parliament, 2006).

Being focussed on retaliation, they typically require that the employer knew of the protected activity (otherwise no interconnection), and that the retaliation was indeed at least partly motivated by the protected activity. The typical defence then is that other behaviour had also justified the employer's reaction. The relative quality of the respective law is then determined by how the burden of proof is balanced between the parties.

A peculiarity of the federal whistleblower protection regime in the US originated in the 19 century civil war and experience with fraudulent military supplies:

the False Claims Act. It is one of the oldest laws on whistleblowing worldwide. After the scrapping of the most important clauses in 1943, it was revamped in 1986 with renewed provisions granting whistleblowers acting as proxy prosecutors ("qui tam …") to collect a 15–30 % fraction of the collected damages. This has returned far more than a billion US Dollars to the Federal budget.

The broadest and earliest act in the USA covers (only) federal civil servants (Whistleblower Protection Act of 1978, WPA). WPA protects "speech," defined as the act of lawfully disclosing information that an employee or applicant reasonably believes evidences illegality, gross waste, gross mismanagement, abuses of authority, or a substantial and specific danger to public health or safety.

A practical obstacle in the US system has been, for some time, the Office of Special Council (OSC), an agency established in 1979 to support whistleblowers and chaperone them through the procedures of the WPA, but found in fact to be acting as a gatekeeper and bottleneck, which in the early years seemed to make it often impossible to even enter the system. Once the OSC has investigated a case of reprisal, it makes a recommendation to the employer and if that is futile, takes the case to the Merit System Protection Board, a panel of administrative judges for labour complaints.

In recent years, the OSC has established better relationships with whistleblower protection groups. OSC has also embarked upon a policy of publishing its actions on behalf of whistleblowers, and undertaking initiatives (such as the Special Counsel's "Public Service Award") to publicly recognise the contributions of whistleblowers to the public interest (European Parliament, 2006).

The scope of the act with the stiffest sanctions against harassment, the Sarbanes Oxley Act of 2002 (SOX), is not yet fully tested, while some practitioners believe it to cover virtually any employment situation. It makes an impact in the sense that it obliges covered corporations to set up a system for the intake of generally internal disclosures (sec. 301) and the protection of their confidentiality – but in sec. 307, also an obligation of company counsel (attorneys!) practising at the Security and Exchange Commission (SEC) to disclose any relevant information there. This is an innovative concept, since it reverses traditionally total confidentiality in favour of the client. It also seriously influences corporate risk management, since a system could be faulty, potentially leading to delisting with the SEC, if even one disclosure was not documented and given plausible follow-up.

This addresses the primary concern of whistleblowers that they might be ignored. Under SOX, ignoring risk information seems harder on management than giving proper follow-up. In any case, failure to set up and manage the system in this prescribed way can be sanctioned by imprisonment, as well as heavy fines on individuals and companies and delisting. Discrimination against a whistleblower can be penalised by a prison sentence of up to 10 years and/or a fine of up to 5 million USD.

Probably all of the European companies listed under the SEC, and the majority of their affiliates, have installed formal procedures aiming to conform to SOX whistleblower regulations. Obviously that also has an enormous influence on non-U.S. legal culture, as the French discussion reflects (European Parliament, 2006).

Finally, another important feature of the US system is the Corporate Sentencing Guidelines, their modernisation invoked by SOX. They provide for incentives to corporations to prove that they have functioning systems in place to react adequately to risk communication. Corporations otherwise run the risk of being delisted by the SEC and fined up to 5 Mio. USD and liable for further compensation. 2.3.4. The UN General Secretariat

On 1 January, 2006, a Policy on Whistleblowing for the United Nations Organisation came into effect. An original draft version had been prepared by the UN Office of Internal Oversight, supported by the author of this study. The Government Accountability Project had helped in drafting a final version after several rounds of input from the entire UN staff.

The UN Policy contains a considerable number of elements typically highlighted in U.S. whistleblower legislation. The statement of purpose is focussed on the whistleblower and his protection, more than on how reporting can help the organisation reach its goals and values. However, everyone who could possibly make an internal report is covered and even persons from the outside, reporting on wrongdoing inside the organisation, are officially protected against retaliation.

In a general section, it defines the reporting of any breach of the organisation's rules as a staff duty. Illegal behaviour of staff constitutes such a breach, so that all sorts of illegal behaviour inside the organisation, plus certain types of irregularities, give a right to protection. A refusal to participate in such breaches, and co-operation in audits and investigations are equally protected (European Parliament, 2006).

The Policy lists four types of internal recipients of reports, without any hierarchy or preference. Other internal addressees are not prohibited. Clearly, external reporting will be very limited under the policy. External reporting is also protected, but only in the following cases:

- if the use of (all) internal mechanisms is not possible,
- for reasonable fear of retaliation;
- for fear that evidence would be concealed or destroyed
- or that the organisation has not reacted on a previous report within six months; and
- that the individual does not accept benefits for such an external disclosure.

The substance of these categories may be relatively easy to fulfil. The burden of proof, however, is with the whistleblower. There is an additional third condition, which will be particularly difficult to prove, unless the UN administrative justice system can define reasonable ways: external reporting needs to be "necessary" to

avoid violations of national or international law or other imminent substantial risks (European Parliament, 2006).

The UN General Secretariat has established an Ethics Office, reporting only to the Secretary General and the General Assembly, which is responsible for receiving complaints and protective measures including preliminary injunctions. It may bypass the internal investigation and oversight mechanisms if there might be a conflict of interest. The Ethics Office will complete a preliminary review of a report or complaint within 45 days. If the Office of Internal Oversight Services (OIOS, functional equivalent of OLAF but a fraction its size) is then asked for further investigations, the OIOS will report within 120 days and seek to complete its investigations by that date.

The Ethics Office has an extensive counselling function and may advise the staff of the other relevant services of the organisation, such as the Office of the Ombudsman, or refer a situation to the Management Performance Board (European Parliament, 2006).

Retaliation against a person engaging in protected behaviour, explicitly defined as misconduct and possibly leading to a demotion, is investigated by the OIOS.

The following **10 statements concerning whistleblowing** are meant to encourage those who may become committed and proactive whistleblowers in the future, and also to provide arguments for the urgent, necessary, protection of whistleblowers. [Holger-Michael Arndt, Hans-Joachim Rieger, Thomas Wurm]

Society benefits from whistleblowing

Whistleblowers' revelations of abuses are in the public interest and in the interest of business enterprises. Whistleblowers provide important information for the early identification of risks for individuals and society — information that helps to combat abuses and supports criminal prosecution. Whistleblowers are an important foundation for the creation of a well-functioning civil society. However, in principle, whistleblowers must nonetheless have the right to decide for themselves whether, when and how they want to exercise their right to whistleblowing. This also means that the options for acting which have been represented can be exercised openly, confidentially or anonymously, and that the potential recipients of tips (e.g. supervisors, monitoring bodies or the criminal prosecution authorities) must provide appropriate channels and feedback channels for whistleblowers (H. M Arndt, H. J. Rieger, T. Wurm, 2008).

Whistleblowers need protection

Whistleblower protection does not primarily serve potential whistleblowers, because, as a rule, in places where there is no effective whistleblower protection, whistleblowing simply does not exist. But this also means that when information

about abuses is not passed along, we are all deprived of the benefits and the possibility of making use of whistleblowing. Employees must have the legal right to make complaints within their workplace so that they can take their requests, complaints and tips to their employer or to independent institutions of their employer's choice, either inside or outside the company, without having to be personally affected in a legal sense. At the same time, the employer to whom the complaints are addressed must be obligated to deal with these complaints within an appropriate timeframe, to inform the whistleblower about the progress of the investigation, and to respond appropriately to the complaint. The proper processing of the complaint must be a legal obligation that is owed to the whistleblower, and information about this processing must be available for judicial review, including a possible court decision to sentence the employer to pay damages.

Whistleblowers are not informers

Whistleblowers wish to have a clearing up of their complaints, and this clarification must be carried out in an independent manner. They want to combat the abuses they have reported within organisational structures in which clarification is otherwise prevented by the existing internal power structures. By contrast, informers build their case on rumours, do not want to have a clarification process, and come to terms with the power structure so that they can receive rewards, personal advantages and a questionable type of recognition. Nonetheless, the deliberate dissemination of false information, slander, false suspicions or insults by unscrupulous tipsters is possible. These types of behaviour must be prosecuted and punished, because they are not the same as whistleblowing. By contrast, a whistleblower who is acting with the best of intentions must be protected by the state and the society. For this reason, legal regulations are necessary to guarantee whistleblowers the right to make their whistleblowing public. In particular, this must happen if, from the whistleblower's viewpoint, he or she is acting to preserve important rights that are particularly protected by the country's constitution and its system of laws. This may be the case if the situation is urgent (e.g. to prevent direct dangers to life, health or the environment) or if other methods have proved to be insufficient or inappropriate (H. M Arndt, H. J. Rieger, T. Wurm, 2008).

In general, public whistleblowing is also permissible if the whistleblower's claims can be proved to be true and thus are a reliable expression of opinion that does not affect any interests of third parties that are particularly deserving of protection (e.g. a justified interest in keeping something confidential), or if the third persons in question have forfeited their rights that are normally deserving of protection (e.g. through manipulation or delay of previous investigations). In all of this, it must be kept in mind that an interest in concealing violations of the law, and the advantages resulting from this concealment, do not constitute a justified interest in confidentiality.

The right to whistleblowing must be guaranteed

Whistleblowing is based on the right of free expression of opinion. This indivisible human right, which is an important component of every legal system in the free world, must also be granted to a whistleblower. Limitations of this basic principle are, however, possible if they are urgently necessary for the preservation of other highly ranked rights. In Poland, as in all the other member states of the European Council, the immediate validity of freedom of expression (protection of the freedom of expression in accordance with Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms) must be expressly anchored in the existing legal system for all relationships involving work and employment. This right must apply to all expressions of opinion that are not deliberate lies and are not made with a careless disregard for the truth, and that affect the public interest (in this case, criminal prosecution in particular) (H. M Arndt, H. J. Rieger, T. Wurm, 2008).

Whistleblowing as a management task

Those who bear responsibility in a professional or private capacity must allow themselves to be called to account for their actions. Whistleblowing serves to make this possible, even in situations where otherwise there is not (yet) sufficient transparency, or where the existing conditions are purposefully kept obscure. Dealing openly with criticism and with one's own mistakes and those of others must be promoted and socially recognised. Public discourse between the individual citizens of a society must be promoted on a long-term basis. The uncritical trust in authority that often exists, as well as generally existing prejudices, must be replaced by clear information.

Whistleblowing means combating corruption, but it achieves much more

Whistleblowing helps to reveal abuses at all levels of society and to combat crime. But whistleblowing achieves a lot more than that. It is also a question of implementing a culture of responsible behaviour with regard to the public interest and of ensuring that a state, an organisation or a society reacts appropriately to the communication of critical information. In the world of business, whistleblowers help the company's management, owners and shareholders to find out what is really happening within the company. This means that promoting whistleblowing is a practical way to detect risks at an early stage of their development.

Whistleblower protection must be promoted and supported

Ensuring anonymity is only one of several ways to protect whistleblowers, but it may be the most important one. However, this is often not possible in practice, because tips are believed only if the whistleblower reveals his or her identity. Some-

times he or she is treated as a suspect himself or herself in the course of the investigations. Anonymous whistleblowing must therefore be regarded as a fundamental right that deserves special protection. Nonetheless, a cultural change, and recognition of whistleblowing in the perception of the general public is particularly promoted by public whistleblowing. However, protection of whistleblowers is not only in the interest of the whistleblowers affected but also in the properly understood interests of business, society and the state. The legal regulations for the protection of whistleblowers, which have so far only existed in the form of initial attempts, are still completely insufficient. Comprehensive and effective protection is necessary for the people who want to report what they have seen, experienced or found out. The assertion of these rights in an actual court case must be supported by regulations that relieve the burden of proof. In addition, attempts must be made to eliminate the still existing possibilities for circumventing the laws. Within the framework of promoting democracy and the rule of law, the state has the function of providing this 'safety net' for whistleblowers, if this protection is not provided by business and the society. The state must create transparent frameworks and effective protective mechanisms in the form of legal regulations, and it must give a higher priority to the protection of freedom of expression and important common goods than to the protection of individual interests and interests that require confidentiality. Independent investigators must have the means and the opportunities to help the truth come to light even in cases where those in positions of power want to prevent this (H. M Arndt, H. J. Rieger, T. Wurm, 2008).

It must be clearly established that whistleblowing, in so far as it is permitted or the whistleblower may assume that it is permitted, is justified and cannot result in criminal prosecution (in particular in cases of violations involving expressions of opinion and violations of confidentiality). By contrast, the punishment of slander remains untouched, as does the punishment of a deliberately planted false suspicion or slander. However, in order to protect whistleblowers, there must be punishment of the deliberate or grossly negligent illegal prevention of, or attempt to influence, whistleblowing and the resulting investigations, and of sanctions against whistleblowers and their helpers. Polish criminal laws to this effect must also be passed by the legislature, if necessary.

Attention must be paid to the effective enforcement of the rights of those affected

Even though whistleblowing is primarily addressed to the elimination of abuses and the limitation of risks, it may also involve accusations against third parties. Such accusations may even be made deliberately. In view of the assumption of innocence, which is an essential part of the rule of law, the rights of third parties must always be especially protected. Insofar as, and as soon as, there is no danger to the investigation of the situation, third parties must be informed about the accusations and investigations, but there is no compelling reason to inform them about the identity of

the whistleblower. Data protection regulations regarding the right of deletion must be guaranteed. Comprehensive compensation must be paid for any negative consequences endured by third persons, in particular, consequences due to any mistakes made during private and state investigations.

Measures to promote whistleblowing are important

In addition to the regulations to permit whistleblowing and to protect whistleblowers, further state measures are necessary to promote ethical behaviour, everyday courage on the part of citizens, whistleblowing, and the stronger anchoring of these measures and their general acceptance in society (through educational projects), in sports and in the world of business. It is also necessary to support advice centres for (potential) whistleblowers and to create the legal groundwork for these centres, and to set up a foundation to support whistleblowers who are in need, or to pay compensation to the victims. These foundations could, for example, intervene in situations where someone acted in the public interest and this action had negative consequences for himself or herself (e.g. the loss of a job after the bankruptcy of an employer engaged in criminal activities). The comprehensive investigation of whistleblowing (motives, situations, consequences) should also be promoted, as should (advanced) training with regard to the ethical issues involved. These activities must be supplemented by improvements in the legal standing of whistleblowers, and the general conditions for similar situations must also be correspondingly improved. This applies, for example, to the issue of refusing to perform a certain action for ethical reasons or reasons of conscience, and it also applies to necessary improvements in the protection of journalists' sources. The promotion of alternative mechanisms for conflict resolution (mediation) and participative communication mechanisms must be increased and grounded in legal regulations. Mobbing must also be effectively combated with regard to cases of whistleblowing and also in other contexts (H. M Arndt, H. J. Rieger, T. Wurm, 2008).

Whistleblowing needs recognition

Whistleblowing is important. People who become proactive in spite of all the risks that have been described, and who show everyday courage in a struggle to bring about a better society, must not be left on their own. In addition to the personal recognition between individuals that each one of us can provide, we need symbols that testify to the social significance of whistleblowing. The Whistleblower Award presented by the Association of German Scientists (VDW), the German sector of the International Association of Lawyers Against Nuclear Arms (IALANA) and the ethical protection initiative of the International Network for Engineers and Scientists for Social Responsibility (INESPE) was founded about ten years ago and first awarded in 1999. This award honours outstanding individuals who have drawn public attention to serious abuses in their workplaces or fields of influence, abuses that

have posed considerable risks for individuals, society, the environment or peace. These are true whistleblowers!

5. Rotation of employees

The rotation of employees in sensitive areas is meant to prevent the danger of corruption from arising. For these areas, a personnel concept should be developed, insofar as it is professionally and financially acceptable, in which set periods of utilisation are established, at the end of which periods the employees in question receive new positions. In smaller bureaux this will of course be difficult to put into practice. There is also the danger that professional experience gained in the course of many years will go to waste (Bundeskriminalamt, 2004).

6. 4-Eyes principles

This is a form of mutual supervision for certain work processes which are at risk of being influenced by third parties. The basic principle of the separation of functions and tasks prescribes that no employee should carry out a process of this kind from beginning to end alone.

Against the background of the employees' partnership and mutual co-operation and their mutual responsibility, the partner principle provides "monitoring" for one's own protection and for the protection of the co-worker. This monitoring includes, for example, counter-signatures in financial transactions (separation of the person authorised to make financial transactions from the one who ascertains factual and arithmetic correctness).

Input of key project data should be reviewed, supervised and approved by a second person (4-eyes principle) to ensure the adequacy and correctness of data in project lists (Bundeskriminalamt, 2004).

Chapter 2
Instruments Concerning Institutional Organisations

1. Structural evaluation

The constant monitoring and, when necessary, alteration of organisational structures and procedures is indispensable as a measure to prevent corruption. In particular, all areas that are at risk of corruption must be investigated to find their weak points.

Specifically, the following measures should be carried out regularly:

a) intensive exercise of official and technical supervision,

b) optimising the way procedures are monitored,

c) incorporation of further monitoring mechanisms,

d) preventing individual employees, groups of employees or departments from closing themselves off from scrutiny or operating independently,

e) "horizontal" monitoring (self-monitoring by co-workers who are at the same level in the hierarchy, in accordance with the partner principle),

f) splitting up tasks,

g) repeated changes in the responsibilities of individual officials in charge,

h) rotation of personnel: for positions that are especially at risk of corruption, a personnel concept will be developed that will be officially in effect for ca. 3–4 years,

i) a special procedure for appointing personnel in risk areas,

j) external monitoring according to the partner principle (e.g. during outside appointments, monitoring etc.),

k) increased vigilance in cases where signs of corruption have occurred repeatedly,

l) refraining from side activities if there is the danger of a conflict of interest between one's activities as a civil servant and one's side activities; this must be determined by the responsible bureau,

m) making it difficult to grant contracts that have not resulted from a public invitation of tenders.

Supervision is exercised through increased monitoring of the areas that are at risk of corruption. Specifically, it is implemented through:

a) intensified monitoring by supervisors in the context of official and technical supervision,

b) intensified monitoring by the auditing department,

c) unannounced inspections by external monitors (state auditing bureau, independent assessors),

d) registration by a central corruption office of cases of corruption or suspected corruption,

e) use of allocation offices for all public contracts,

f) principle of carrying out procedures in pairs (mutual monitoring),

g) intensified use of information-processing systems with built-in monitoring mechanisms.

2. Areas at risk of corruption

Anti-corruption measures are basically appropriate for every area of an administrative bureau (Bundeskriminalamt, 2004). Any level of the hierarchy could be affected. Nonetheless, certain areas in which the risk is higher must be emphasised.

There are special risks in areas which:

- have the responsibility for making decisions that have a high material or immaterial value for those who are affected,
- prepare invitations of tenders, allocate contracts and sign contracts,
- make acquisitions,
- have access to confidential information,
- make decisions concerning applications,
- make decisions concerning discretionary matters,
- grant permits and permissions of every kind (e.g. building permits, restaurant permits, concessions) and
- punish violations (e.g. of the building regulations).

Increased vigilance must be exercised in these areas in order to prevent corruption from setting in.

3. Qualitative institutional education

Information, training and further-education programmes are valuable preventive measures for stopping corruption. The information deficit of employees and political representatives can be filled only by increasing the number and quality of further-education programmes on offer.

For this reason, education programmes for the following groups should be offered:

a) elected representatives and politicians,
b) heads of departments and directors of administrative bureaux,
c) employees in supervisory positions,
d) officials in charge of specific areas.

In areas at risk of corruption, these programmes are carried out regularly and the employees are obliged to attend them (Bundeskriminalamt, 2004). The topic of corruption is dealt with to an appropriate extent within the framework of the internal training programmes for new employees.

The programmes include the following main emphases:

a) information using case studies and clarification of the fact that corruption is not a trivial offence,
b) information about already existing anti-corruption measures and their effectiveness,
c) vivid presentation of examples of processes where the danger of corruption exists,
d) encouraging employees' acceptance of anti-corruption measures (e.g. monitoring, limitation of discretionary areas, limitation of periods of use),
e) requiring all management personnel to commit themselves to preventing corruption,
f) internalising the relevant regulations, e.g. those concerning the gaining of advantage and corruptibility.

4. Indicators and transparency

There are many different causes of corruption. They can be categorised in terms of signs specific to individuals and signs specific to systems. In many cases it is not possible to make clear distinctions between particular causes. Often several causes

are operating. Thus the following list can only be a model and does not claim to be complete (Bundeskriminalamt, 2004). Of course every individual case must be carefully scrutinised.

Signs specific to individuals:

- personal problems (addiction, excessive debts, frustration etc.),
- need for admiration,
- "it's just a job" attitude, lack of identification with one's work,
- deliberate by-passing of monitoring mechanisms, closing off individual task areas from scrutiny,
- utilisation of the applicant's/bidder's workplace, recreational areas, vacation homes or events sponsored by him/her,
- unexplainably high standard of living.

Signs specific to the system:

- undue concentration of tasks in the hands of a single person,
- inadequate monitoring, insufficiently developed official and technical supervision,
- unduly broad unmonitored discretionary areas,
- regulations that are hard to understand,
- mismanagement,
- a lack of transparency in the work processes.

Passive indicators:

- lack of complaints from citizens, even though a letter of protest would have been understandable,
- lack of official actions or reactions.

Concerning transparency, the problem of dissemination of information about public affairs and the management of public issues is one of the most frequently-cited anti-corruption measures. Populations which are made and kept aware of governance issues which affect them, develop expectations about standards and are in a position to put pressure on officials to meet those standards.

Access to Information laws usually incorporates some or all of the following elements (United Nation 2004):

- Every government agency is required to publish basic information about what it does and how, in order to provide a basic level of information both for the pur-

poses of general information and transparency and in order to provide a basis for rational requests for more specific information. Requirements commonly include the publication of such things as legislative and other mandates, budgets, annual or other regular reports summarising activities, and information about complaints or other oversight bodies, including how they can be contacted and reports on their work or the locations where such reports can be found.

- A legally enforceable right of access to documented information held by the Government is recognised, subject only to such exceptions as are reasonably necessary to protect public interests or personal privacy. The subjects generally excluded from scrutiny include cabinet discussions, judicial functions, law enforcement and public safety, inter-governmental relations and internal working documents. Access is provided by giving applicants a reasonable opportunity to inspect the document or by supplying them with a copy.
- An independent review mechanism for determining whether information sought is subject to or exempt from access is established and maintained.

  Usually, for the sake of efficiency, the process involves a presumption that information is accessible, placing the burden of establishing that it should not be disclosed on the government agency involved. There is a review of information by the agency which holds it to identify documents or other elements which, in its view, should not be disclosed. There follows a review by an independent authority, and if his or her decision is not to disclose any of the material, this can be appealed to a court or other independent tribunal. The independent review is usually needed because the information must be reviewed by someone who is not biased in favour of the government agency, but who at the same time, can be relied upon not to disclose sensitive information if the decision to withhold it is maintained. This function is critical – information in dispute is often extremely sensitive, and it is essential that both sides respect the discretion, integrity and neutrality of the review process without either being in a position to fully review its work.
- Time limits and time frames are often established to allow sufficient time for government agencies to search for, gather and review the information sought, and if it proposes not to disclose any of it, for the independent review process to proceed, while at the same time not permitting excessive or indefinite delay.
- Information about private individuals is usually protected from general access, but may be requested by the private individuals themselves. Often rights of individual access are accompanied by rights to dispute information on the basis that it is incomplete or inaccurate and if this is established, to have it amended. Some systems also allow the individual to place challenges or countervailing information on the record if a decision is made not to change the challenged information. [United Nation, 2004]

5. Blacklisting

'Blacklisting' or 'debarment' in the realm of public contracting is a process whereby, on the basis of pre-established grounds, a company or individual is prevented from engaging in further contracts for a specified period of time. Debarment may be preceded by a warning of future exclusion should the conduct persist, be repeated, or occur under aggravated circumstances. An investigation that could lead to debarment may be promoted by an existing judicial decision, or when there is strong evidence of unethical or unlawful professional or business behaviour. Many debarment systems today allow the latter form, as judicial decisions are often slow to obtain.

The key function of debarment in public contracting is prevention and deterrence. For companies, debarment means a damaged reputation, lost business prospects and even bankruptcy. It therefore increases the opportunity cost of engaging in corrupt practices. Debarment systems have been around for some time, both at the national and the international level [J. Olaya1, 2006).

The US debarment system is among the oldest, and its grounds for debarment include anti-trust violations, tax evasion and false statements, in addition to bribery in procurement-related activities. The World Bank has taken the lead internationally: its debarment system was made publicly available in 1998. Since 2003, the European Commission's financial regulations have included a debarment system that is currently being developed. Almost all development banks now have debarment systems of some kind and, at the national level, many countries have, or are seriously considering, blacklisting systems (Olaya1, 2006).

Many of the current debarment systems have been criticised for being closed, poorly publicised or unfair, and for failing to include big companies with proven involvement in corrupt deals.

The decision to debar Acres also helps dispel the fear that debarment agencies might face reprisals, such as allegations of slander or misjudgement. The two main problems Transparency International has encountered with blacklisting are: an unwillingness to debar on the basis of 'strong evidence' (without a court order); and resistance to giving the public access to blacklists. In order to be effective and to stand up to scrutiny and possible legal challenges, certain steps need to be taken when designing and implementing a debarment system.

Effective debarment systems must be fair and accountable, transparent, well publicised, timely and unbiased [(Olaya1, 2006).

1. Fairness and accountability. Clear rules and procedures need to be established and made known to all the parties involved in a contracting process, ahead of time. The process needs to give firms and individuals an adequate opportunity to defend themselves.

2. Transparency. Sanctions and the rules regarding the process must be made public in order to minimise the risk of the debarment system being subjected to manipulation or pressure. The outcomes must also be publicised. Contracting authorities and export credit agencies need to be given access to detailed information from the debarment list so that they can carry out due diligence on potential contractors (for overseas tenders this might mean accessing the debarment system in the home country). This process is especially complicated because owners of debarred companies may simply start up a new company operating under a new name. Up-to-date public debarment lists can help procurement officers and due diligence analysts keep track of such cases. Publicity also has an important impact on the legitimacy, credibility and accountability of debarment agencies, and facilitates monitoring by independent parties. The information made public in debarment lists needs to include the company or individual's name, the grounds for investigation, the name of the project, the country of origin of sanctioned firms or individuals, as well as the rules governing the process.
3. Functionality. Publicly available debarment lists facilitate electronic matching and other information-sharing features that organisations such as the World Bank's International Finance Corporation already have in place. Systems could be interconnected internationally, for example, among development banks, or between countries. Such networking may even reduce operating costs, and make systems more effective.
4. Timeliness. Debarment systems should be timely.
5. Proportionality. For some companies, being barred from a particular market might mean bankruptcy, so in certain cases a debarment of five years could be too much. The system should allow for a sliding scale of penalties, and should provide entry and exit rules. If a company has shown that, after the offence, it implemented substantial changes, for example, by enforcing codes of conduct, or changing policies and practices, it should be possible to lift the debarment (Olaya1, 2006).

Chapter 3
Audit Instruments

The fundamental purpose of auditing is the verification of records, processes or functions by an entity that is sufficiently independent of the subject under audit as not to be biased or unduly influenced in its dealings.

Strengthening transparency and accountability in public finances is a defining challenge for emerging economies seeking to foster fiscal responsibility and curb corruption (C. Santiso, 2007). There is renewed interest in those oversight agencies tasked with scrutinising public spending and enforcing horizontal accountability within the state. However, little is known as to what explains the effectiveness of autonomous audit agencies (AAAs).

Institutional arrangements for government auditing

The core functions of AAAs, traditionally referred to as supreme audit institutions, are to oversee government financial management, ensure the integrity of government finances and verify the truthfulness of government financial information. AAAs contribute to anchoring the rule of law in public finances, including through the imposition of administrative sanctions (Santiso, 2007).

In some countries, they also perform key anti-corruption functions, such as overseeing asset declarations, public procurement or privatisation processes.

There exist different institutional arrangements for organising the external audit function, which can be regrouped in the following three broad ideal types:

(i) the **court model** of collegiate courts of auditors or tribunals of accounts with quasi-judicial powers in administrative matters, often acting as an administrative tribunal, such as in France, Italy, Spain, Portugal, Brazil or El Salvador;

(ii) the **board model** of a collegiate decision-making agency but without jurisdictional authority, such as in Germany, Netherlands, Sweden, Argentina or Nicaragua; and

(iii) the **monocratic model** of a uninominal audit agency headed by a single auditor general and often acting as an auxiliary institution to the legislature, such as the US, the UK, Canada, Chile, Colombia, Mexico and Peru.

In practice, however, AAAs are unique hybrids that combine several elements of the different models. Key variations between agencies include the timing of control (ex-ante or ex-post), its nature (compliance or performance auditing), its effects (follow-up of audit recommendations), as well as its status (legal standing of audit rulings). The most important issue, however, concerns the agencies' approaches to fiscal control, which vary across countries and have evolved over time.

Fiscal control can be preventive, corrective or punitive. Compliance control is concerned with the formal adherence to budget rules and financial regulations, including through the imposition of administrative sanctions. Performance control is concerned with the manner in which public resources are deployed, emphasising the economy, efficiency and effectiveness of public spending. The trend is towards greater emphasis on the preventive and corrective functions of government auditing through ex-post performance auditing (Santiso, 2007).

Audits work primarily through transparency. While some auditors have powers to:

- act on their own findings, their responsibilities are usually confined to investigation, reporting on matters of fact and, sometimes, to making recommendations or referring findings to other bodies for action. While auditors may report to inside bodies such as Governments or boards of directors, their real power resides in the fact that audit reports are made public (United Nations, 2004).

Once carried out, audits serve the following specific purposes:

- **They independently verify information and analysis,** thus establishing an accurate picture of the institution or function being audited.
- **They identify evidentiary weaknesses,** administrative flaws, malfeasance or other problems that insiders may be unable or unwilling to identify;
- **They identify strengths and weaknesses in administrative structures,** assisting decisions about which elements should be retained and which reformed;
- **They provide a baseline against which reforms can later be assessed** and, unlike insiders they can, in some cases, propose or impose substantive goals or time limits for reforms;
- In public systems, **they place credible information before the public**, generating political pressure to act in response to problems identified; and,
- Where malfeasance is identified, **they present a mechanism through which problems can be referred to law enforcement or disciplinary authorities** independently of the institution under audit (United Nations, 2004).

Instruments that may be required before an audit institution can be successfully established include:

- Instruments, usually in the form of legislation, establishing the mandate, powers and independence of the institution;
- Policy and legislative provisions governing the relationship between the audit institution and other related institutions, especially law enforcement, prosecution and specialised anti-corruption agencies;
- Instruments establishing legal or ethical standards for public servants or other employees, such as codes of conduct, both for general classes of workers and for those employed within the audit institution itself;
- Ways of raising public awareness and expectations regarding the role of the audit institution and its independence of other elements of Government; and
- The establishment of a parent body, such as a strong and committed legislative committee, to receive and follow up on reports (United Nations, 2004).

Relationship between audit institutions and other public bodies

Relationship with the legislature and political elements of Government

Legislatures are political bodies whose members will not always welcome the independent oversight of auditors and other watchdog agencies. National audit institutions must, therefore, enjoy a significant degree of functional independence and separation both from the legislature and from the political elements of executive Government. One way is by constitutionally entrenching the existence and status of the institution, thereby making interference impossible without constitutional amendment. Where this is impracticable, the institution can be established by an enacted statute. The statute would set out basic functions and independence in terms that make it clear that any amendment not enjoying broad multipartisan support would be seen as interference and generate political consequences for the faction sponsoring it.

The mandate of an audit institution should also deal with the difficult question of whether the institution should have the power and responsibility to audit the legislature and its members. If an auditor has strong powers, there may be interference with the legitimate functions of the legislature and the immunities of its members. If, on the other hand, the legislature is not subject to audit, a valuable safeguard may be lost. One factor to be considered in making such a decision is the extent to which transparency and political accountability function as controls on legislative members. Another is the extent to which internal monitoring and disciplinary bodies of the legislature itself act as effective controls. A third is the degree of immunity

members enjoy. If immunity is limited and members are subject to criminal investigation and prosecution for misconduct, then there may be less need for auditing. Where immunity is strong, on the other hand, exposing members to strict audit requirements may compensate for this. A mechanism could be tailored, for example, to ensure political and even legal accountability without compromising legislative functions (United Nations, 2004).

The third aspect of the relationship between the legislature and an audit institution lies in the process for dealing with the reports or recommendations of auditors. Auditors established by the legislature are generally required to report to it at regular intervals. As an additional safeguard, reporting to either the entire legislature or any other body on which all political factions are represented ensures multipartisan review of the report. Moreover, constitutional, legislative or conventional requirements that proceedings and documents of the legislature be made public ensure transparency, a process further assisted by the close attention paid to most national legislatures by the media. In some circumstances, auditors may also be empowered to make specific reports, recommendations or referrals to other bodies or officials. For instance, some cases of apparent malfeasance may be referred directly to law enforcement agencies or public prosecutors.

Relationship to Government and the administration

The relationship between auditors and non-political elements of Government and public administration must balance the need for independent and objective safeguards with the efficient functioning of Government. Auditors should be free to establish facts, draw conclusions and make recommendations, but not to interfere in the actual operations of Government. Such interference would compromise the political accountability of the Government, effectively replacing the political decision-making function with that of a professional, but non-elected auditor. Over time, such interference would also compromise the basic independence of the office of the auditor, which would ultimately find itself auditing the consequences of its own previous decisions. That is the main reason why most auditors are not given powers to implement their own recommendations [United Nations, 2004].

Regarding reporting, the primary reporting obligation of auditors is to the legislature and the public. Specific elements or recommendations of a report may be referred directly to the agency or department most affected, but that should be done in addition to the public reporting and not as an alternative, subject to the possible exceptions set out under "non-public audits", above.

Audit methods, audit staff

Audit staff

Audit staff should have the professional qualifications and moral integrity required to carry out their tasks to the fullest extent to maintain public credibility in the audit institution.

Professional qualifications and on-the-job development should include traditional areas, such as legal, economic and accounting knowledge, along with expertise, such as business management, electronic data processing, forensic science and criminal investigative skills. As with other crucial public servants, the status and compensation of auditors must be adequate to reduce their need for additional income and to ensure that they have a great deal to lose if they themselves become corrupted. As far as ordinary public servants are concerned, even if involvement in corruption is not cause for dismissal, it should result in the exclusion of that individual from any audit agency or function.

Audit methods and procedures

The standardisation of audit procedures, where possible, provides an additional safeguard against some functions of the department or agency under audit being overlooked. Where possible, procedures should be established before the nature and direction of enquiries become apparent to those under audit, to avoid any question of interference later. One exception, and a fundamental principle of procedure, is that auditors should be authorized and required to direct additional attention to any area in which initial enquiries fail to completely explain and account for processes and outcomes (United Nations, 2004).

Essentially, the audit process will consist of initial enquiries to gain a basic understanding of what the department or agency does and how it is organised; more detailed enquiries to generate and validate basic information for the report; and even more detailed enquiries to examine areas identified as potential problems. Audits can rarely be all-inclusive, which will generally necessitate either a random sampling approach or the targeting of specific areas identified by other sources as problematic.

Audit of public authorities and other institutions abroad, and joint audits

National auditors should be given powers to audit every aspect of the public sector, including transnational elements or those outside the country. Where the affairs of other countries are involved, joint audits carried out by officials of both countries could prove useful. In such cases, however, there must be a clear working arrangement governing the nature and extent of co-operation between auditors, and the

extent to which mutual agreement is required regarding fact finding, drawing conclusions and making recommendations. While co-operation may prove useful, the national auditors of each country should preserve their independence and the right to draw any conclusions that they see fit.

Tax audits

In many countries, domestic revenue or tax authorities have established internal agencies to audit individual and corporate taxpayers. One of the functions of national audit institutions is to audit those auditors as part of a more general examination of the taxation system and its administration. Such audits are vital, given that tax systems can be a "hot bed" of economic and other corruption. When such an audit occurs, national audit agencies must have the power to re-audit the files of individual taxpayers. The purpose is to verify the work of the auditors, not to reinvestigate the taxpayers involved. Where malfeasance or errors are discovered, the interests of the taxpayer who has been previously audited and whose account has been settled should not be prejudiced.

National auditors should also have the powers to audit individual taxpayers under some circumstances, for example where there is no specialised tax audit function, where tax auditors are unwilling or unable to audit a particular taxpayer, and where an audit of the tax administration suggests collusion between a taxpayer and an auditor (United Nations, 2004).

Public contracts and public works

The considerable funds expended by public authorities on contracts and public works justify a particularly exhaustive audit of such areas. The public sector elements will usually already be subject to audit and required to assist and cooperate by law. The private sector elements, however, may not be. In such cases, they should be required, as a term of their basic contracts, to submit to a request for audit and to fully assist and cooperate with auditors. Audits of public works should cover not only the regularity of payments but also the efficiency and quality of the goods or services delivered.

Audit of electronic data-processing facilities

The increasing use of electronic data storage and processing facilities also calls for appropriate auditing. Such audits should cover the entire system, encompassing planning for future requirements; efficient use of data processing equipment; use of appropriately qualified staff, preferably drawn from within the administration of the audited organisation; privacy protection and security of information; prevention of misuse of data; and the capacity of the system to store and retrieve information on demand.

Audit of subsidized institutions

Auditors should be empowered to examine enterprises or institutions that are subsidized by public funds. At a minimum, that would entail the review of specific publicly funded or subsidised projects or programmes and, in many cases, a complete audit of the institution. As with contractors, the requirement to submit to auditing and fully assist and co-operate with auditors should be made a condition of the funding or enshrined in any contract.

Audit of international and supranational organisations

International and supranational organisations whose expenditures are covered by contributions from member countries should also be subject to auditing. That may, however, be problematic, if the institution receives funds from many countries and each insists on a national audit. In the case of major agencies, it may be preferable to establish an internal agency to conduct a single, unified audit, with participating States providing sufficient oversight to ensure validity and satisfaction with the results (United Nations, 2004).

Preconditions and risks

Inadequate enforcement or implementation of findings or recommendations

As noted, auditors generally have the power only to report, not to implement or follow up on reports. Their recommendations usually go to the legislature or, occasionally, other bodies, such as the public prosecutor, whose own functions necessarily entail discretionary powers about whether or not to take action. The reluctance to implement recommendations can be addressed only by bringing political pressures to bear through the transparent reporting by the media of the recommendations. Additional attention may be focused by supplementary reports direct to the agencies that have been audited. Auditors can also report on whether past recommendations have been implemented and, if not, why not, through follow-up reports or by dedicating part of their current report to that question.

Inadequate reporting and investigations

In the course of an audit, it is common for personnel to be diverted from their usual functions. A lack of qualified professional staff and resources therefore makes it difficult for those being audited to render the necessary co-operation and for auditors to successfully complete rigorous audits.

Unrealistic aims and expectations

The belief that corruption can be eradicated, and in a short time, inevitably leads to false expectations, resulting in disappointment, distrust and cynicism. The mistaken impression may also be given that audit institutions have powers to implement or enforce their recommendations.

Competition and relationships with other agencies

Audit institutions often operate in an environment in which anti-corruption agencies, law enforcement agencies and, in some cases, other auditors are also active. Roles should be clearly defined and confidential communications established to avoid conflict of audit and law enforcement investigations. The leading role in this regard may lie with the auditors, whose investigations are generally public, as opposed to law enforcement, whose efforts are generally kept secret until charges are laid.

Lack of political commitment and/or political interference

Political will is essential to the impact of an audit institution. As with other anti-corruption initiatives, there should be as broad a range of political support as possible; oversight should be of a multipartisan nature; and mandates and operational matters should be put beyond the easy reach of Governments. The transparency and the competence of auditors will also help to ensure popular support for their efforts, and as a result, ongoing political commitment (United Nations, 2004).

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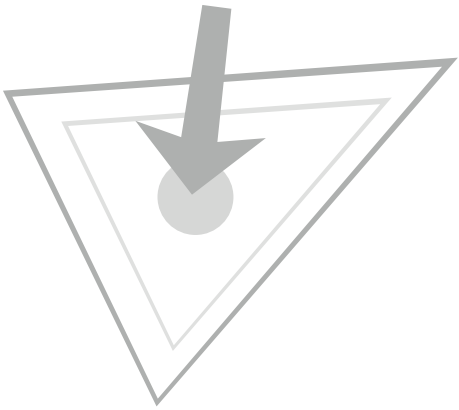
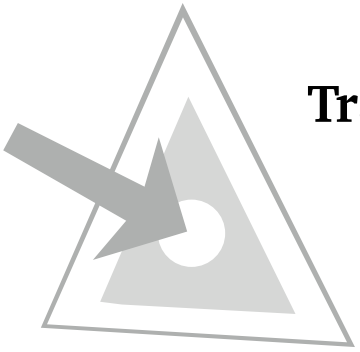
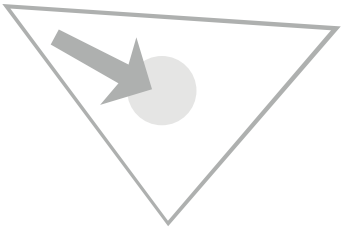
SECTION V





Training

Hans Joachim Rieger



Chapter 1
Background of Training Integrity

Is training and education of integrity possible or is integrity a personnel criterion which cannot be improved by training?

Integrity is a complex field. If different people are asked "what is integrity?" they will answer the question in different ways. That means there is no common understanding about honest behaviour and it differs from the experience and personality of those interviewed. Nevertheless, it is true that you can minimise harming integrity by good leadership and organisational solutions. As a consequence, this means if we influence leadership and organisational change with training, it is expected that we promote integrity in the public service.

What is good leadership and how does it influence integrity?

Supervision and leadership is exercised through increased monitoring, especially in the areas that are at risk of corruption or where misbehaviour can cause much damage. Specifically, supervision is implemented through leadership and organisational solutions:

a) intensified monitoring by supervisors in the context of official and technical supervision,
b) unannounced checking of files and administrative acts by a supervisor,
c) intensified monitoring by the auditing department,
d) unannounced inspections by external monitors (state auditing bureau, independent assessors),
e) registration by a central corruption office of cases of corruption or suspected corruption,
f) use of allocation offices for all public contracts,
g) principle of carrying out procedures in pairs (mutual monitoring),
h) intensified use of information-processing systems with built-in monitoring mechanisms.

This leads to actions which could be expected to be carried out by leaders in public service.

In order to prevent corruption and increase integrity, it is absolutely necessary that in a case of suspected corruption or misbehaviour there are prescribed instructions for each of the involved parties on how to proceed. The following main points, in particular, must be kept in mind:

a) general ban on the acceptance of rewards and presents,

b) prescribed procedures in cases of suspected corruption or misbehaviour,

c) establishment of a central "corruption office" which is informed about all happenings in this area,

d) compulsory reporting of suspected corruption or misbehaviour.

Deterrence is achieved by informing all employees of the consequences of corruption. This includes not only the aspect of work regulations, but also that of criminal law. It also includes informational meetings or circulars concerning recent court decisions which deal with the battle against corruption in other realms. The individual's awareness of the fact that corruption is a severe offence, which will be prosecuted and harshly punished, raises his/her personal threshold of corruptibility.

The deterrent effect is especially strong if cases of corruption in the employees' immediate surroundings are publicised and those involved are identified by name. Closeness, in terms of space and similar tasks, to a case of corruption that has been exposed, increases the likelihood that persons at risk of corruption will vividly imagine the dangers of succumbing.

To strengthen these actions, further-training programmes are on offer.

Information, training and further-education programmes are valuable preventive measures for stopping corruption and improving behaviour of staff. The information deficit of employees and political representatives can be filled only by increasing the number and quality of further-education programmes on offer.

For this reason further education programmes for the following groups should be:

a) elected representatives and politicians,
b) heads of departments and directors of administrative bureaux,
c) employees in supervisory positions,
d) officials in charge of specific areas.

In areas at risk of corruption, these programmes are carried out regularly and employees are obliged to attend. The topic of corruption is dealt with to an appropriate extent within the framework of the internal training programmes for new employees.

The programmes include the following main emphasis:

a) information using case studies and clarification of the fact that corruption is not a trivial offence and that integrity management is a priority to all functions,

b) information about already-existing anti-corruption measures and their effectiveness,

c) vivid presentation of examples of processes where the danger of corruption exists and integrity is necessary,

d) encouraging employees' acceptance of anti-corruption and integrity measures (e.g. monitoring, limitation of discretionary areas, limitation of periods of use),

e) requiring all management personnel to commit themselves to preventing corruption and to give an example for integrity,

f) internalising the relevant regulations, e.g. those concerning the gaining of advantage and corruptibility.

In order to promote employees' readiness to speak openly about corruption and integrity difficulties and expose it, as well as reducing vulnerability to corruption, measures are required which bear in mind the tasks to be accomplished, existing organisational structures etc.

These include:

- reinforcing employees' awareness of the problem and of their sense of responsibility,
- reinforcing their sense of injustice with regard to corrupt dealings and non-corrupt behaviour,
- comprehensive and, if necessary, regular instruction of employees at all levels of the hierarchy, concerning the relevant regulations, e.g. concerning the ban on acceptance of advantages and presents, the need for permission of side activities, and the sanctions they can expect if they violate the rules,
- inform supervisors about the available possibilities for monitoring, supervising, and sanctions.

The following information channels should be used:

- comprehensive and practical information for employees in sensitive areas through supervisors or specially trained employees,
- internal informational work, e.g. by means of circulars, brochures concerning regulations in force and practical examples,
- dealing with the topic of corruption in talks with employees and staff meetings,
- specific training courses.

Supervisors must receive further education on the subject of corruption so that they can exercise a sufficient amount of official and technical supervision. In these programmes, particular emphasis must be placed on recognising the patterns of corruption and sensitising management personnel. Members of management must be enabled to promptly identify situations of conflict for employees and to offer help. The following measures in leadership can be taken:

1. system for monitoring processes, supported by a technical supervisory institute
2. supervisory activities with quotas
3. documentation of monitoring
4. monitoring by means of internal review by monitoring bodies specific to various work areas
5. analysis of weak points
6. review of compliance with prescribed areas of discretionary action
7. preventing individual employees, work groups or departments from closing themselves off from scrutiny or from operating independently
8. receiving and investigating reports of suspected corruption
9. vigilance regarding personal weaknesses (addiction, expensive hobbies, excessive debts)
10. vigilance in case of an employee's conspicuous recommendation of a particular client or in a client's unexplained defence of a certain employee.

Training and teaching has to support the above mentioned topics.

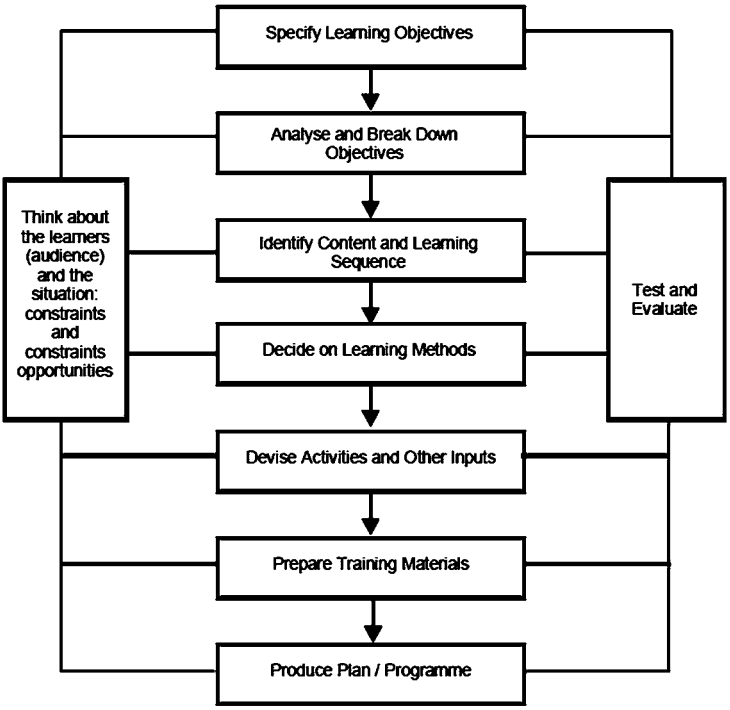
Training is very different from the traditional scientific way of teaching and studying. The point of departure is the practical situation of the participants. Participants in practical training are adults and professionals with years of experience in the public service. In the following chapters, you will find training parts which can also be used in some well-selected teaching lessons in university or academies.

The planning of training begins with an analysis of the target group and their needs. If the target groups are practitioners, it is necessary to involve their experience of various cases in the training. If the training group are students, then a common background is the point of departure for the training.

Objectives of the training have to be precise and measurable, and success indicators for the training should be in place. Of course, the participants have this information before training commences.

The flowchart below outlines the specific tasks that the planning group should carry out in designing the training event:

Picture 5.1


Specify Learning Objectives
Analyse and Break Down Objectives
Identify Content and Learning Sequence
Decide on Learning Methods
Devise Activities and Other Inputs
Prepare Training Materials
Produce Plan / Programme
Think about the learners (audience) and the situation: constraints and constraints opportunities
Test and Evaluate

Chapter 2
Training Concepts

A precise description of training objectives and content is developed by the DBB Akademie in Germany. It has a proven track record in Germany and in several CEE countries.

To have relevant training in place it would appear that different offers for different target groups are necessary. In this context we have horizontal training and vertical training. Horizontal Training means: In this component, the main goal is to ensure that all the institutions involved in the training and education of officials providing public services, develop an understanding of the nature and sources of corruption and integrity, as well as the competence to deal with them effectively. A compact three-day seminar consisting of four modules is developed and can be delivered:

Module 1: Definitions, causes and effects of corruption

Module 2: Legal aspects of fighting corruption

Module 3: Organisational aspects of fighting corruption

Module 4: Conflicts of interest/codes of conduct

These four modules are elaborated for all target groups in order to convey basic information on corruption and integrity, as well as to build an appropriate attitude, i.e. a personal readiness to participate in the fight against corruption and improve integrity. Therefore, the "Horizontal Training" contains both cognitive and affective elements.

On a cognitive level, it was important for members of all target groups to become aware of the causes and phenomenology of corruption, as well as the harmful effects of corruption on the State and society as a whole, on social status and the credibility of the administration, and on the economy.

Therefore, the first module entitled "Definitions, causes and effects of corruption" includes such aspects as various definitions and types of corruption, causes of corruption, and the effects and consequences for society and politics. The emphasis lies in active dialogue with participants.

Furthermore, the potential of legal measures in the fight against corruption needed to be presented and discussed. Thus, in the second module, entitled "Legal aspects of fighting corruption", members of all target groups had to be made aware of the relevant legal norms and procedures to be followed in cases of corruption. Therefore, this training module covers the applicable law, in particular the Anti-Corruption Law, relevant norms on disciplinary violations and sanctions, as well as relevant portions of the Criminal Code.

The third module, "Organisational aspects of fighting corruption", covers forms of detecting corruption, e.g. defining risk areas in public administrations and recognising "alarm signals", which indicate a high probability that a particular civil servant or a group of civil servants are corrupt, and generally applicable methods of preventing corruption through organisational, intra-administrative measures, such as job rotation in sensitive areas, and the introduction of the "four-eye principle" in all sensitive transactions.

At an affective level, it is important for members of all target groups to put into practice the overall accepted ethics and standards for civil servants in their daily work.

Therefore, the fourth module concentrates on how to deal with possible "Conflicts of Interest" and the development and implementation of "Codes of Conduct" in public administrations. Particular emphasis of this module was placed on developing problem-solving skills, especially on the basis of a game entitled "Dilemma Situations".

The three-day compact course, as well as the corresponding training manual for all employees in public administration, is set up as follows:

Concrete objectives

For each module, corresponding objectives were formulated, which indicate clearly whether or not they deal with cognitive or effective objectives and the level of achievement at which they are aimed (e.g. to become acquainted with different definitions of corruption = the lowest level; to be able to formulate a definition applicable to one's own area of work = highest level).

Questions/discussion points

Questions/discussion points were formulated for each module, which should aid the trainers in initiating discussions. Possible results and analyses were also anticipated.

Basic text(s)

Each of the four modules contains an in-depth basic text, which serves as a participant text, as well as background information for the trainers. Since different EU

experts elaborated the basic texts, they vary somewhat in set-up and style. They present the EU standard and can be adapted at any time by trainers (e.g. when the legal situation changes in Latvia, the basic text for the module "Legal aspects" needs to be adapted).

Exercises

Moreover, exercises were prepared for each module, which range from simple multiple-choice tests on analysis and problem-solving tasks for group work, to more ambitious role playing.

Ready-to-use transparencies

A complete set of transparencies is provided for each module, which facilitate the structuring of the trainer's information and presentation style, as well as the visualisation of content. The selection of transparencies is quite varied: cartoons, tables, graphic presentations and texts. The transparencies, or a selection thereof, also make suitable participant materials.

The content of the training modules is:

Module 1 – Definitions, causes and effects of corruption

The first module includes such aspects as various definitions and types of corruption, causes of corruption and the effects and consequences for society and politics.

Objectives of Module 1

The participants should:

- be introduced to the various definitions of corruption from the political, economic and legal points of view;
- be motivated to critically discuss the current EU/international standard definition of corruption and integrity management;
- be encouraged to formulate their own definitions of corruption and non-corrupt behaviour;
- be able to indicate causes and effects of corruption and non-corrupt behaviour on the State and society, as well as be able to analyse them on the basis of materials;
- be in a position to name the particular causes of corruption in their country and be able to debate them using specific materials;
- be able to name, analyse and debate the current effects of corruption for their country on the basis of specific materials.

Module 2 – Legal aspects of fighting corruption

In Module 2, the members of all target groups needed to be made aware of the relevant legal norms and procedures to be followed in cases of corruption. Thus, this training module covers the applicable substantive law, in particular the Anti-Corruption Law, relevant norms on disciplinary violations and sanctions, as well as relevant portions of the Criminal Code.

Some of the main topics covered include the following:

1. The role of law in combating corruption (general considerations)
2. Preventing corruption
3. Sanctioning corruption
4. Criminal law: interpretation, problem areas and reform
5. Procedural issues
6. Practical issues

Objectives of Module 2

The participants should:

1. be made aware of the role of law in everyday life and its meaning for the fight against corruption;
2. be able to obtain an overview of the applicable legal norms in Latvia (prevention norms, i.e. administrative law and guidelines, Anti-Corruption Law, sanctioning norms – criminal law and procedural issues) and their areas of application;
3. be able to recognise that the occurrence of corruption is related to the risk of being caught and punished;
4. become familiar with the problems of different methods of investigation (e.g. hidden cameras, undercover agents);
5. be able to describe the legal situation on the basis of various case study descriptions, with the corresponding formulation of questions and (in individual cases) be able to apply the valid legal norms.

Module 3 – Organisational aspects of fighting corruption

This module covers the various forms of detecting corruption, e.g. defining risk areas in public administrations and recognising "alarm signals", which indicate a high probability that a particular civil servant or a group of civil servants are corrupt, and generally applicable methods of preventing corruption through organisational, intra-administrative measures, such as job rotation, in sensitive areas and the introduction of the "four-eye principle" in all sensitive transactions. An example of an overall corruption plan is also examined.

Objectives of Module 3

The participants should:

1. be in a position to indicate and analyse the weak points and the risk areas in public administration, which favour corruption;
2. be able to describe the various kinds of indicators ("alarm signals"), that point to corruption in different areas of public administration;
3. be motivated to develop guidelines for corruption risk assessment and risk management;
4. become familiar with international examples of corruption prevention;
5. be able to develop regulations and measures of corruption prevention for their own areas of work;
6. become familiar with the organisational, intra-administrative measures of corruption prevention;
7. be able to develop suggestions for the implementation of corruption prevention plans and measures for their own areas of work.

Module 4 – Conflicts of interest/codes of conduct

It is critical for members of all target groups to put into practice the overall accepted ethics and standards for civil servants in their daily work.

Therefore, the fourth module concentrates on how to deal with the possible "Conflicts of Interest" and the development and implementation of "Codes of Conduct" in public administrations. Particular emphasis of this module is placed on developing problem-solving skills, especially on the basis of a game entitled "Dilemma Situations".

Objectives of Module 4

In this module the participants should:

1. become familiar with examples of conflicts of interest in the area of public administration;
2. be able to identify and explain possible conflicts of interest from their own areas of work;
3. be encouraged to recognise the relationship between conflicts of interest and (possible) corruption;
4. be able to develop different ways/measures to deal with conflicts of interest;
5. become familiar with international rules for the development and implementation of codes of conduct;

6. be able to name the most important aspects, which need to be included in a Code of Conduct;
7. be encouraged to develop suggestions for promotion strategies for Codes of Conduct;
8. practise ethical behaviour in the role-play entitled "Dilemma Situations".

To spread the idea of Integrity Training, it is necessary to have highly qualified trainers available. So, a 'Train the Trainer' concept is necessary:

Step 1: Train the Trainer seminar

Step 2. Delivery of seminar by qualified trainers with observation

Step 3. Co-teaching by the trainers and the qualified trainers

Step 4: Training by the new trainers under the supervision of the qualified trainers

Training is for professionals who are in different positions in public service and are involved in integrity management.

Chapter 3
Training Content

List of topics (not exhaustive) that can be covered by the DBB Akademie

- Definitions of corruption
- Causes of corruption
- Consequences of corruption in the public administration, the economy and society
- Types of corruption
- The role of law in the fight against corruption
- Disciplinary law
- Areas at risk of corruption in public administration
- Conditions favouring corruption
- Indicators of corruption
- Corruption prevention plans: design and implementation
- Methods of corruption prevention
- Code of conduct
- Conflict of interests
- Rules of ethics and ethical behaviour
- Dilemma situations-simulation game (see attached description)

Corruption Prevention

List of topics (not exhaustive) that can be covered

- Definitions of corruption
- Causes of corruption
- Consequences of corruption in public administration, the economy and society
- Types of corruption
- The role of law in the fight against corruption
- Disciplinary law
- Areas at risk of corruption in public administration
- Conditions favouring corruption

- Indicators of corruption
- Corruption prevention plans: design and implementation
- Methods of corruption prevention
- Code of conduct
- Conflict of interests
- Rules of ethics and ethical behaviour
- Dilemma situations-simulation game (see attached description)

(dbb akademie, 2008).

Chapter 4

Training Methodology in Integrity and Anti-corruption Training

The goal is to make available a repertoire of methods which will ensure the success of the qualification courses themselves and the application of the subject of "Combating corruption and Integrity Management" in practice.

The goal of the seminar methods is to make the instruction process as interesting and vivid as possible for the participants. A further goal is to prepare appropriately for the application of the learned material into practice, and to ensure that the learned material is both cognitively grasped and effectively worked through.

When planning and conducting seminars, we are guided by the following principles:

- Orientation towards the participants: The educational concept is a curriculum that is open to the participants. The aforementioned subject matter and subject areas is the framework; the manner of proceeding, methodology and use of the media are planned and put together with a view to the specific group of participants for each seminar. The methods for proceeding develop dynamically in the course of the teaching and learning process.
- Relevance to practice: Practice is the point of departure and the goal of the further-education courses. For this reason, the subject matter is mainly dealt with in terms of concrete examples and cases taken from the working areas of the seminar participants (cf. Training material).
- Orientation towards action: The concept of qualification goes beyond the conducting of seminars. In the seminars we support the participants as they plan activities to combat corruption, and prepare them to put these plans into action. For this purpose, we create space in the seminars to test new modes of behaviour, and we accompany the participants as they implement them in practice (cf. Didactic Centre).

- Double effect: In the training courses, the seminar participants will learn methods and processes that they can use or find in their own work (e.g. planning games).
- A variety of methods: The following methods and social forms are used, depending on the subject that is being dealt with, and they are supported by appropriate training materials: work in small groups, the short lecture, the longer lecture, the teaching talk, text work, brainstorming, planning games, case simulation, discussion, visits to practitioners (cf. Study tours), metaplan, exchange of experiences, individual work, the project method.
- The holistic approach: Qualification is interpreted in a holistic way. This means that crucial interdisciplinary qualifications are developed, in addition to professional knowledge of the subject, and that social competence and personal development are promoted in the educational measures.

The methodologies of the individual modules on the subject of "Combating corruption and integrity management" can be separated into two main categories:

- In the modules that are primarily concerned with the acquisition of professional knowledge of the subject and with cognitive learning goals, for example in the modules "Relevance and definition of corruption" or "Information on the legal framework", the methodology is based on the classic phase model: orientation of the participants, motivation, teaching professional knowledge of the subject / using the participants' previous experience, exercises / cases from practice, evaluation / reviewing the results and summary. For the "motivation" and "teaching professional knowledge" phases, appropriate materials are available, such as videos, sets of overhead-projector slides, and pedagogical tips, all of which enable the instructor to convey professional knowledge of the subject in a varied and participant-oriented way. However, the central focus of these modules is not only to teach knowledge, but also to apply what has been learned to practice cases. The aforementioned case examples and exercises are used for this purpose. Case examples taken from practice and exercises derived from the participants' range of experiences create, first of all, a high degree of motivation and secondly, create the preconditions for the transfer of knowledge into practice in the participants' respective offices (orientation towards action).
- In the modules in which the emphasis is more on the teaching of attitudes, opinions and effective learning goals, it is important to achieve the emotional involvement of the participants. This applies, for example, to the modules 'Internal rules and standards on ethical conduct' and 'Personal integrity'. This means that the teaching of attitudes and opinions must proceed, not via instructor-oriented, but via participant-centred methods. Here the aforementioned planning games and role play are obviously good choices. These are presented in the respective modules using video feedback and group evaluation. Here again, a good introduction is provided by the video sequences, which, because they are so vivid and

easily comprehensible, make it possible to highly motivate the participants and give them quick access to the subject to be dealt with.

The goal of the various methods of application is to facilitate practical application through a variety of activities, reduce impediments and minimise sources of friction.

Even good material, ingenious methods and effective seminars still do not guarantee that what has been learned will be applied in practice. Even motivated participants who have successfully completed the relevant qualification courses encounter cynicism, indifference and apathy when they return to their own offices and organisations. This familiar attitude in organisations often leads to a general loss of motivation and paralysis in the very people who want to actively bring about change.

Investigations of change in organisations and attitudes have shown that there are key factors that are crucial to the success of the organisational changes:

- Administrative support: If there is no support from the top administrators, there is hardly any chance for change to come about. For this reason, the subject of 'Combating corruption' is integrated into the qualification courses for administrators. Furthermore, methods of change management will also be dealt with in the qualification courses for administrators. Finally, the behaviour of the administrators themselves must be perceived by the employees as honest and trustworthy. Other key points are the top administrators' credible political will and their declared will to change.
- Building networks: Qualified seminar participants should not be left on their own after the seminar; rather, if possible, they should be integrated into networks where they can exchange views about current cases, problems of application and difficulties connected with transfer. The Didactic Centre can offer a forum for these activities (see above).
- Critical mass: In physics, the term "critical mass" means that processes become stable and self-sustaining only when a critical mass has been produced. In our case, this means when the appropriate knowledge and attitudes on the subject of combating corruption have spread throughout a bureau and passed a certain mark. This mark is generally assumed to be about 20 % of the employees; from this point on, a bureau has internalised an issue. In terms of further education, this means that the subject of 'Combating corruption' should be integrated into as many curricula as possible; it also means that transferring what has been learned into practice should be linked with internal multipliers in the bureau (cf. Didactic Centre, Training material: orientation towards transfer).
- Transparency: The goals, procedures, total concept and expected benefits of dealing with the subject of 'Combating corruption' must be made clear to all

those who are affected. This too implies a task for the bureau administrators. This function must be prepared for in the further-education courses. Public-relations work (Project Part 3) provides additional essential support in this area.

- Consistency: Possible forms of positive and negative reinforcement must be worked out for each case, made understandable, and applied consistently. The consistent application of rules and sanctions leads to rapid change, but it may also increase potential conflicts, at least in the short term.
- The interdisciplinary approach: Co-ordinated areas of responsibility, the interplay of various individuals and institutions, and the regular exchange of experiences all increase the likelihood that measures to combat corruption will be put into practice. Moreover, they lead to a decrease in egotistical territorial claims. The interdisciplinary approach is deliberately promoted in the project. Examples include: the general subject matter on the topic of 'Combating corruption' with mixed target groups (horizontal), study tours, etc.
- External accompaniment: Frequently, the rigid structures that have formed within a bureau cannot be altered by the bureau itself. An extreme degree of accompaniment, for example one initiated by the project and later continued by the Didactic Centre at the LSPA, can break through these rigid structures and introduce new patterns of behaviour.
- Participation: The participation of all of the involved parties in the development of the project, transparency concerning the results of each project and their practical application, talks between co-workers, and even employee surveys, if necessary, are the components of participatory project work. These elements offer the employees a certain degree of identification with the project, which makes it possible to successfully put the project results into practise. Participation also means that 'change agents' will develop; these must be deliberately promoted through qualification. The following qualities must also be encouraged: new ways of dealing with mistakes, the courage to make (uncomfortable) decisions, a sense of personal responsibility etc.
- Creating or increasing public interest: This increases the pressure on administrators not to impede, through indifference or cynicism, the application of the professional knowledge their employees have gained in the area of anti-corruption work, but instead, to promote it without reservation. If they do impede it, they risk receiving "a bad press". This aspect of press work is, of course, the primary subject of the third part of the project (public relations), which is meant to encourage interested journalists to look at this connection as a further incentive for good journalistic reporting on corruption.
- Creating a clear legal obligation to combat corruption or, if it already exists, improved communication concerning this obligation: By means of this measure, committed employees are strengthened in their struggle against corruption,

because they are given moral support in dealings with indifferent (or hostile) supervisors when it becomes obvious that these supervisors' behaviour is not correct. This aspect also constitutes an important link with the other two areas of the project, because the statutory part of the project can address the lack of a statutory basis, and the public-relations part of the project can address the insufficient level of public knowledge about the statutory basis that does exist. But, this point can also be included in the area of training as a supplementary element.

The aforementioned critical factors of change, taken together, still do not guarantee the successful application of measures for combating corruption and integrity management. But paying attention to every individual element increases the chances that there will be successful implementation in the individual offices, and it is an effective contribution towards overcoming cynicism and indifference.

Chapter 5
Specialised training (vertical example)

Seminar on anti-corruption training for customs, Dr. P. Warners (Bundeskriminalamt, 2006).

In order to develop a curriculum on the subject of "Combating corruption" from the viewpoint of the field of customs, the first module must determine the actual causes for the existence of corruption. These are briefly characterised below:

a) Actual causes for the existence of corruption in the field of customs
   - the financial significance of administrative practice in the areas of excise duty, value-added tax, customs and subsidies
   - clearance time as an economic factor (rolling stocks, just-in-time deliveries)
   - customs clearance as a mass procedure, monitoring papers as a substitute for inspection and monitoring of the goods, technical prerequisites for monitoring goods
   - relationship between gifts and the payment of customs officials

In the second module, the statutory and procedural background of the existence of corruption in the field of customs will be explained, as is sketched in the following section:

b) Statutory and procedural background of the existence of corruption in the field of customs
   - joint/collective shipment procedures
   - TIR procedures
   - shipment with an accompanying administrative document in the area of excise duty
   - export/pretended export
   - import
   - Subsequently, the known areas of corruption in the field of customs will be described and discussed in the third module, as indicated briefly below:

c) The known areas of corruption in the field of customs

- cigarette smuggling in export and import (inspection, non-inspection, false declarations, camouflage shipments, false documentation – customs stamps – in carrying out shipment procedures
- alcohol smuggling, see above
- brand-name piracy, see above
- narcotics, see above
- market-regulated goods and subsidies, see above

In the fourth module, the known forms of corruption in the field of customs are presented, as is briefly sketched below:

d) Known forms of corruption

- the progression of gifts from favours to bribery
- the initial gift and vulnerability to blackmail
- the gift and preferential treatment in procedures that are otherwise legal (time is money)
- deliberately making official procedures dependent on a gift
- bribery as an inducement to illegal actions (non-provision of documentation – registration book, customs register, false declarations, deliberate non-investigation, waiving of necessary import documents, ignoring circumstances relevant to customs, etc.)

The subject of the fifth module will be the criteria for identifying circumstances that arouse the suspicion of corruption. Some considerations on possible ways to structure this module, in terms of the subjects to be dealt with, are listed below:

e) Criteria for identifying circumstances that arouse the suspicion of corruption

- official occupation with financially significant decisions (customs and taxation rulings, procurement orders, clearance procedures and monitoring, etc.)
- official occupation with the drawing up of financially significant customs certificates or the keeping of customs registers (registration books etc.)
- private lifestyle of the official, private property and official income
- debts in general, security for debts and proper repayment of debts, heavy indebtedness as a clue
- impounding of salary and official tasks and areas of authority
- mistakes noticed by supervisors and incidents in the customs official's assigned work area as clues

The sixth module deals with the essential aspects of the criminal investigation of cases of corruption in the area of customs:

f) Criminal investigation of cases of corruption in the area of customs

- general right to investigate (public prosecutor's office, police, customs investigation department, separation of customs investigation department from general customs administration, close location and investigation of the customs offices – personal relationships)
- general investigation tactics: nature of the corruption crimes (a hidden crime based on an agreement to commit an illegal action, material evidence is seldom or never directly available; for these reasons, it is important to establish an unassailable set of evidence before the first public investigation, i.e. interrogation of the accused and the witnesses; this must be done through investigative procedures, an intermediary, observation, telephone surveillance, audio or video surveillance, photos of the act etc., monitoring the suspected officials' bank transactions, examining the relationship between lifestyle, acquisitions, spending habits and the official's income, claimed Lotto winnings, gambling etc.)
- special investigation tactics (corruption connected with protective measures for witnesses; breaking up corruption cartels in entire offices – searching for a chief witness; use of covert investigators, use of informants from the shipping business – apprehending the criminals *in flagranti*; instructions regarding the tax liability resulting from participation in tax crimes – liability debtors; instructions regarding co-operation by the administration in cases of partial invalidation, cancellation and remission of the liability debtor's tax debts after his dismissal from office)
- instructions regarding the income-tax components of investigations of corruption (non-declaration of money received to the tax office)
- tactics in the initial interrogation of the accused official, psychogramme of the accused (removal of the "we" feeling of the official who has participated in corruption – the investigator knows everything; removing the official from his familiar office surroundings, distant place of interrogation, choice of investigative officials that are either known or unknown to the accused, instructions regarding forbidden methods of interrogation)

There follows a brief sketch of the investigation of cases of corruption leading to disciplinary measures in the area of customs; this will be the subject of the seventh and last module:

g) Investigation of cases of corruption leading to disciplinary measures

- the relationship between investigations leading to criminal prosecution and those leading to disciplinary measures; suspension of disciplinary procedure

until sentencing, link with the actual conclusions of the sentence and those related to criminal law

- the disciplinary procedure "removal from office" in cases of acceptance of preferential treatment or corruption; the non-restorable basis of trust with the employer; suspension from office
- possibilities for an agreement in disciplinary investigations between the investigator and the investigated official in order to clear up the matter completely and speed up the procedure.

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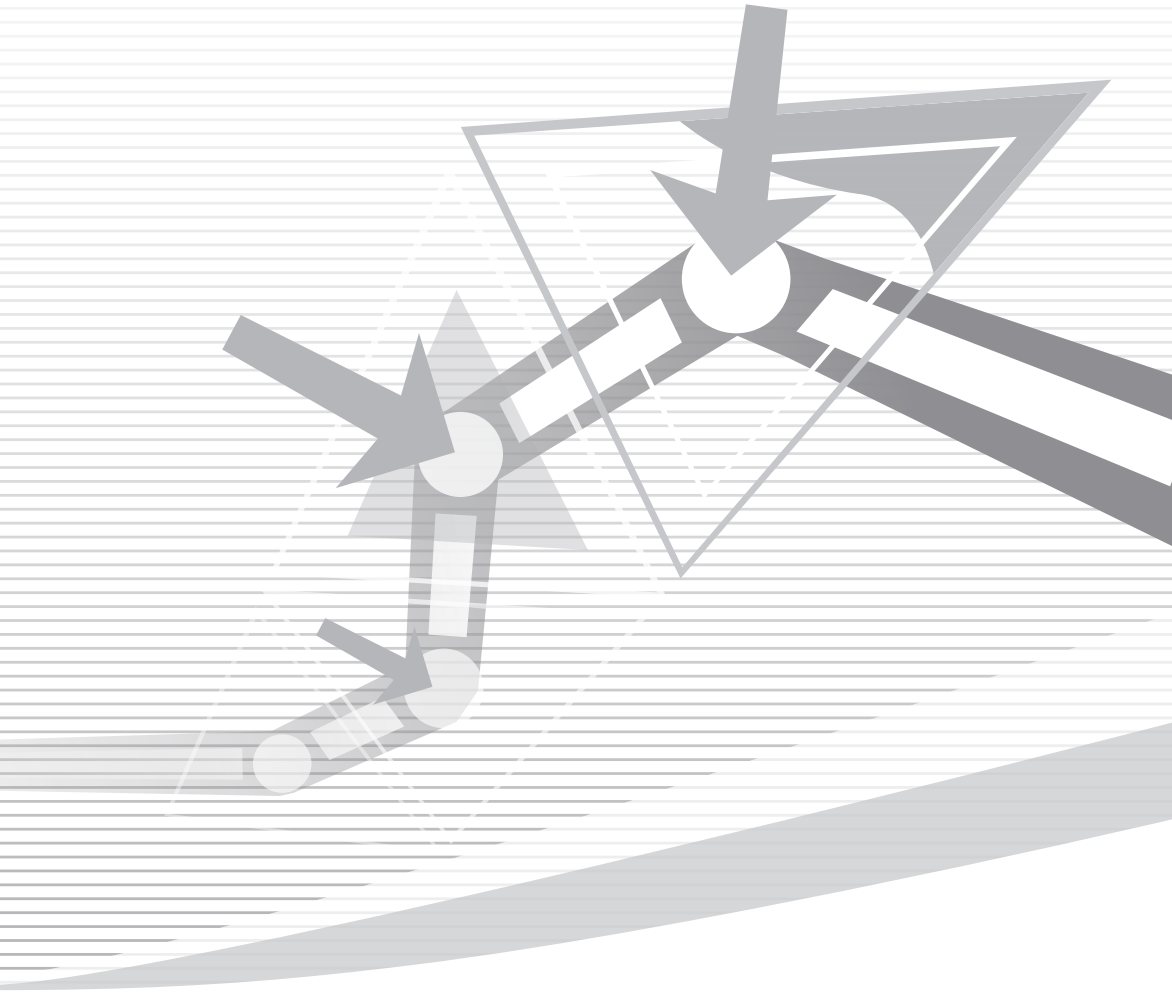
PART TWO

Annex – Practices



Annex 1

Essential Values of Leadership Inside Public Organisations

– Case of Romania –

Armenia Androniceanu, Oana Matilda Abaluta

Abstract

The idea that the role of ethical behaviour in public management is crucial for public organisations' results and for the citizens' satisfaction all over the world is already demonstrated by several researches and recognised by practitioners. There is only limited knowledge of how the newly emerged politico-administrative dichotomy in the region has influenced the formation of ethical behaviour during the management process and how it should be changed being influenced by regional cultures and by the public managers and politicians.

The main objectives of this paper are: (1) to present some of the conclusions of our empirical survey, (2) to underline the main reasons for unethical behaviour, (3) to identify some recommendations for creating and maintaining an ethically-oriented behaviour and culture. We use a special questionnaire to investigate 40 people from the Centre of the Romanian Government and identified some important elements of their ethical profile and the main changes needed. The paper contains several recommendations for increasing ethical behaviour in Romanian public organisations, especially the centre of the government.

The main and the most important conclusion is that the leaders empower human resources to act on a ***vision*** based on their core value.

1. Introduction

We began our research from the premises that the decisions and behaviours are influenced by values. Because people today have differing values, it is necessary for public managers to foster common value systems within their structures if they

want decisions and human behaviour to be consistent with their objectives. This consistency is only possible if the organisations' values are identified and people are hired who are willing and able to embrace the organisations' values.

The word "ethics" is often in the news today. Ethics is a philosophical term derived from the Greek word "ethos" meaning character or custom. This definition is germane to effective leadership in organisations, in that it connotes an organisation code conveying moral integrity and consistent values in service to the public.

Certain organisations will commit themselves to a philosophy in a formal pronouncement of a Code of Ethics or Standards of Conduct. Other private organisations, however, will be concerned with aspects of ethics of greater specificity, usefulness, and consistency. Formally defined, ethical behaviour is that which is morally accepted as "good" and "right" as opposed to "bad" or "wrong" in a particular setting.

With the arrival of the twenty-first century, organisations faced a variety of changes and challenges that will have a profound impact on organisational dynamics and performance. A long-standing tradition of ethical behaviour is based on principles of honesty, integrity and trustworthiness.

The ethical climate of an organisation is the shared set of understandings about what correct behaviour is and how ethical issues will be handled. This climate sets the tone for decision-making at all levels and in all circumstances. Some of the factors presented below, also used by our team in the survey, may be emphasised in different ethical climates of public organisations. They are the following: personal self-interest; public interest; operating efficiency; individual friendships; team interests; social responsibility; personal morality; rules and standard procedures; laws and professional codes.

Standards for what constitutes ethical behaviour lie in a "grey zone" where clear-cut right-versus wrong answers may not always exist. As a result, sometimes unethical behaviour is forced on public organisations by the environment, but in many cases the Romanian public organisations' ethical behaviour is strongly influenced by the values promoted by the public managers and politicians through their personal example. It has been demonstrated by our survey that there are several differences concerning the core premises of the ethical behaviour and values considered by the administrative and the political level of the government centre.

The effective management of ethical issues requires that public organisations ensure that their public managers, politicians and the civil servants know what the ethical values are and how to deal with ethical issues in their everyday work lives.

2. Empirical survey on specific values concerning the ethical behaviour of public managers, civil servants and politicians and also the leadership competences in the Romanian centre of government

It is now necessary for Romanian public managers and for politicians to reconsider their fundamental values and beliefs, to see if what it represents now deviates from what we think we set out to be, and what we would like public employees to see us to be. Ethical behaviour is acknowledged as a necessity in modern governments.

There are some recent research studies and surveys, developed on this subject by specialists from all over the world. In the period 15–20 February 2006, one Romanian academic group, working inside the International Research Centre for Public Management from the Academy of Economic Studies, Bucharest, coordinated by the authors, initiated an empirical survey on the ethical behaviour in the Centre of Romanian Government (CRG). We set up this survey with the main objectives being to know what people understand by ethical values and ethical behaviour and to identify the main reasons for unethical behaviour in the CRG. Based on this, we made some recommendations for improving ethical behaviour of the people, taking into account the general principles for managing ethics in the public sector.

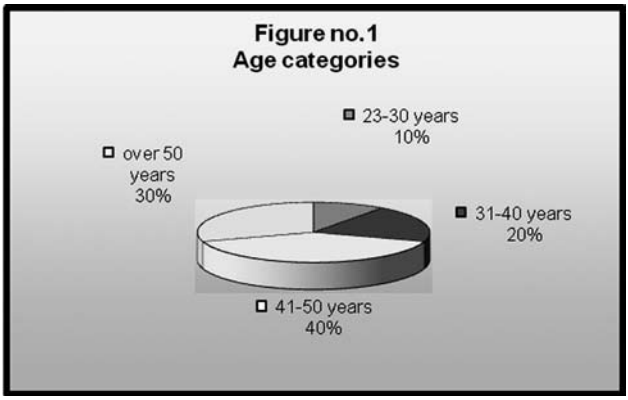
The main purpose of the survey was to identify the problems in relation with ethical behaviour and the main reasons. The results were then used for making recommendations concerning the essential ethical values and the needed changes for the Romanian public administration and especially for the central government body.

Ethical behaviour has been analysed from the following views:

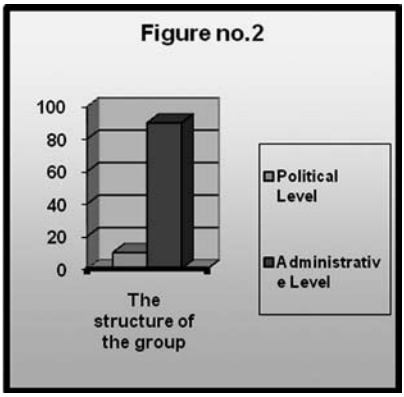
1. Utilitarian view of ethics — greatest good to the greatest number of people;
2. Individualism view of ethics — primary commitment is to one's long-term self-interests;
3. Moral-rights view of ethics — respects and protects the fundamental rights of all people;
4. Justice view of ethics — fair and impartial treatment of people according to legal rules and standards.

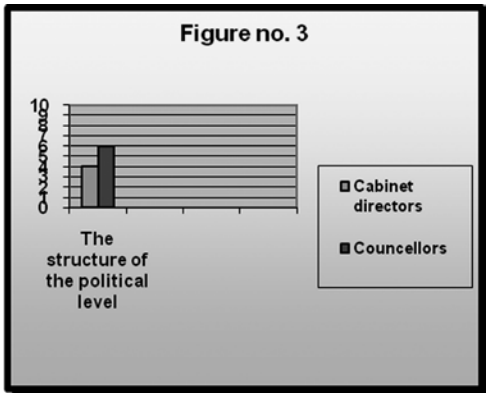
40 people from CRG responded to the questionnaire, bearing in mind the identification of the ethical profile of the people from this level of the Romanian public administration. There were 32 men and 8 women, the age categories were: 23–30 years – 10 %; 31–40 years – 20 %; 41–50 years – 40 %; over 50 years – 30 %. Depending on the last school of graduation, it is notable there was an average importance for university studies 85 %, post-university 10 % and college studies 5 % respectively. Concerning the public administration experience of those questioned,

it is remarkable that most of them - 55 % - have 15 years' experience at this level which was followed by the category of those with experience between 5–14 years' experience – 20 %, and the remainder of those investigated had less than 4 years' experience (between 1–4 years) – 25 %.

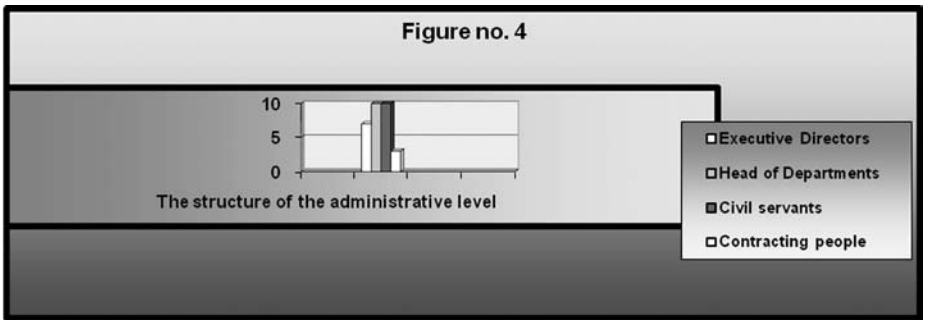


As was mentioned above and also in Figure no.2, we included in our survey representatives from both levels: political and administrative. Figure 3 details the structure of the political group: 10 persons from the political level – 4 directors from the minister's Cabinets and 6 councillors.



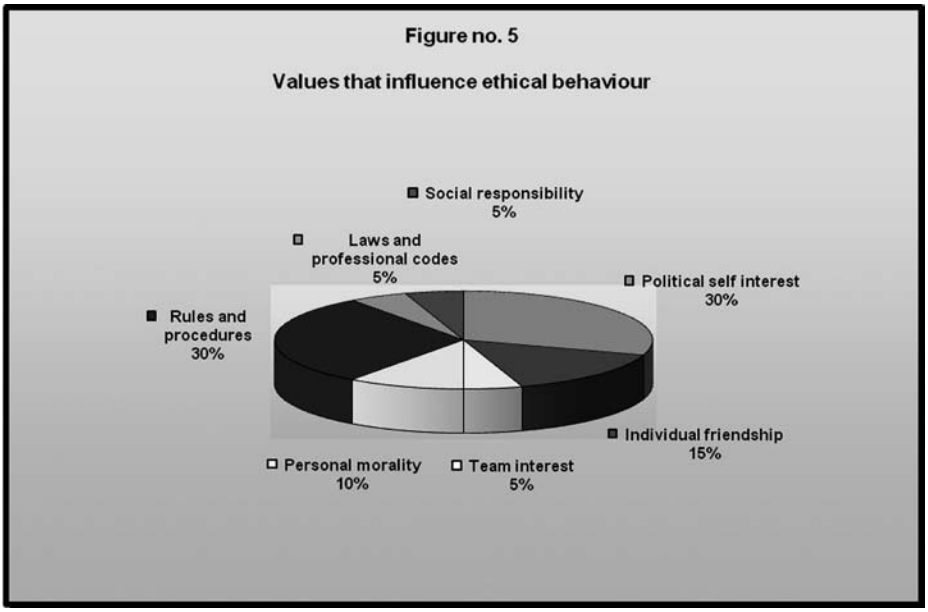


In Figure 4 we can see the structure of the group from the administrative level: 30 people: 7 executive directors, 10 heads of functional departments, 10 civil servants and 3 contracted people.



In our survey, we considered the following three factors influencing ethical behaviour: the person – family influences, religious values, personal standards, and personal needs; the government body needs – supervisory behaviour, peer group norms and behaviour, and policy statements and written rules; the environment – government laws and regulations, societal norms and values.

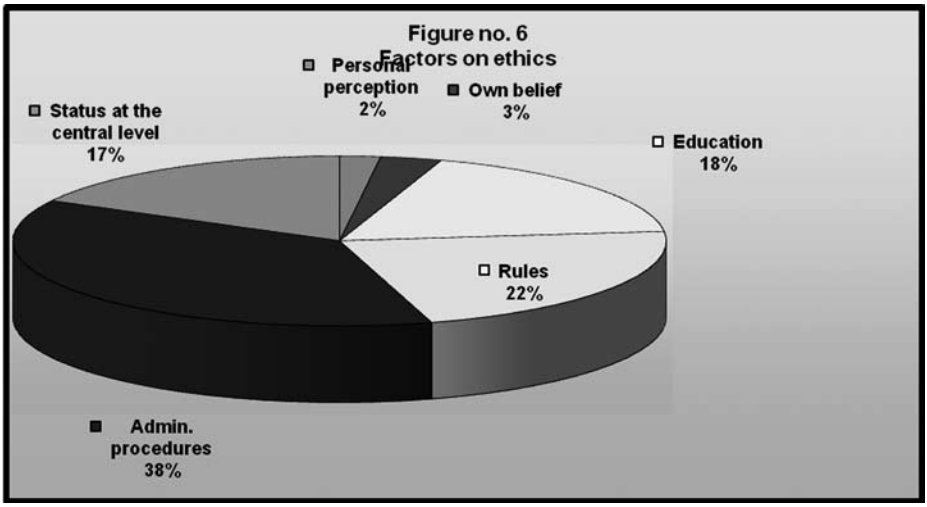
It was found (see Figure 5) that in general, most of the people from the administrative level who were questioned feel a strong influence on their ethical behaviour coming from the last two factors. On the opposite side is the opinion of the people from the political level, who consider that their ethical behaviour is influenced by other factors related with the first one and their political values supported by all of them.



The main values considered in our survey were: political self–interest; individual friendships; team interest; social responsibility; personal morality; rules and standards procedures; laws and professional codes. Concerning the understanding of ethical values and behaviour through our survey, we discovered that more than 80 % of those questioned know nothing about ethical values and behaviour.

As we can see from Figure 5, the following percentage, as was identified for each factor, considered that what influences ethical behaviour at the centre of the Romanian government are: political self-interest – 30 %; individual friendships – 15 %; team interests – 5 %; social responsibility – 5 %; personal morality – 10 %; rules and standard procedures – 30 %; laws and professional codes – 5 %.

More than 90 % of those involved in the survey mentioned that both categories of values are strongly influenced by the following factors: personal perceptions, own beliefs, education, rules, administrative procedures and the status in the central public administration (see Figure 6).



All those from the political level considered the first and the second factors as the most important for influencing their ethical behaviour. The remainder of the people investigated appreciated that their ethical values and their behaviour are strongly influenced by administrative procedures, which had the highest rank, followed by rules and education. Only 5 % from the administrative level considered that their ethical behaviour is influenced by their personal perceptions and beliefs. As is demonstrated by the survey there is a strong difference between the political and the administrative level from the prospective of ethical values. No-one referred to the clear system of ethical values for people working at the level of the government. More than 90 % of those investigated declared that they feel their ethical values and follow them in their daily activities because they understand how

important they are in their relations with others and for the image of the institutions where they are working.

As is demonstrated by our empirical research, people look at their leader and say, 'should I follow this person?' One very important attribute is integrity. When the leader loses legitimacy, the entire basis of an effective body comes down – fairness, equality and long lasting values. The proper governmental culture will collapse, and that is something no public manager or politician can afford.

If a government is known to have corrupt structures and a bad image and non-ethical behaviour from their politicians and public managers, the politicians might be able to escape the hand of the law, but no great talent will work for them; no-one would like to co-operate with such a government and in the long run, citizens and the business environment do not want to be associated with such structures. Once a government or the public management representatives are regarded as corrupt, their level of legitimacy declines.

The corollary is that, in a system where one government subverts the law, it becomes that much harder for other public organisations to operate cleanly. This is why ethical behaviour and ethical leadership are a necessity. Only if public managers and politicians set clear, unequivocal policies and controls stipulating zero tolerance, can public management ensure good practices in the central public administration.

Following the results of our empirical study, credible leaders and politicians challenge the process by experimenting and taking risks in their work as a means to finding new and better ways of doing things. They inspire a shared vision among employees by envisioning the future and enlisting others to bring about that vision. They enable others to act by fostering collaboration and strengthening others.

Around 30 % of the people questioned, it is especially public managers who model the way by setting an example and helping people achieve "small wins." Some of the public managers, approximately half of the total number, are credible leaders who give encouragement by recognising individual contributions and celebrating accomplishments. That means an ethical behaviour based on ethical values and morality. Most of the subjects considered that ethical behaviour is absolutely necessary when leaders attempt to implement reforms that are transformational in nature.

The survey pointed out that there are 2 categories of leadership competences related to public managers and politicians: one category is soft skills and the second is strong/technical skills. It has been demonstrated that there are some critical leadership competencies confirmed as a baseline for promoting ethical behaviour inside the centre of the government: understanding other departments; understanding the ministries and their environment; building relationships and networks; managing change; managing the public; managing the media; influencing, motivating, devel-

oping, retaining talent and creative human resources; managing conflict and dealing with problem employees.

According to the survey results, "Many public managers are so focused on their department that they do not see its connection with other departments and also with society as a whole." Leaders need to fully understand how their departments: (1) fit into and support the larger government and (2) enable their jurisdiction/agency to serve stakeholders.

We conclude that ethical behaviour and performance expectations are strongly influenced by leadership knowledge, skills, attitudes, and abilities of individuals. We try to group these leadership competences into three broad categories: self, working with others, and performance, although some competencies overlap. Together, these leadership competencies are the keys to the success of the centre of government based on the ethical behaviour.

Most of those questioned mentioned that there is a special code containing the main ethical values, but the problem is how to create an internal mechanism for taking it into account. The code of ethics for civil servants was approved more than 3 years ago, following the Governmental Decision promoted by the National Agency for Civil Servants, but the effect is worthless. The public managers and civil servants are much more motivated to follow the legal framework and the job description than to make an effort to integrate ethical values in their daily activities. Most of them said that if their initiatives are legal, that means that are ethical too. No-one explained to them or trained them on what the difference is between rules, legal framework and ethical values and how it would be possible to integrate all of this into their ethical behaviour. The majority of our individuals pointed out that there are no internal mechanisms related to ethical standards for the public sector.

Another important conclusion identified by us during the survey was that there is no clear definition of civil servants' rights and obligations, except the Status of Civil Servants, which is the general legal framework for this category of employees. This is why they frequently have a feeling of injustice, especially concerning their rights. They know their obligations from the job descriptions, but most of these documents are very similar, so most of them have the same rights and obligations.

Concerning the political commitment to ethical values, this depends on the politicians, Cabinet Directors and also the personal councillor of the ministers. Some of them, in a very empirical way, try to have an ethical behaviour, but this does not happen all the time. They are politicians, and they feel that public institutions are a temporary framework for their political career, and because of that, they are not very interested in building a consistent and effective commitment to ethics to reinforce the ethical conduct of people who are working in public institutions from the central public administration.

Regarding the decision-making process, the surveys identified that there is a very low level of consultations. Usually, the dialogue between politicians, executive public managers and civil servants at the centre of the government is very poor and most of the time, those from the administrative level are very much involved in public policies' implementation, not in the decision-making process. In this context, the ethical values are not part of a politician's working life, they consider these subjects to be secondary and because of that, they are not interested in investing time in designing a functional mechanism for ethical values. There is a clear division between politicians, public managers and other employees from the public administration. The people from the administrative level are interested in having an ethical values system and they want to follow them, together with representatives from the political levels. In conclusion, the people who were directly implicated in the CRG are a fair distance from having a vision, in general, on these ethical values and behaviour and sometimes do not even understand them. This state of affairs may have many explanations, but some of them are: the weak training of these people and the low interest and support of the politicians.

Taking into account the results of our empirical survey and the EU framework related with ethical behaviour in public organisations, we identified some recommendations for increasing the ethical behaviour at the centre of the Romanian government.

3. Recommendations for increasing ethical behaviour at the centre of the Romanian government

One of the greatest challenges confronting any leader in this, the twenty-first century, is bridging the gap between strategy and getting people to execute. Leaders (politicians, executive public managers) direct people to focus on the right strategic issues. Too often, people cannot identify with a government's strategy and likewise, too often, leaders are disconnected from the realities that people must face within an organisation. If the leaders can properly bridge this gap (strategy vs. organisational capacity), then they should be able to create value.

The centre of government must be managed in such a way that a strong dialogue takes place between the leaders and its people. If the right people are engaged, then everyone should be able to cut their way through the strategic jungle. If leaders fail to engage people in strategic execution, then creating value through leadership will be exceedingly difficult. Although it is true that most people are not good strategic thinkers, it is also true that people want to contribute to a larger purpose that only the leader can convey. Therefore, communication is at the cornerstone of creating value through leadership. And given great communication, leaders from the centre of government can close the gap between strategy and strategic execution.

Although governments have different cultural, political and administrative environments, they often confront similar ethical challenges, and the responses in their ethics management show common characteristics. Member countries need to have a point of reference when combining the elements of an effective ethics management system in line with their own political, administrative and cultural circumstances.

We take into account the problems identified through the empirical survey inside the centre of the Romanian government and environment, already mentioned in the previous section, the main reasons discovered and the new modern leadership theory. We appreciate that this is a very crucial subject, not only for Romania, but for other CEEC and other regions from all over the world. We believe that a consensus is needed concerning the content of the ethical values and to accept that *leaders, politicians and public managers must be very flexible in implementing these, depending on the particular internal and regional environments*.

Taking into account the reasons identified through the empirical survey and also the general principles for managing ethics in public administration, we can recommend several ways for increasing the ethical behaviour of leaders from the Romanian public organisations, and especially from the centre of the Romanian government.

4. Training on the specific values concerning ethics and ethical behaviour

The training programmes must be structured to help participants understand the ethical aspects of their work, their status and also the ethical aspects of the decision-making process inside the public institutions. It must help people to know how to incorporate high ethical standards into daily life. During the training programme, people must learn how to deal with ethical issues under pressure, and other relevant ethical behaviour, being convinced that it represents a real need for the Romanian public administration.

Professional socialisation should contribute to the development of the necessary judgment and skills, enabling people to apply ethical principles in concrete circumstances. Training facilitates ethics awareness and can develop essential skills for ethical analysis and moral reasoning. Impartial advice can help create an environment in which people are more willing to confront and resolve ethical tensions and problems. Guidance and internal consultation mechanisms should be made available to help public people apply basic ethical standards in the workplace.

Promoting the organisational methods for overcoming whistleblowing barriers

Related to this suggestion, we can propose setting up ethics staff units which serve as ethics advocates or special groups for discussion and solutions related to ethical behaviour. The name of this special team could be "moral quality circles" and could work at the centre of the Romanian government, based on the same principles as "management quality circles".

5. Design and implementation of a special ethical accounting mechanism inside the centre of the Romanian government and also the ministries and other public organisations

The internal mechanism must be based on the following values:

- Respect for human dignity. That means: to create a culture which values employees, citizens, politicians; to produce safe public policies;
- Respect for basic rights. That means: to protect the rights of employees, public managers, citizens, and communities; to avoid anything that threatens safety, health, education, and living standards;
- Be a good public leader. That means: to support social interest; to work inside the government and institutions to support and protect the public interest.

Public leaders should be accountable for their actions to the public. Accountability should focus both on compliance with rules and ethical principles, and on achieving results. Accountability mechanisms can be internal or can be provided by civil society. Mechanisms promoting accountability can be designed to provide adequate controls while allowing for appropriately flexible management.

The main steps for creating such mechanisms are:

- Clarifying the vision and mission statement, setting goals and objectives;
- Present the principles and design the core ethical values and the ethical standards in the workplace;
- Disseminating, motivating and communicating ethical standards and values;
- Building teams oriented on ethical values and results;
- Measuring performance;
- Developing human resources;
- Increasing participative management;
- Preparing for transition to the new public management model based on ethical values and competitive leadership in public organisations.

6. Create a code of moral principles

That means establishing a set of standards of "good" and "bad" as opposed to "right" and "wrong." Public servants need to know what their rights and obligations are in terms of:

- exposing actual or suspected wrongdoing within the public service. This should include clear rules and procedures for politicians and executive public managers to follow, and a formal chain of responsibility. Civil servants and some politicians also must know what protection will be available to them in cases of exposing wrongdoing.

7. Create an ethical role model

Following the experiences from other developed countries, usually it is the top public managers and politicians who serve as ethical role models. All public managers and politicians can influence the ethical behaviour of people who work for and with them. Practice has shown that excessive pressure can foster unethical behaviour. Because of this, public managers should be realistic in setting performance goals for others. They also must observe ethical values throughout their daily life inside public organisations. In this way, they can become models for those around them.

Political leaders are responsible for maintaining a high standard of propriety in the discharge of their official duties. Their commitment is demonstrated by example and by taking action that is only available at the political level; for instance by creating legislative and institutional arrangements that reinforce ethical behaviour and create sanctions against wrongdoing; by providing adequate support and resources for ethics-related activities throughout government and by avoiding the exploitation of ethics rules and laws for political purposes.

8. Create a special code of ethics for all those working for the centre of government and also for other public organisations

That means a formal statement from the centre of government and also the organisation's values and ethical principles regarding how to behave in situations susceptible to the creation of ethical dilemmas. It must be reflected in the legal framework.

The Public Management Committee and the OECD Council recommended that member countries must take actions to ensure well-functioning institutions and systems for promoting ethical conduct in the public service. This can be achieved by:

- developing and regularly reviewing policies, procedures, practices and
- institutions influencing ethical conduct in the public service;

- promoting government action to maintain high standards of conduct and
- counter corruption in the public sector;
- incorporating the ethical dimension into management frameworks to ensure
- that management practices are consistent with the values and principles of
- public service;
- combining judiciously those aspects of ethics management systems based on ideals with those based on the respect of rules;
- assessing the effects of public management reforms on public service ethical conduct;
- using as a reference the Principles for Managing Ethics in the Public Service to ensure high standards of ethical conduct.

The idea of this approach is to create a set of HR practices that work together to identify, develop, and advance talented people through the essential ethical values and leadership competencies. For example, if decision-making and problem solving are key leadership competencies, an integrated leadership development system ensures that the organisation assesses, selects, evaluates, advances, trains, develops, and compensates managers on this competency (along with other critical competencies, of course).

9. Conclusion

We take into account the problems identified through the empirical survey inside the Romanian centre of government and the environment, already mentioned in the previous section, the main reasons discovered and the new modern leadership theory. We appreciate that this is a crucial subject, not only for Romanian public organisations, but for all CEEC and other regions of the world. We believe that we need to have a consensus concerning the profile and role of leaders, public managers and politicians related with ethical behaviour.

As we can see in this paper, the absorption of the ethical values should happen in different ways, depending on the environment and the organisational culture and the particular characteristics of the human resources. An effective leader is one who makes a demonstrable impact on one or more of the ethical values presented in a positive way, by influencing the behaviour and the performance of others.

In the new era of rapid changes and knowledge-based organisations, managerial work becomes increasingly a leadership task based on ethical behaviour. Leadership is the primary force behind successful change. Leaders empower human resources to act on the vision based on their core values.

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Annex 2

First Steps in the Implementation of Codes of Conduct for Local Government Officials

– Case of Serbia –

Jelena Jerinić

Abstract

This paper attempts to describe and evaluate the initial period of implementation of ethical codes of conduct for local government officials in Serbia. During the past year and a half, the codes have been widely adopted by local assemblies in Serbia as a result of an aggressive campaign by the local government association. The first experiences point to the fact that the future of these codes' is futile without proper mechanisms to monitor their implementation in place. The paper analyses the process of codes' adoption, establishment of first monitoring bodies in a number of local governments and the first experiences in the practice of these bodies. For the purposes of the paper, the author conducted a short survey among secretaries of selected local assemblies. The findings are based on the analysis of the survey results, cross referenced with other sources and materials from municipalities, as well as reports and surveys by other institutions and organisations. The data collected shows that in most of the cases, the codes were adopted either unanimously or with an extremely high majority in the local assemblies. A vast majority of local assemblies adopted the text of the code recommended by the local government association. The paper then presents the first examples of code monitoring councils or similar bodies established in a small number of municipalities, describing their status, structure and powers. Finally, the author tries to draw conclusions on the perception of the codes among its addressees and the wider public. Principal conclusions drawn from the facts presented are mainly determined by the fact that the ethical codes of conduct for bearers of public functions at the local level in Serbia are a complete novelty and that, therefore, expectations should not be too high. It is certain, though, that wider acceptance and results of code implementation depends, perhaps solely, on the establishment of proper independent monitoring mechanisms. The conclusions

of the paper even suggest possible changes to the legislative framework at national level, as well as statutory framework at the local level, which could facilitate the status and practice of genuine monitoring mechanisms. Also, much work needs to be done on raising awareness of the codes' existence, significance and contents of the codes – both among bearers of public functions, the media and the public at large. Finally, it is certain that, at the moment, the still rare examples of code monitoring bodies need to be supported and their practice promoted among other local governments as models with the aim of introducing a state-wide practice.

1. Background

Adoption of codes of conduct for local government officials and staff in Serbia has been initiated and encouraged by the Standing Conference of Towns and Municipalities (SCTM), the local government association[1]. Initiatives in the field of ethics and integrity at local level began in 2003 after Serbia and Montenegro entered into full membership of the Council of Europe, when the translation of the European model code of conduct for local and regional elected representatives of the Congress of Local and Regional Authorities of Europe (CLRAE) was dispatched to all local governments with a recommendation for it to be considered and adopted by local assemblies. Since this initiative resulted in only four (out of 167) local governments reacting and adopting the texts in local assemblies, it became clear that wider success can be expected only if the text of the code was adapted to the local environment and if proper ownership of the text by its addressees was achieved. The SCTM began a wide campaign of raising awareness on the necessity of establishing a set of ethical rules for the local level in the course of which model codes were drafted and finally adopted by the association's General Assembly in December 2004[2]. During the process, a cross-sectoral working group, consisting of representatives of local governments, central government ministries and international and expert organisations drafted a model code, mainly on the basis of the Council of Europe's recommendations. The model was then widely consulted upon by partners of the SCTM and presented during a series of 30 public debates organised in regional centres and attended by local politicians, media and the citizens. Collected comments were

1 The Standing Conference of Towns and Municipalities is a membership association, gathering all 167 towns and municipalities in Serbia. Like similar associations, SCTM's main activities include advocating for the interest of its members, mainly in terms of legislative and policy reforms, and advisory and training services in all areas of local government competences. For more information on SCTM, please visit http://www.skgo.org.

2 The activities were widely supported by a pool of donors including the European Commission, Open Society Institute and the Konrad Adenauer Foundation. The initial project was followed-up by a separate project directed towards promotion of monitoring mechanisms to complement the adopted codes in 10 pilot municipalities, which is on going and supported by the Westminster Foundation for Democracy.

The SCTM General Assembly is the association's highest body consisting of representatives of all members, i.e. all towns and municipalities in Serbia.

incorporated into the final text of the Model presented to the SCTM General Assembly for adoption. Two model codes were recommended for adoption to local assemblies – Model ethical code of conduct for local government officials and Model code of conduct for employees in administrations and public services in towns and municipalities.

This paper focuses on the first of the models – of the Ethical code of conduct for local government officials. "Local government officials" of "functionaries" – as they are called in the Serbian legal system – include bearers of public functions, elected or appointed by local assemblies to these functions. These include: presidents, deputy presidents, councillors and secretaries of municipal assemblies; mayors/presidents of municipalities and their deputies; members of town/municipal boards; heads of municipal/town administrations, chief architects and other chief experts and other appointed persons in local government bodies; town/municipal public defenders; local ombudspersons; managers of public enterprises, institutions and other organisations founded by towns/municipalities and members of managing boards and other persons appointed to these enterprises, institutions and organisations. The remainder constitute the group of usually-called "local government employees" since the proper framework for the status of civil servants on the local level is still lacking. For this group, a separate model code was drafted but it was not promoted in such an aggressive manner, mainly due to the constraints in the legal framework.

The Model ethical code of conduct for local government officials consists of a Preamble and 29 articles. The 29 articles are separated into three main chapters – Subject and Main Principles; Standards in Performance of Function; and Relations with the Public. After setting basic principles and standards in the performance of a function[3], the Code practically guides an official from electoral campaign[4], through his/her mandate[5] all through the termination of mandate[6], with a separate title on relations with the public[7]. Most of the Code's provisions coincide with provisions of national legislation in force – e.g. Law on financing political parties, Law on prevention of conflict of interest, other anti-corruption legislation. However, it sometimes recommends stricter standards than the ones set in the legislation – e.g. it covers a wider range of officials, recommends that officials do not change political parties during their mandate etc. After the model code was recommended, municipal and town assemblies started to adopt their

3 Articles 2–9 of the Code.

4 Chapter 2 of the Code (Articles 10–11).

5 Chapters 3–5 of the Code (Articles 12–23).

6 Article 24 of the Code.

7 Title III of the Code.

own codes. Until the time this text was concluded, 147 local governments[8] (out of a total of 167) adopted such codes of conduct.

The described initiative seems to be unique – at least in the region of South East Europe[9] - in several aspects. Primarily, this refers to the process of code promotion and advocating for its adoption in individual municipalities as well as the results of this process. As far as the author has been informed, Serbia is the only country in the region where the same model code has been adopted by 90 % of local governments. Similarly, the Council of Europe's documents of public ethics on the local level[10] recommend to Member States to draft model codes and recommend them to local authorities. In Serbia, this role has been fulfilled by the local government association.

Also, compared to other examples in the region and Europe-wide, the circle of addressees to whom the code applies is much wider in the Serbian codes. The codes usually cover local elected officials (councillors and/or mayors) – local politicians – or local civil servants. The Serbian code covers a much wider circle of persons with diverse positions and tasks within the local government system. However, it is yet to be seen if this particular point is an advantage or a disadvantage to the adopted codes in view of their overall implementation, since the data available at the moment do not present enough basis for such an evaluation.

As will be described later in this paper, most of the municipalities followed the model recommended by the SCTM, i.e. a great majority of them adopted codes in texts identical to the one recommended. Also, for most, the codes were adopted without clarification of further steps for their implementation. The Model code, in its final article[11] recommended local assemblies to establish bodies for monitoring the Code's implementation and provide explanations on its content. However, it did not delve further into the structure and functioning of such bodies, but left that

8 The text was concluded on April 10, 2006.

Web-site of the Standing Conference of Towns and Municipalities (http://www.skgo.org) lists all 147 municipalities which adopted the code.

9 The author already addressed this issue in a paper presented at the 2005 Annual Conference of the European Group for Public Administration (EGPA), within the Study Group on Ethics and Integrity of Governance, in Bern, in September 2005. The paper "Development of codes of conduct for local government officials in Serbia: A beginner's case" is available at the official website of the Conference (http://www.egpa2005.com). Other authors have analysed similar initiatives in the CEE region as well – see e.g. Kudrycka, Barbara, *Combating conflict of interest in local governments in the CEE countries*, Budapest: LGI/OSI, 2004 or Palidauskaite, Jolanta, "Codes of conduct for Public Servants in Eastern and Central European Countries: Comparative perspective", paper presented at EGPA Annual Conference, Oeiras, 2003.

10 See: *Model initiatives package on public ethics at local level*, Steering Committee on Local and Regional Democracy, Council of Europe, 2004 – in particular, Recommendations 60 (1999) and 79 (1999) of the Congress of Local and Regional Authorities of Europe (CLRAE) on political integrity of local and regional elected representatives.

11 Article 29 of the Code.

to be determined by municipalities themselves, according to the framework they already had and their local circumstance.

Nevertheless, some of the local assemblies – immediately after the codes were adopted or after a period of time – realised the necessity of monitoring the implementation of the Code and established some kind of a mechanism for these purposes. These, still isolated, examples inspired the SCTM to start a follow-up initiative in several pilot municipalities on establishment of and support to monitoring boards.

In view of the above mentioned, the author found it interesting to look further into three main sets of issues relating to processes briefly presented above – adoption of the codes by local assemblies, implementation, i.e. establishment and practice of monitoring mechanisms and perception of the codes and their implementation in local communities.

2. Basis for research

In order to look into the three mentioned groups of issues, the author conducted a short empirical research based on questionnaires designed solely for the purpose of this paper and dispatched to targeted persons in selected municipalities.

A questionnaire was designed for secretaries of local assemblies and a second one for other local functionaries. It consisted of 13 questions relating mainly to the first two sets of issues – adoption of the codes and established monitoring mechanisms – but used also in relation to the third one, i.e. perception of the code – primarily by bearers of functions themselves. It was dispatched to 17 secretaries of local assemblies – 2 towns and 15 municipal assemblies – on February 16, 2006 and by mid-March answers had been received from 10 of them. For the purposes of this paper's conclusions, questions and answers are grouped according to the three groups of issues identified and analysed in respective chapters on adoption (Chapter 3), implementation (Chapter 4) and perception of the codes in local environments (Chapter 5).

Since the total number of municipalities which adopted the code of conduct is now 147 and the number of those who fully responded to questionnaires is 10[12]

12 Town of Kragujevac (Central Serbia), Municipality of Kruševac (Central Serbia), Municipality of Mladenovac (Belgrade), Town of Novi Sad (Vojvodina Province – North Serbia), Municipality of Pirot (South Serbia), Municipality of Požarevac (Central Serbia), Municipality of Subotica (Vojvodina Province – North Serbia), Municipality of Šabac (West Serbia) and Municipality of Vranje (South Serbia).

(though supplemented by partial data from twenty other municipalities[13]) it is certain that the sample is not representative in terms of the number of municipalities targeted. However, in terms of their geographic position and political affiliation of mayors and local assembly majorities, it can be said that the sample is at least indicative of the current situation. Also, bearing in mind the diversity of individual municipalities, the uniformity of answers suggests that there is space for basic conclusions to be drawn.

Other sources used as a basis for analysis include materials received from individual municipalities – information on adoption of certain acts by relevant local government bodies, texts of acts adopted – in particular, texts of the codes and acts on establishment of code monitoring bodies, minutes from conferences and meetings etc.[14] – as well as reports and surveys issued by other institutions and organisations – such as the Republic Board for Resolving Conflict of Interest and Transparency Serbia.

3. The process of adoption

3.1 Decisions of local assemblies

The Model Code was approved by the SCTM General Assembly on December 5, 2004 and recommended for adoption to local assemblies. The first code was adopted less than a month later, on December 23, and the process is still on-going. The 10 municipalities covered by the questionnaire adopted their codes during the first three months of 2005. Overall, the time elapsed from adoption to date is, in most of the cases, less than a year.

In terms of form, most of the codes – meaning all of the codes adopted in all 147 municipalities – were adopted by local assemblies in the form of a "decision"

13 Municipality of Ada (Vojvodina Province – North Serbia), Municipality of Arilje (West Serbia), Municipality of Barajevo (Belgrade), Municipality of Blace (Central Serbia), Municipality of Boljevac (East Serbia), Municipality of Čajetina (West Serbia), Municipality of Čukarica (Belgrade), Municipality of Kanjiža (Vojvodina Province – North Serbia), Municipality of Kuršumlija (South Serbia), Municipality of Lazarevac (Belgrade), Municipality of Negotin (Eastern Serbia), Municipality of Novi Bečej (Vojvodina Province – North Serbia), Municipality of Novi Beograd (Belgrade), Municipality of Palilula (Niš – South Serbia), Municipality of Pančevo (Vojvodina – North Serbia), Municipality of Pantelej (Niš – South Serbia), Municipality of Petrovac (East Serbia), Municipality of Senta (Vojvodina – North Serbia), Municipality of Vlasotince (South Serbia), Municipality of Zrenjanin (Vojvodina Province – North Serbia). The municipalities listed here and under s.n. 13 will not be specified or identified in relation to particular answers to the questionnaire or other data presented in the paper.

14 The author would like to thank her colleagues in the Standing Conference of Towns and Municipalities – in particular Ms. Marija Šošić and Mr. Dragan Vujčić – for their undivided support and assistance in distribution of questionnaires to municipalities and collection of other sources for this paper. In addition, the author particularly thanks the secretaries of local assemblies and other persons approached in municipalities for their time and effort in answering questionnaires and providing additional material.

(*odluka*). In the Serbian legal system, this is the most common act of a general nature passed by local assemblies. This means that the legal situation introduced by a "decision" is permanent and can be amended or abolished only by way of a subsequent decision or an act of higher legal force – e.g. the municipal statute or a national law.

In most cases (7 out of 10) the text of the code was publicised though the official gazette – the usual channel for the official publicising of decisions by state authorities on all levels. In one case, the channels of publication were the municipal message board and the local media and in two cases, answers to questionnaires stated that the code was not publicised at all, i.e. not even in the official gazette. As for the Internet, only two of those interviewed stated that the text of the code is available at the official website of the municipality. A simple visit to Google provides a similar image – only a small number of municipalities used the Internet to communicate the adoption of the code to the general public, even though the majority of Serbian municipalities now have official web presentations.

In all of the ten interviewed municipalities, the proposal to adopt the Code came from the mayor/president of the municipality – in one instance accompanied by presidents of all assembly caucuses, and in one by the municipal board[15]. This fact is easily explained by the fact that some of these mayors/presidents of municipalities actively participated in SCTM's activities relating to drafting and promotion of the Code – some of them, even as promoters of the Model code during the public debate in regional centres all around Serbia. In addition, the promotional campaign coincided with the electoral campaign for the 2004 local elections, during which many of the candidates took over the Model code as part of their election programmes. Finally, in the majority of the cases, mayors/presidents of municipalities sit as representatives of towns and municipalities in the SCTM General Assembly, which recommended the Model code.

Secretaries of the assemblies were also asked to outline the main features of debate on the text of the Code – i.e. was their any debate on the text, how many councillors participated in the debate and to summarise the flow of the debate. In most of the cases five to eleven councillors took part in the debate[16], but most of them supported the idea of the Code and the proposed text, i.e. none of them expressed opposition to it. The fact is also visible through answers to the following questions on amendments to the proposed text and analysis of the texts finally adopted[17].

15 According to the 2002 Law on local elections (Official Gazette of the Republic of Serbia, No. 33/2002) both mayors and councillors in municipal assemblies are directly elected. However, councillors are elected according to the proportional system which resulted in assembly majorities now consisting of very wide coalitions, in some places consisting of as many as seven or eight political parties. Often enough, the political affiliation of the mayor and the assembly majority differs.

16 Assemblies covered by the questionnaire have between 55 and 87 councillors.

17 See Section 3.2.

Finally, when asked about the majority by which the texts were adopted in the assemblies, most of the secretaries stated that the text of the Code was adopted unanimously. Only one of the ten interviewed, stated that there were 11 votes against the Code and in a few cases one or two councillors sustained from voting.

3.2 Texts of Codes adopted by local assemblies

The secretaries were also asked to describe the amendments submitted on the proposed text of the Code and their adoption or refusal by the assembly. In total, amendments were submitted in four of the ten covered assemblies. In three cases, the amendments were adopted. However, in most of the cases, the amendments did not lead to more substantial changes of the proposed text, except in one when it led to a provision establishing a body for Code monitoring purposes.

The interviewees were also asked to compare the adopted text to the one recommended by the SCTM. In only two cases, they reported slight differences between the texts. In addition to this, the author herself conducted a comparison of the texts adopted in all 147 towns and municipalities and the Model code.

The analysis showed that only 18 municipal assemblies adopted codes which differ from the recommended text. However, it also showed that only 13 of the texts contain substantial changes, whilst in others, these are only changes in the preamble or "grammatical changes", not changing the meaning and consequences of the proposed provisions.

Only two texts are completely different from the model recommended by SCTM and both from 2003, before SCTM started its activities on promotion of the present Model. One of them is actually a recommendation on rules of conduct for elected, appointed and employed persons in municipal bodies, while the other covers only elected representatives and is apparently a result of the SCTM's prior effort to promote the CLRAE model[18].

As stated above, the Model states that the local assembly can – a possibility, not an obligation – establish a body to monitor the Code's implementation and provide explanations relating to its content and application to officials, citizens and the media. Five of the analysed texts contain additional provisions concerning Code monitoring. Two of them just provide a general obligation on the part of the municipal assembly to establish a body to monitor the implementation of the Code, whilst the two others contain more detailed provisions on the structure of the body, its mandate, procedure for determination of a breach of the Code, types of measures, informing the public and reporting to the municipal assembly. Finally, the last in this group differs from the model and designates the president of the municipality – and not the municipal assembly as recommended – as the body which can establish such a monitoring body.

18 See in part 1 of this paper.

Finally, there is a group of municipalities which omitted parts of the recommended text relating to, either the possibility to establish a monitoring body – in three of the texts – or the officials' obligation to sign a written statement acknowledging that they are familiar with the Code and ready to abide to its rules. In two texts the written statement was completely omitted, whilst in two others, the word "written" in front of "statement" was deleted.

4. The process of Code implementation

4.1 Familiarisation with the Code

Since the Code is envisaged as an act of self-regulation, the Model recommends that bearers of public functions to whom the Code applies are to become familiarised with the text of the Code and provide written statements that they are prepared to act according to its provisions[19].

As stated above, a few of the adopted codes actually omitted this provision, while others simply mention "a statement" without distinguishing its form. Truth be told, the second omission can be explained by the fact that it is hard to imagine possible forms in which different statements can be given in general – other than the written one.

However, the answers to questionnaires on actual statements signed in the ten municipalities provide more reason for concern. In only three municipalities, the officials were asked to sign written statements. According to another answer, the statements were signed only by the president and deputy president of the municipality, president and deputy president of the municipal assembly, secretary of the assembly and the head of municipal administration, while the councillors were "familiarised with the text of the Code by way of the adopted text of the Code being sent to them", without signing the statements. Other officials to whom the text applies were not mentioned.

In the seven remaining municipalities, officials were familiarised with the text of the Code through being present during assembly debate or the fact that the Code was publicised on the municipal message board or through the local media.

The SCTM received a model statement adopted from one of the municipalities, which led in Code implementation by establishing the first monitoring body and forwarding it to other interested local governments. This municipality was the most thorough in listing the officials and acquiring the written statements (103 out of a total 119).

19 Article 27 of the Model.

4.2 Establishment of monitoring mechanisms

As shown above, a small number of municipalities introduced some kind of monitoring mechanisms in the initial text of the Code adopted. Others simply repeated the recommended provision, opening a possibility for such a mechanism to be established later, whilst only a few left out the provisions from the final text adopted.

Among the second group of municipalities, a few of them later adopted separate decisions establishing such mechanisms – mostly working bodies of the municipal assemblies – and appointed their members. So far, the SCTM was informed of the establishment of such bodies in six municipalities and that several others plan to do so in the near future. It needs to be noted here that the number of such municipalities might be higher, even though the SCTM is not aware of the fact.

The questionnaire also addressed the issue of established monitoring bodies, asking interviewees to state if a body was established and to describe its structure and functioning. The answers confirmed that the process has only just begun and that examples of established and functioning monitoring bodies are still few. Three of the ten targeted municipalities have established monitoring bodies, but only one of them has been constituted and actually has some practice[20].

4.3 Status and structure of monitoring bodies

So far, six local assemblies established Code monitoring bodies, as their ad hoc or permanent working bodies. These bodies were entitled Commissions (*Komisija*), Boards (*Odbor*) or Councils (*Savet*) for monitoring the implementation of the Ethical Code of Conduct.

According to the Serbian basic Law on local self-government[21], local assemblies can establish permanent and ad hoc working bodies for discussing issues in their competence. The number of working bodies, their constitution and mandate is designated by town and municipal statutes or, in case of town municipalities, by assembly rules of procedure.

The central issue which arose in connection to the establishment of Code monitoring bodies is whether or not members of these bodies can be persons who are not councillors, i.e. ordinary citizens. The answer to this question lies in town and municipal statutes or assembly rules of procedure. Some of them explicitly state that members of assembly working bodies can only be councillors, others allow for citizen-members, but demand that they do not out count councillor-members and that the chair of the body is a councillor, while some do not contain any obstacle for citizens to even be the sole members of the bodies.

20 See more below, in Section 4.5.

21 Official Gazette of the Republic of Serbia, No.9/2002, Article 34.

The SCTM drafted a Model decision on the establishment of councils for monitoring the implementation of the Ethical code. Bearing in mind the different framework in municipalities, the Model provided three alternatives to suit the combinations of membership conditions found in the local statutes.

Out of the six working bodies analysed in this paper[22], three are composed only of councillors, 2 only of citizens and one is mixed – 3 councillors and 4 citizens. In most cases, these bodies have 5 members, while in two cases they have 8 (to represent all caucuses in the local assembly) and 7 members.

When we look closer at criteria according to which members of the councils were chosen, we see that in one of the municipalities, they were simply appointed by their assembly caucuses, apparently without any prior criteria being set, whilst in others, at least minimum criteria existed. In one of them, with a mixed composition of the body, separate criteria were set for councillor-members and citizen-members. Councillors were not to hold any other function on the local or state level, while citizens could become members if they did not hold any function at the local or state level, a function in political parties, syndicates or business associations. Both groups should not have been convicted of a felony or acted against the principles or rules of the Code and were to be familiar with the Code's contents and show adequate knowledge of that.

In another municipality whose newly established monitoring council consists only of citizens, candidates were asked to sign a written statement that they fulfil the conditions designated, which are the same as in the previous example. Both of the last two municipalities mentioned are part of the SCTM pilot programme. Besides the conditions listed, the Model also recommended another – that the person nominated for membership enjoys undivided reputation and respect in his /her community.

Another positive practice that was promoted is the process in which candidates for council members were designated in the second municipality whose council consists solely of citizens. The president of the assembly drafted an initial list of distinguished persons in the community and then conducted several rounds of consultations with all seven assembly caucuses, until the final five candidates were agreed upon.

The second important issue relating to the status of these bodies is the fact that, without a change of statute, in most municipalities they can only be established as ad hoc bodies, meaning that their mandate can last until the end of the mandate of the present composition of the local assembly at the latest. Since, during the process of drafting of the Model decision of the SCTM most of municipal representatives pointed out this fact, the Model also recommends that the bodies are established as ad hoc working bodies of the municipal assemblies. Nevertheless, in one of the

22 Municipalities of Arilje, Barajevo, Leskovac, Mladenovac, Pirot and Zrenjanin.

municipalities, the monitoring council was established as a permanent body of the local assembly. Apparently, this assembly's rules of procedure in this municipality do not pose an obstacle for that.

Finally, it seems suitable to mention here that the Serbian Law on Local Self-Government envisaged the establishment of two councils as independent bodies. One of them, the Council for inter-ethnic relations[23] is mandatory for the so-called ethnically mixed municipalities, whilst the other one, the Council for protection and advancement of local self-government[24] is facultative and local assemblies can choose to establish them. In the case of the first of the councils, members are representatives of different ethnic groups, whilst in the second case they are elected among experts and citizens. The councils are, as said, independent, and report periodically to the local assembly. The first of them has wide competences in relation to the position and protection of rights of ethnic minorities.

4.4 Rules of procedure

Most of the mentioned monitoring bodies are newly established. Most of them are still in the process of constituting and have not yet adopted their own rules of procedure or handled any "cases". Besides the Model decision on the establishment of the monitoring councils, the SCTM has also prepared a Model Rules of Procedure for the newly established bodies.

One of the monitoring councils – in fact, the first one established – adopted its own Rules of Procedure in March, 2005. The Council acts upon written complaints by citizens or upon its own initiative. Anonymous, incomprehensible, "malicious and obviously not serious" petitions are not to be investigated. Upon receipt of a petition, the Council invites the official in question to provide an answer. The Council can also use other sources of information to verify the facts of the case. It regularly informs the Assembly of its findings. It also provides explanations in relation to the Code and its implementation in accordance to the text of the Code or adopted positions of the Council.

The same council adopted and published a template petition (or complaint). The template requires the petitioner (or complainant) to describe the event or circumstances of the case and all available data upon which the petition is based. It also reminds the complainant to attach all available proof or documentation which could uphold the complaint. Finally, the petitioner needs to identify the official to whom the petition applies and his/her own identity and contact details. The petitioner is also warned that he/she will be contacted in relation to the petition, as well as that his/her identity could be discovered and that the official to whom the complaint is directed will be informed of its content.

23 Article 63 of the Law on local self-government.

24 Article 127 of the Law on local self-government.

The SCTM Model decision recommends that anonymous complaints also be investigated and provides the Council with a much more proactive role towards bearers of public functions, besides investigations. For instance, the Council has a role in the process of nomination of candidates for public functions, it collects data from functionaries, different bodies and organisations, monitors and analyses data relating to the Code's implementation on the territory of the local government in question and provides opinions on the content and application of the Code etc.

The first case

As stated above, most of the monitoring councils are still in the initial phase of establishment. Most of them still have not had any activity or investigated any cases of alleged breach of codes.

Even though there have been reported instances of the Code being called upon in assembly debates, during appointment procedures or in media appearances, so far, only one of the Councils handled an actual case of Code breach. The case was initiated on the Council's own initiative on the occasion of a local councillor changing political parties during mandate. The procedure was initiated on the Council's own initiative and the Council called upon the Code, which recommends that an official avoids changing political parties during his/her mandate. The Council drafted the information and publicly announced it. This remains the only case of Code breach announced since the codes where adopted.

Unfortunately, during the period covered by the first annual report of this council, no petitions have been submitted by citizens.

The same council had two more public activities worth mentioning. The first concerned collection of written statements by local officials. The council named all of the officials who did not sign the statements abiding to the Code and included the list in the information submitted to the local assembly. Since the work of the council is public, the fact was also made known to the wider public. Also, the Council, together with the municipal administration, provided functionaries obliged by the Law on prevention of conflict of interest to report their property to the Republic Committee for resolving conflict of interest, to do so through the municipality. More than half of the functionaries (65 out of 104) chose to do so and their reports were forwarded to the Republic committee in sealed envelopes.

Measures in case of Code breach

Unfortunately, other than reporting to the Assembly or informing the public, the council whose rules procedure and initial practice were described above[25] do not identify measures that can be undertaken by the Council if it determines that the Code has been breached.

25 See Sections 4.4 and 4.5.

The SCTM Model decision recommends three types of measures to be taken by the monitoring councils, depending on the circumstances of the case and the severity of the breach and its consequences – a non-public warning, publication of the decision on the established breach of the Code and publication of the decision with a recommendation for dismissal or resignation of the official or other measures to be taken towards the official. Similar measures are determined by the Serbian Law on prevention of conflict of interest – a non-public warning and publication of a recommendation for dismissal.

The debate *pro et contra* sanctionless ethical codes and codes of conduct has, it seems sometimes, been going on forever. However, in concrete circumstances, we are able to demonstrate that even "soft measures" such as a warning, publication of a decision etc. can produce real results. This has been rightly stressed by the President of the Republic Committee for Resolving Conflict of Interest[26]. According to him, in 95 per cent of the cases initiated by the Committee, the officials in question fulfilled their obligations under the Law on Prevention of Conflict of Interest – e.g. reporting his/her property – as soon as the procedure was initiated. During its one-year practice, the Committee has not had a chance to set a more severe measure than a warning.

In its annul report, the Committee has evaluated that bearers of public functions, in order to preserve the reputation of their function, choose to recognise the authority of the Committee and to quickly comply with the provisions of the Law once warned. Finally, in their opinion, the preventive aspect of the Committee's existence seems to make the introduction of classical legal sanctions unnecessary – e.g. pecuniary sanctions – in order to achieve the objectives of the Law[27]

Also, according to the President of the Committee, the mere fact that a monitoring body – the Republic Committee – exists, has been one of the main contributions to the Law's implementation. If some kind of a monitoring mechanism was not in place, the Law would remain "a letter on a piece of paper"[28].

26 The Republic Committee was established by the Law on prevention of conflict of interest (Official Gazette of the Republic of Serbia, 43/2004). The Board was officially constituted on January 18, 2005 and has submitted its first annual report to the National Assembly for the period from its constitution until the end of 2005. For more information on the legal framework and activities of the Committee (in Serbian and in English), see http://www.sukobinteresa.sr.gov.yu.

27 From the Annual Report of the Republic Committee for resolving conflict of interest.

28 Extracts from the address of Mr. Milovan Dedijer, President of the Republic Board for Resolving Conflict of Interest at the Conference "Code of Conduct for local government officials – a step towards implementation", organised by the Standing Conference of Towns and Municipalities, on February 13, 2006 (published in SCTM newsletter "Lokalna samouprava", No. 9/2006 – available in Serbian at http://www.skgo.org).

5. Perception of the Code

The research conducted for the purposes of this paper, as well as the day-to-day work on promotion of the Code of conduct in local governments, demonstrated that it is extremely hard to measure the attitudes of bearers of public functions towards the Code and its importance. However, some of the details in relation to the process of Code adoption presented here can also be interpreted as indicators of attitudes towards and the level of understanding of the Code's significance and content.

For instance, the fact that in most of the local governments targeted by interviews the text of the Code was not publicised in the media or on the Internet, but only the official gazette which is not read by most citizens, can be interpreted in the way that not enough significance has been given to the promotion of the Code to the wider public.

Another, again negative, indicator is the fact that, even though the text of the Code obliges officials to do so, in most cases, they were not offered to sign a written statement acknowledging the Code and declaring their readiness to abide by its provisions. Bearing that in mind, it cannot be claimed that all officials covered by the Code even know of the existence of the Code. As mentioned at the beginning, the code is supposed to apply to a very wide circle of persons, who do not necessarily follow the activities of the municipal assembly as regularly as its councillors or mayors – e.g. managers or members of managerial boards of municipal enterprises.

Also, the mere fact that some – although a small number of municipalities – local assemblies did not find it necessary to include a provision on the possibility to establish any kind of a separate monitoring mechanism in the text of the code, is certainly a practice which could not be commended.

On the other hand, a survey recently presented by Transparency Serbia[29] showed that, even though most Serbian municipalities adopted codes of conduct, that fact and the content of the codes are not familiar to most of their citizens. To be more exact, 71.8 % of citizens declared that they have not even heard that their local assembly adopted such a document. Among those who have heard of the code of conduct, most do not know what its content is. Only 4.5 % of those surveyed declared that they are familiar with the content of the code.

In the course of its activities on the promotion of the Code, the SCTM also realised some activities towards the general public. It published a leaflet with the text of the Model code in the national daily "Politika" and has provided each of the

29 Results of the survey "Public interest, conflict of interest, free access to information and ethical code of conduct for local government officials" were presented on April 5, 2006. Results of the survey are available in Serbian at http://www.transparentnost.org.yu. The author would like to thank Mr. Nemanja Nenadić, Executive Director of Transparency Serbia for assistance in preparation of this paper.

municipalities, which adopted the codes, with three framed posters with the texts of the code.

6. Conclusions

From the above described research it is possible to draw certain conclusions relating to the process of adoption and first steps in implementation of the ethical codes of conduct in local governments in Serbia.

First of all, it seems that Serbia presents a unique example of the process of drafting and promotion of the Model code which has, in just over a year, been adopted by 90 % of its local governments. The fact that in most local governments the more or less same text of the codes has been adopted is commendable, in the sense that on almost the whole territory of the country, the same ethical standards apply to bearers of public functions – at least at the local level.

The process of adoption of the codes in local assemblies also provides very positive examples of political consensus which, with the current electoral system at the local level, is not as easy to accomplish in many local governments.

On the other hand, the absence of any kind of confronted debate on the text of the code or absence of substantial amendments to the recommended text of the code could be interpreted as saying that the codes were not examined seriously enough during this process. Of course, it is possible that the fact that the Model code passed several rounds of consultations and public debates, actually resulted in a set of ethical standards acceptable to most local governments in Serbia, and that not much can be added to it or amended.

However, examples of omitting certain provisions evaluated as important for subsequent implementation of the Code – though in isolated cases – can also be interpreted to point to codes not being taken as seriously as expected.

A positive occurrence in the process of codes' adoption is certainly the fact that they were adopted in the form of a general act, making it harder to abolish them in the case of change of political structure in a particular local government. Their abolition would require the same high level of political consensus which, bearing in mind the nature of the document seems to be hard to achieve.

Another significant feature of the Model code is the extremely wide circle of persons to whom they apply. In other comparable systems – primarily other CEE states which passed or are still in the period of transition – the fact is certainly commendable in the sense that the same standards apply to all bearers of any kind of public function at the local level. However, during the short period of existence of codes in Serbian local governments, it is uncertain if all of these persons have been familiarised with the existence and content of the codes. This applies to all bearers of public functions other than the highest local government officials – mayors,

members of municipal boards or local councillors. In that sense, it might be wise to consider designing separate codes applying to different groups of "functionaries" – e.g. elected representatives (mayors, councillors), appointed functionaries, bearers of functions in municipal enterprises and institutions etc. The survey conducted seems to point to the direction that the present codes are usually perceived only as codes for mayors and councillors. In any case, since the code demands that all of these persons sign written statements abiding to the principles and provisions of the code, the obligation has to be fulfilled regardless of the fact that they have been familiarised with the code in another manner, as stated in some of the answers to the questionnaire.

One of the most important points this paper makes is, that in order for genuine implementation of the codes to be achieved, some kind of monitoring mechanism needs to be established. The point has also been proven by the one-year practice of the Republic Board for Resolving of Conflict of Interest.

Further, bearing in mind the sensitivity of the subject matter, it is clear that in order for these mechanisms to produce the desired results, they need to be armed with genuine independence from the very beginning of their existence. This relates to their status, structure and powers, as well as financing, which can often be a realistic obstacle or be presented as such. Ideally, a monitoring council or other body needs to be completely independent of any other body or individual at the local level – especially bearers of public functions targeted by the Code. This can be achieved by providing them with permanent status and their members should not themselves be bearers of public functions.

However, in most local governments, some of these features cannot be accomplished until the present legal framework – including the basic national legislation – is amended. In that sense, it might be useful to consider an amendment of the Local Self-Government Law, to envisage the possibility of the establishment of other independent councils, similar to the two already envisaged. Notwithstanding, the municipal and town statutes should be amended to provide proper independence to these bodies.

However, even before these changes occur, the features of the current framework need to be utilised as much as possible to provide some kind of independence to bodies already established or in the process of establishment. The experience of the present, pioneer monitoring councils will certainly be of indispensable value to every future body established. The SCTM continues to serve as an advisor and channel for the exchange of (positive) examples and best practices among municipalities.

As has been shown, the practice of these bodies is still scarce. Most of them have not had the chance to handle concrete cases of alleged code breach yet. However, the practice of a similar republic body shows that the body has to be able to at least recommend some kind of measures to be taken. The measures do not need

to take the form of typical, legal sanctions or penalties. The pressure of the public and danger of damage to reputation of the functionary seems to be sufficient in the majority of cases.

This leads to the final point this paper aims to make – the necessity to raise awareness of the existence of the code, its contents and the possibilities offered by monitoring mechanisms. The last finding applies to all the stakeholders involved – bearers of public functions as addressees of the Code, the media and the citizens. Results of recent surveys show that the level of awareness is still extremely low.

However, it is still early days and it would certainly be too ambitious to expect that after only a year or less of existence of the codes in the Serbian legal system, the results are impressive. It is apparent, though, that all of the listed groups need to be active in order for ethical standards to become deeply rooted in the legal system and society. Primarily, local governments need to enable mechanisms for monitoring the implementation of the codes in practice and to establish regular communication with the public at large.

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Annex 3

A Crime of Calculation: Addressing the Economic Bases of Corruption

– Case of Serbia –

Mirjana Stanković, Robert Sundberg

Abstract

Early official anti-corruption efforts related to Serbian local governments were largely based on a legislated ethics approach to reforming individual practices, if not changing individual attitudes towards willingness to engage in corrupt practices. The Serbian Law on Conflict of Interest and adoption of the Code of Conduct for Public Officials illustrate this approach, which was mirrored in the participation of local governments in the anti-corruption initiative of the Standing Conference of Cities and Municipalities (2004–2005).

Attempting to prevent and "alleviate" corruption, Serbia, like many other countries in the region, has gone through a period of vigorous promotion of ethical standards through laws and codes. Campaigns have been organised; public officials have received numerous ethics training. The attempts resulted in a number of *outcomes* at the local level: public awareness has been raised; mayors have competed as to who would be the first to adopt the Code of Ethics and the Code's text has been framed and hung in the municipal halls across Serbia. But the *impact* of legislating anti-corruption has been seemingly minimal: to date, the impact could neither be adequately measured, nor demonstrated – heavily reliant on public perception. Public perception has proved to be an unreliable indicator of corruption.

In a previous paper, the authors suggested the beginnings of a movement away from purely "legislated ethics" to anti-corruption when they surveyed the benefits of process reform – specifically in the area of public procurement – the training and consequential professionalisation of the local government procurement workforce in Serbia. They reported on anti-corruption activities that did not

solely rely on the conscience of individuals and explored other means of suppressing corrupt activities.

In their book, "Corrupt Cities," Robert Klitgaard, Ronald McLean Abaroa and H. Lindsey-Parris point out that "Corruption is a crime of calculation, not passion." Their argument – that corrupt systems need to be "healed" via mainly technical interventions aimed at corruption's root causes through an economics-based approach that incorporates ethics strategies as one part of a more holistic intervention – seemingly mirrors current anti-corruption strategies of major bilateral donors (e.g. The World Bank, USAID, the Stability Pact). It may be early yet in Serbia, but systemic reform initiatives do exist and are being tried there.

An example of such a systemic approach is the introduction of process-oriented, e-procurement software in Serbia, created by the Development Consulting Group, with the participation of the authors and colleagues, which is currently being piloted in the City of Belgrade's Vračar Municipality. The software immerses Serbian public procurement practitioners in the appropriate processes that implement Serbia's reformed Public Procurement Law; guide them firmly, but in a user-friendly fashion through the numerous steps necessary to appropriately plan and implement public procurement actions; encourages practitioner compliance with the Public Procurement Law's principles of economy and efficiency, transparency, competition and equality of bidders – at the same time discouraging deviation from the principles; and creates transparent, practical records by which the procurement process may be monitored/overseen by outside officials to detect and suppress corrupt practices.

Introduction

Early official anti-corruption efforts related to Serbian local governments were largely based on a "good ethics approach" to reforming individual practices, if not changing individual attitudes towards willingness to engage in corrupt practices. The Serbian Law on Conflict of Interest[1] and the adoption of the Code of Conduct for Public Officials[2] illustrate this approach, which was mirrored in the participation of local governments in the anti-corruption initiative of the Standing Conference of Cities and Municipalities (2004–2005).

Attempting to prevent and "alleviate" corruption, Serbia, like many other countries in the region, has gone through a period of vigorous promotion of ethical standards through laws and codes. Anti-corruption efforts concentrated on the strategies rooted in traditional ethical/legal approach, including the promo-

1 Law on the Conflict of Interest (RS Official Gazette 43/04).

2 The Code of Conduct of Public Officials was adopted by the Assembly of the Standing Conference of Cities and Municipalities (SCTM) in December 2005. The SCTM recommended it to all local governments for adoption and invited local leadership to support the effort.

tion/establishment of ethics codes of conduct for public officials[3], legal reforms/anti-corruption laws[4], public anti-corruption awareness campaigns, training aimed at anti-corruption capacity building of civil society institutions and building the awareness/capacity of the business community to resist corruption have not yielded significant results. Campaigns have been organised; public officials have received numerous ethics trainings. The attempts resulted in a number of *outcomes* at the local level: public awareness has been raised; mayors have competed in who would be the first to adopt the Code of Ethics; the Code's text has been framed and hung in the municipal halls across Serbia. But the *impact* of legislating anti-corruption has been seemingly minimal: to date, the impact could neither be adequately measured, nor demonstrated – heavily reliant on public perception. Public perception has proved to be an unreliable indicator of corruption.

Clear ethical and legal bases, rooted in sound process and professionalisation of the workforce are among the essential elements that assist public institutions to resist outside pressures to conduct or condone irregular practices and may provide public officials the legal and administrative authority to resist corrupt influences from other officials. Ethical and legal standards set out the needed baseline against which individuals and governmental entities may measure their conduct[5]. But – as much as they are necessary and supportive, adoption of anti-corruption-related legislation and ethics-promotional activities are not, *per se*, sufficient to completely address corruption.

Additionally, until recently, many anti-corruption initiatives were mainly imposed from the top down in an unfocused manner, with very little evidence of any effective, bottom-up interventions. Top-down activities have been, typically, conducted by the National Anti-corruption Council[6] or Transparency Serbia and have included organisation of anti-corruption events, public reactions to revealed corrupt activities, policy research and legal analyses, as well as reporting to the public

3 In 2004–2005, an EU-funded (CARDS) Serbia-wide, campaign for an adoption of Ethical Code of Conduct for Local Government Officials was conducted by the SCTM, which led to a formal adoption of the Code by the majority of Serbian municipal assemblies.

4 In addition to the Law on the Conflict of Interest, e.g., the Law on Free Access to Information of Public Interest (RS Official Gazette 120/06).

5 In "Corrupt Cities," Klitgaard, Abaroa and Lindsey-Parris demonstrate that public officials involved in corruption often understand that what they are doing is unethical or illegal, but they engage in corrupt practices anyway, until given incentives not to do so. In Serbia, up until recently, it might be argued that many public officials saw nothing wrong in engaging in practices which would be considered unethical or illegal elsewhere. The "legislated ethics" campaigns and initiatives in Serbia over the past several years have, at least, addressed this issue.

6 The National Anti-corruption Council is a governmental body, established in October 2001 (RS Official Gazette 59/01, p. 3), mandated "… to conceptualise anti-corruption activities, to propose efficient anti-corruption measures to the Government of the Republic of Serbia, to monitor their implementation and initiate adoption of laws and regulations related to this area.". The Council has 15 members, including the RS Government officials and distinguished experts, with an authority to form expert teams, as needed.

on these activities.[7] These are necessary and worthy activities and should be continued; but they are slow to get at the root causes of corruption and offer relatively few practical techniques for public officials – frustrated by corruption's impacts on government and society – to end the practice.

In a previous paper, the authors alluded to the beginnings of movement away from a purely "legislated ethics" to anti-corruption, when they surveyed the benefits of process reform – specifically in the area of public procurement reform, training and consequential professionalisation of the local government procurement workforce in Serbia. They reported on anti-corruption activities that did not solely rely on the conscience of individuals and explored other means of suppressing corrupt activities.[8] The authors stated that dealing with the problem of corruption "would require a multi-pronged strategy tailored to the specific pattern of corruption", encountered in the specific setting towards which an intervention is targeting.[9] Compared with other anti-corruption strategies, increasing the capacity, stature and professionalism of government institutions which coexist with or contain "corruption focal points" may not seem to be a dynamic or attractive course of action. However, when institutions are built up in terms of staff training; normalising staff positions and providing staff with adequate compensation; formalising organisational and individual legal standing vis-à-vis other institutions and political leaders; giving organisations and staff effective legal and regulatory tools, as well as user-friendly IT solutions with which to effectively carry out more clearly defined responsibilities, such institutions may become effective mechanisms upon which other reform strategies may be based, successfully tying together an entire, multi-faceted anti-corruption strategy. Such an approach is in line with the popular thesis that public institutions with typically overwhelming monopoly and discretion and a lack of accountability, are the ones that are most prone to corruption.[10]

M + D – A = C

MONOPOLY
+
DISCRETION
-
ACCOUNTABILITY
=
CORRUPTION

Though not intended as a specific test bed for this thesis, the public procurement training initiative in Serbia in 2003–2005, which the authors reported about in their previous paper, produced results which may be interpreted in support of the thesis. Training municipal procurement officials/workers in the subject matter of their professional activities and creating an institutional

7 www.antikorupcija-savet.sr.gov.yu/eng/list.jsp?type=izvestaj; www.transparentnost.org.yu/index_en.htm

8 Sundberg, Robert and Mirjana Stanković.2007. Anti-corruption Mechanisms in Serbian Local Government: Institutions That Both Oppose and are Resistant to Corruption. Paper presented at the *15 NISPACEE Conference in Kyev, 2007.*

9 World Bank, 2000. Anti-corruption in Transition – A Contribution to the Policy Debate. Washington, D. C.

10 Klitgaard, Robert, Ronald McLean Abaroa and H. Lindsey Parris. 2000. Corrupt Cities: A Practical Guide to Cure and Prevention. The World Bank Institute and Institute for Contemporary Studies, Washington, D. C.

setting which more clearly defines their responsibilities and authority appears to have given the officials/workers greater ability to resist outside pressure to circumvent or ignore their national procurement law. In fact, such awareness on the part of the procurement officials discourages leadership from attempting such a pressure.[11]

2. Turning Anti-corruption Strategies into Practice

The authors' previous paper surveyed commonly-employed/currently-favoured anti-corruption intervention strategies, leading to the conclusion that building corruption-resistant governmental institutions appears to enjoy less attention than designing large-scale anti-corruption programmes, the impact of which is unlikely to be properly measured by commonly used, perception-based indicators.[12]

However, some work has been done to address corruption from the bottom up (the institutional "cure and prevention" approach), in addition to using the top-down (legal/ethical) approach. Robert Klitgaard has identified four major areas of an integrated anti-corruption intervention: 1) punishing some major, high visibility offenders; 2) involving the public in diagnosing corrupt systems; 3) repairing corrupt systems; and 4) reforming incentives (i.e., public sector wages).[13] Such interventions are more likely to be systematically implemented at the local government level, where typical "corruption focal points"[14] can be easily identified and diagnosed.

An approach to corruption that emphasises more controls, more laws, and more bureaucracy is not recommended because "these can simply paralyse administration, and in some cases they can foster new and more deeply embedded varieties of corruption."[15] Instead, especially in cases of systematic corruption, they "…advocate both a restructuring of local government services and institutional

11 One might argue that training and empowering public procurement officials to more effectively implement their procurement law and regulations and resist outside pressure to subvert the procurement system would lead to a shift of corruption opportunity away from outside sources to the procurement officials themselves. This danger does exist. A holistic anti-corruption strategy, incorporating many techniques and approaches, is necessary. This paper suggests one of them.

12 Sundberg, Robert and Mirjana Stanković.2007. Anti-corruption Mechanisms in Serbian Local Government: Institutions That Both Oppose and are Resistant to Corruption. *15 NISPACEE Conference in Kyev, 2007* (p. 2–5).

13 Klitgaard, Robert. 1998. International Co-operation Against Corruption. *Finance & Development,* Vol. 35, No. 1 (March), http://www.worldbank.org/fandd/english/0398/cover.htm (accessed April 7, 2007).

14 Corruption focal points should be thought of as points or places within governmental or business processes where opportunities for corrupt practices are especially likely, given either the corruption environment or institutional weaknesses against corrupt practices – or both. An example might be a municipal building permit office where, in many settings, bribes are routinely demanded in exchange for expedited service or getting a permit at all.

15 Preface to the book *Corrupt Cities,* p. 5

AN OVERVIEW OF CURRENT ANTICORRUPTION STRATEGIES			
The World Bank	**USAID**	**Stability Pact**	**The United Nations**
• Increasing the accountability of political leaders • Strengthening institutional restraints • Strengthening civil society organizations • Creating a competitive private sector • Reforming public sector management	• **Explicitly anticorruption programs**: increased transparency and accountability through participation and public scrutiny, improved legislation, reform of budgetary and procurement processes, civil society strengthening media and private sector association strengthening programs; • **Corruption environment programs** - election programs; fiscal, and tax reform programs; privatization; rule of law programs programs; creating an enabling environment for private sector development.	• Establishing "integrity standards and control mechanisms"; • Addressing corruption in corporate sector; • Enhancing "free access to public information" and increasing transparency; • Provision of adequate financial and human resources, as well as improved investigative tools; • Research and analysis of corruption phenomena and corrupt practices in numerous public sectors and institutions; • Public awareness raising to prevent and control corruption in specific sectors and institutions and create demand for reforms.	• Creation/strengthening of corruption prevention organizations; • Merit- and incentive-based employment and HR management; • Institute codes or standards of conduct governing performance of public functions; • Adoption of minimum standards for public procurement processes; • Increasing transparency in public administration; • Strengthening of judicial and prosecutorial integrity; • Prevention of corruption in private-sector; • Civil society awareness-rasiing; • Creation of anti-money laundering legislation and mechanisms; • Criminal sanctions against numerous, corruption-related offenses and sound legislation.

reforms that improve information and create new and more powerful incentives and disincentives." Addressing *corruption in the right ways "can become a lever to achieve much broader ends, not only financial survival but* ***remaking the relationship between citizen and local government****."*[16] The "big picture" should also encompass the changing role of local government and the public-private relationship perspective, in the context of local economic development. Corruption is an impediment to investments and, thus, to overall economic growth of a community.

Furthermore, the *Corrupt Cities'* authors argue that "even though corruption is a subject of **passionate opinion and ethical freight**, preventing it **requires a strategy as coldly calculated as any other major innovation in a local government's policy or management**. A strategy must go beyond moralising, legalisms, and the bromide that corruption would not exist if only we all fulfilled our obligations."[17] - because successful corrupt interventions focus on corrupt systems and not (solely on) corrupt individuals. Successful system interventions are driven by the goal to decrease monopoly and discretion and increase accountability.

Between 2003 and 2005, the authors, with colleagues, under a USAID-funded programme, systematically trained several thousand Serbian municipal government public procurement officials and workers in 83 local governments and 35 public utility companies across Serbia in the process of how to implement Serbia's reformed Public Procurement Law,[18] and how to establish effective, professional municipal public procurement offices. In 2006, the authors conducted a USAID-funded post-intervention survey of the status of public procurement reform and process, and what impacts remained in effect from the intervention, in a representative sample of the 83 Serbian municipalities. The lessons learned by these activities were used in an attempt to apply the formula and create a systemic approach to reducing corruption related to this universally acknowledged focal point.

In 2007, the authors, in collaboration with colleagues in the Development Consulting Group, and others, designed a prototype public procurement process management e-tool for use by Serbian cities and municipalities. The process-based public procurement software was centred on the Serbian Public Procurement Law's "Four Principles of Public Procurement."[19] The project was piloted with the enthusiastic co-operation and participation of the government of the Belgrade City Municipality of Vračar, led by its democratically-oriented Mayor, Mr. Branimir Kuzmanović. In November 2007, Vračar Municipality's public procurement e-sys-

16 Idem, p. 5.

17 Idem, p. 4.

18 Public Procurement Law of the Republic of Serbia (RS Official Gazette, 39/02 and 43/03).

19 The principles of 1) economy and efficiency, 2) transparency, 3) competition and 4) equality of bidders are articulated in the articles 5, 6, 7 and 8 of the RS Public Procurement Law.

tem was officially launched at a public event, attended by the Serbian Minister of Finance and numerous other officials, dignitaries and media representatives[20].

The Vračar prototype e-procurement system seeks to automate many of the functions inherent in the Serbian public procurement process. Automating the process both makes the work of public procurement officials easier and it limits human discretion at key decision points in the public procurement process. These decision points are, not coincidentally, corruption focal points within the public procurement process.

3. An Overview of Software's Technical features and Functions

3.1 Technical Characteristics

The e-procurement tool is a user-friendly desktop application[21] - the internet connection is necessary only when new data/software versions are updated, or when information is exported to the user's website/public procurement web-page[22].

Minimum preliminary technical requirements that each user must fulfil include installed MS Windows XP Professional and SQL server. All Serbian local governments are well equipped with the entire package, due to the Strategic Co-operation Agreement on free transfer of knowledge and technology between Microsoft and the Government of the Republic of Serbia[23].

The software is designed to work within local area connection, which allows access and different levels of use by the authorized local government personnel – officials in charge of financial management/public procurement process, through a password protected system.

3.2 Public Procurement Database

In order to manage data effectively, the software has been designed as a unified database that can be easily upgraded and updated, with a simple "back-up" restore system, which keeps all data in one place, whereas back-up copies are kept elsewhere.

20 http://www.dcg-consulting.com/pp_software.html

21 The authors have opted for a desktop application, rather than a web one because it provides a better protection of the confidentiality of data.

22 Selected information is exported in xml format, or as PDF documents.

23 The Agreement was signed in Prague on December 5, 2001. Serbia and Montenegro was the third Balkan country to promote better access to knowledge in this way.

By accessing internet, the users receive notification on the available updates, which can be downloaded automatically.

In implementing a public procedure, public procurement officials make use of both static and dynamic data, which are displayed as a drop-down menu[24]. In an interactive way, the users are free to add new information and expand the database in the course of their work, with both qualitative and quantitative data. The main characteristics of the database are given in a table format on the next page:

Document management System

Data on Bidders

The document management system allows the use of available templates to produce documents within each step, by entering specific data in the given fields. All non-confidential documents can be exported to the website and made available to the public.

3.3 The Process

The reported trainings and ability to discuss implementation issues with Serbian public procurement officials[25] served as a resource for defining the parts of the process which were incorporated into the provided IT solution. The principal idea was to design a tool which would immerse Serbian public procurement practitioners in the appropriate processes that implement the Serbian Public Procurement Law, guiding them firmly, but in a user-friendly fashion through the numerous phases associated with public procurement, from annual planning to contract execution. Serbian procurement practitioners tend to view the process as starting with preparation and adoption of a written decision to commence a public procurement procedure[26] and ending with contract award. The presented tool offers a broader view

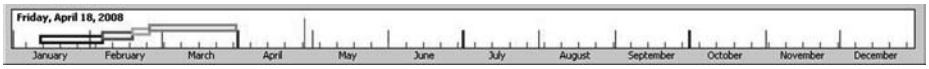
24 Thus, supporting and operational data are clearly separated from the parts of the process, which are displayed on the screen in a sequential order.

25 Sundberg, Robert and Mirjana Stanković.2007. Anti-corruption Mechanisms in Serbian Local Government: Institutions That Both Oppose and are Resistant to Corruption. Paper presented at the 15 *NISPACEE Conference in Kyev, 2007,* p. 6–7.

26 Article 24, Public Procurement Law, Official Gazette of the Republic of Serbia, 39/02.

Database of Static Data	
Mandatory financial and technical capacity documents	List of all documents legally required in a bidding process.
List of Financial Accounts	Clear relationship between the public procurement and financial plan. Easy communication between the financial and procurement department and tracking of payments per procurement.
Database of ordering entities	Details about direct and indirect budget beneficiaries (particularly relevant in case of centralized procurements)
Legal acts and regulations	All laws, by-laws and written internal procedures in one place
Useful links	Direct access to all relevant websites (e.g., links to national level institutions, such as the Public Procurement Agency)
Database of Dynamic Data	
Users	Available list of all software users and information on their access level
Bid evaluation criteria	Expandable database of criteria; possibility of using the existing criteria from the database and to add new criteria; automatic ponder calculation in 4 ways, depending on the type of criteria (e.g., maximum value or minimum value gets the biggest ponder value - formula; cumulative ponder calculation – in case of sub-criteria).
Bidders	Details about bidders, expandable mechanically or through log-in system in case tender documents are picked through the website.
Human resources	Data about municipal officials who can appropriately serve as PP Commission members, as well as external experts who can be hired to prepare tender documents and specifications, or be the Commission members
M?dia	Contact list of media for the publication of invitations to bidders.
Specifications	With more software users, it will be possible to network them and exchange specifications for common procurement subjects and, gradually, build a national database of specifications
Document Management System	All documents are managed directly by the system and kept at one place. The "search" option allows immediate access to any desired document related to a current or finalized procurement.

– it emphasises both procurement planning (which the Serbian Procurement Law itself envisions, but which many overlook) and contract execution and quality control. Using the public procurement software, a procurement planner can enter the desired contract execution date and the software automatically shows the user the necessary timelines for a complete, proper procurement, in accordance with the Serbian Procurement Law's provisions. The software shows the milestones of the process in different colours[27], most importantly, calling out the recommended date for the commencement of the procurement procedure on the planner's computer screen:



The public procurement software both depicts and leads its user through an entire procurement cycle, requiring, at various points inputs of data and approvals of proposed actions or decisions by appropriate authorities within the municipal government who are required by law or regulation to be involved in the municipality's budget, treasury, procurement programme, etc. Various steps in the procurement process are quickly accessed by means of clicking on tabs on the computer screen, where the viewer can either look at data or, if authorized, enter data and take affirmative actions that directly or indirectly complete a milestone ("step") in the procurement's process. Once a step is completed, the system is locked; the data generated via the actions that have been taken, or approvals given, to complete the step, cannot be altered. The decisions and actions taken cannot be altered. Additionally, authorized reviewers of the procurement process – even persons at remote locations, such as in the Serbian Public Procurement Office in Belgrade, can be given authorisation to access the procurement system's data base to review compliance with law and procedures. The following describes some of the features of the "tab system":

1. **Annual plan** provides key information about all procurements entered in the system (their subject, selected type of procurement procedure allowed by the Serbian procurement law[28], type of procurement[29], the procurement's estimated

27 Key milestones of the public procurement process, as defined by the authors include: 1) launching of the invitation for bidders, 2) evaluation of bids; 3) contract award and 4) contract execution. (Sundberg, R., M. Stanković, A. Protić and M. Todorović. 2003. Procurement Planning Methodology. DAI Inc., SLGRP, Belgrade. Serbia.).

28 The Serbian procurement law recognizes the following procurement procedures: Open, Low Value (further broken down into either a simple or regular procedure), Restricted, and Negotiated procedure, including procurement in lots.

29 Goods, services or works.

value, its priority group[30], the identity of the ordering entity, and budget information). The current status of each procurement is available at any moment of time;

2. **Public procurement commencement.** Documented evidence of the "green light" to proceed with the procurement, provided by the Financial Department (approval registry number, date of approval);
3. **Decision of commencement.** At this point, the actual dates of the procurement are provided, comparable with the planned dates, so as to evidence the timeliness and efficiency of procurements, as well as the invitation for bids and tender documents[31];
4. **Current procurements.** Information about procurements in progress;
5. **Submitted bids.** Registration of the date and time of bid submission and issuance of confirmation of receipt to bidders;
6. **Bid opening.** Records of bid opening include registering the correctness, acceptability and appropriateness of bids, automatic calculation of ponders and production of the bidders' ranking list. A printable version of bid opening records is available immediately to all present bidders;
7. **Contract award.** This tab provides all standard details that are typically included in the notification of contract award;
8. **Contract execution** includes information related to the financial management of contract, including payment details and quality control;
9. **Disputable bids.** Evidence of cancelled procurements, including the reasons for their cancellation and processing motions for the protection of bidders' rights.

Example of notification of legal violation

Automatic ponder calculation

30 Four priority groups are recommended.

31 Including data about commission members, criteria, documents to be submitted by bidders and invited bidders (in case of low value procurement).

HIGHLIGHTS OF THE KEY BENEFITS OF PROCESS-ORIENTED APPROACH	
Forward and backward planning	The software starts from the expected/desired date of contract execution. Backward planning and legal deadline condiderations help the users determine the date of public procurement commencement.
Constant monitoring of the procurement process	A report on the current status of procurement can be produced at any moment in ti me.
Notification of legal violations	The system automaticaly warns users of illegal activites and does not allow further action without correction.
Members of the Public Procurement Commission defined the whole year in advance.	The members of the Commission are busy people, with numerous other tasks and responsibilities pertaining to their job descriptions. This approach enables them to plan their time and dedicate full attention to the public procurement processes they participate in.
Direct contact with the financial department through online network	Allows for a quick approval process and more efficient financial management of contracts.
Evidence of the exact time of bid submission.	The software allows users to record the exact hour and minute of bid submission.
Transparent bid opening and evaluation	Bidders can monitor the process of bid opening on the screen. Bid opening record can be printed and distributed to bidders on the spot, immediately after bid opening.
Automatic ponder calculation	Expandable database of criteria; four types of ponder calculation
Contract execution monitoring	Coordination with financial department; records of quality control and payments made to contractors only upon quality check.
Organized data about planned, current and finalized procurements	Public procurement status available at any moment of time. All documents and contracts in one database.

4. Public Procurement Principles Embedded in the Process

Serbian municipal officials who are directly engaged in procurement processes, or who are in a position to influence decisions on contract awards to any extent are responsible for conducting their official duties with integrity, fairness and ability. These responsibilities arise from both the text of the Public Procurement Law and general principles of ethical behaviour for public procurement public officials.[32] During the design process, the tool was constantly tested for its compliance with the legal requirements summarized as follows:

10. **Economic and efficient use of public funds.**[33] Public procurement procedures and selection of bidders must be made within *the deadlines* and in the manner prescribed by the Public Procurement Law. As little costs as possible must be incurred when accomplishing a public procurement.
11. **Ensuring competition among bidders.**[34] Competition among bidders may not be limited without good reason. The restrictive tender procedure and discriminatory technical or evaluation criteria must not be used in an unwarranted manner. Persons who have been engaged in preparing all or any part of procurement's tender documentation may not subsequently participate as a bidder or subcontractor of a bidder in the tender procedure. Such persons may not assist a bidder in preparing its bid. Absent a special law or international agreement that authorizes such conduct, an ordering entity may not request that a bidder engage the services of a particular subcontractor, procure particular goods or services, or engage in any transaction that limits competition.
12. **Transparency of use of public funds.**[35] Public funds may be used only for the purposes stated in a contract concluded through a public procurement procedure. Notice of a tender for public procurement must be published in "The Official Gazette of the Republic of Serbia" and in one daily newspaper. Persons who participate in bidding under a public procurement procedure have the right to obtain certain information concerning the public procurement procedure, as specified by the Public Procurement Law.
13. **The principle of the equality of bidders.**[36] Ordering entities may not discriminate among bidders on the basis of territorial, subject or personal conditions, or arising out of the classification of work performed by a bidder. Absent authorisation by special regulations ordering entities may not stipulate the origin of goods or services. Ordering entities may not exclude bids of a bidder solely on the basis

32 Sundberg, R., M. Stanković, A. Protić and M. Todorović. 2003. Ethics and Principles in Public Procurement. DAI Inc., SLGRP, Belgrade. Serbia., p. 1–4.

33 Article 5 of the Public Procurement Law of the Republic of Serbia.

34 Article 6 of the Public Procurement Law of the Republic of Serbia.

35 Article 7 of the Public Procurement Law of the Republic of Serbia.

36 Article 8 of the Public Procurement Law of the Republic of Serbia.

that the bidder's legal residence is in a state with which Serbia has not concluded an agreement on the equal treatment of domestic and foreign bidders.

The table below provides an overview of the software features which support the principles in a process-oriented manner:

SOFTWARE FEATURES	HOW DO THEY SUPPORT THE PUBLIC PROCUREMENT PRINCIPLES?
THE PRINCIPLE OF ECONOMY AND EFFICIENCY OF THE USE OF PUBLIC FUNDS	
Easy and efficient management of data	Significant time saving – once data are entered into a database, they are available for all subsequent public procurement procedures
Unified database and efficient search system	„Everything in one place " – easy and quick data retrieval
Efficient planning tool	Annual planning and individual procurement planning (forward and backward) – no delays of procedures.
Preparation of complete and consistent tender documents	The document management system provides well-prepared document templates, compliant with the Law and other procurement regulations (by-law on Tender Document Preparation)
Clear definition of criteria	Database with criteria and automatic ponder calculation - decreased possibility of making mistakes; time-saving.
Tender documents collected from the ordering entity's website, trough log-in system.	*Money saving* – tender documents are free of charge; ordering entity does not need to print documents. *Time saving* – bidders do not have to come and pick hard copy of tender documents.
Automatic registration of bidder's data upon logging in	Once logged in, a bidder does not need to re-register upon collecting new tender documents.
Less bureaucracy	Less „manual work"; all documents are kept and managed directly from the database.
Possibility to centralize procurements	The software is particularly convenient for centralized procurements, which bring great savings of time and money (grouping of the same/compatible procurement subjects, one public invitation for all, one tender document package, quantity discounts; less work, etc.); better record-keeping and control.
Regular quality control through monitoring contract execution	Maximum value for money.
Financial management of procurement contracts	Efficient use of public funds and good functioning of ordering entity.
Timely and reliable public procurements	Efficient and economic management and good governance.
Regular public procurement procedures	No requests for the protection of bidders' rights → no delays in procedure → no delays in contract execution → no waste of public time and money

THE PRINCIPLE OF TRANSPARENCY IN THE USE OF PUBLIC FUNDS	
Information available through municipal website	Transparency in all phases of public procurement – citizens can monitor the use of public funds.
All documents in one place	Immediate access to all documents – easy system of monitoring and control.
Complete and clear invitation for bids	The public is acquainted with all procurement details.
Model contract as a part of tender document package	Everybody is aware of "adhesion contract content", which cannot be altered; Model contracts available in the database and can be compared to the contract signed by the winning bidder.
Clearly defined criteria in tender documents	Bidders can get acquainted with criteria in advance and assess their chances of winning.
Transparent bid opening and evaluation	Bids are publicly opened immediately after the expiration of the deadline for bid submission – bidders are present at the opening and can get a print-out of minutes of opening on the spot, directly from the software.
Procurement status can be viewed and printed upon request	Consistent control of the process - ordering entity representative, internal or external auditors can access all procedures at any stage of their development.

THE PRINCIPLE OF COMPETITION AMONG BIDDERS	
Publication of the annual procurement plan, prior notice and other relevant information on the website	Possibility for bidders to prepare in advance - better quality bids; more bidders
Tender documents available through the website	No territorial restrictions – all interested bidders are informed about ongoing procurements
Transparent steps in a public procurement procedure	Information about the process readily available to bidders.
Database of bidders	Greater availability of bidders in case of low value procurements; better possibilities for market research by ordering entity.

THE PRINCIPLE OF EQUALITY OF BIDDERS	
Equal terms for all bidders clearly defined on the website	Bidders are more motivated to compete
Database of human resources – potential members of procurement commission	Limited possibility for illegal participation of bidders in tender document and specification preparation.
Same criteria for all bidders and objective ponder calculation	No favoritism and discrimination of bidders
Adhesion contracts viewable upon request	No changes in terms of contract after award
Public procurements with no favoritism	Correct competition – "fair game"

Website of the Municipality of Vračar, City of Belgrade:
Annual Procurement Plan and Information about Ongoing Procurements[37]

5. Anti-corruption Aspect

5.1 Anti-corruption Provisions

Although its anti-corruption provisions are brief, the Serbian Public Procurement Law does label certain practices as being "corrupt"[38]:

14. A bidder's gift, or promise of a gift of money or a non-monetary item, to a current or former employee of the ordering entity, in order to influence the procedure, decision making or the subsequent course of the public procurement procedure.
15. A bidder's offer of employment, or any other benefit that may be expressed in terms of money, to a current or former employee of the ordering entity, in order to influence the procedure, decision making or the subsequent course of the public procurement procedure.

A bid must be rejected when there is "verifiable evidence" of such practices. The ordering entity must inform the Public Procurement Office about the matter.

The Law also restricts ordering entities' ability to release certain information that has been obtained from bidders[39]:

16. Information protected by other laws as confidential must be protected.

37 http://www.vracar.org.yu/javne-nabavke-realizovane.php

38 Article 17 of Public Procurement Law of the Republic of Serbia.

39 Articles 9, 10, and 82 of the Law.

17. Ordering entities are authorized to refuse release of confidential information received during the bidding process.
18. Names of bidders and their bids must be kept as a business secret until after the expiration of the deadline set for receipt of bids.

If the requirements stated above are not followed, the following penalties have been prescribed by the Law:

19. A public contract shall be null and void if it has been concluded in contravention of provisions of the Law which regulate the manner and procedure of awarding public procurement contracts[40];
20. The ordering entity may be fined if a) it awards a contract in violation of the principle of equality of bidders; b) it fails to protect data contained in the tender documentation to the extent required by Articles 9, 10, 11, 12 and 82[41]; c) it fails to notify the State Public Procurement Agency about bids rejected under the provisions of Article 15;
21. Responsible officials of the ordering entity may be fined 7,000 to 10,000 for violations defined in paragraph 1[42].

5.2 Solutions Provided by the Software

Well-organised data and easy access through its searching and sorting mechanism allow the software to generate statistical data, potentially indicative of corrupt activities[43].

Publication of data on the ordering entity's website can be viewed as a public scrutiny mechanism: it allows citizens to monitor how their funds are being spent, but also sends a message to the public about the willingness of local government to make their activities transparent.

Finally, it offers a possibility of introducing an overall control system through the GPRS system, or a similar model and automatic issuance of timely annual reports for the Public Procurement Agency.

40 Article 145, paragraph 1.

41 Article 146, paragraph 1, items 4, 5 and 7.

42 Article 146, paragraph 2.

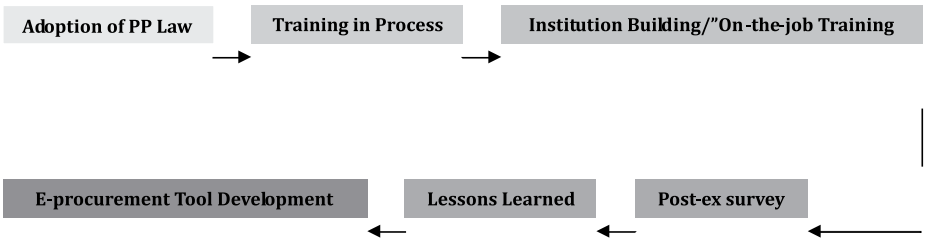
43 How long does a public procurement take? What percentage of employees' work time is dedicated to public procurements? How responsive have bidders been? What is the discrepancy between the planned and actual public procurement timelines? How frequently do bidders submit request for the protection of their rights? Why? The software provides statistics which can lead to conclusions to these and additional questions.

The table below gives an overview of the software's anti-corruption features:

SOFTWARE FEATURES	HOW DOES IT HELP PREVENT CORRUPTION?
A systemic solution for fighting and preventing corruption – clearly defined processes, responsibilities and full transparency of action	The software is a tangible, practical solution for controlling corruption in addition to legal/ethical provisions.
Automatic protection against misuse/abuse	The software warns users when they attempt to act against the law; Impossible to enter data in an illegal manner. Password protected system – only authorized personnel can have access to it.
Clearly defined responsibility	Clearly defined responsibility for each step of the process: ordering entity representative, responsible procurement official, members of Commission for each procuremenr, person(s) responsible for tender document preparation, specifications, etc.
Limited discretion of leadership and public procurement officials	Decreased possibility to conduct "emergency" procurements (not contained in the annual plan); less pressure on the officials by the leadership; limited possibility of awarding contracts at anyone's discretion.
Publication of information on the website	Information available to the public and all interested bidders.
Limited discretion	Leadership cannot decide about contract award at their own discretion
Decreased need for direct contact between ordering entity and bidders	Tender documents can be collected through the website (public procurement web-page) – less contacts with ordering entity – less possibilities for corruption
Confidentiality of data about bidders	Only authorized persons have access to the database. They select information which needs to be kept confidential and information of public interest to be exported to the website.
Clear track record of all activities.	Illegal activities can easily be tracked by consistent review of the process. All disputable procurements and motions for the protection of bidders' rights are regularly tracked.
Monitoring of corruption indicators	Regular process monitoring and monitoring of data on annual level or over a longer span of time can indicate potential corruption, such as collusion of bidders, participation of bidders in tender document preparation; unusually low or high pricing, etc.
Comparability of data about similar procurements across different ordering entities	Possibility for all ordering entities which use software will be able to compare data and processes.
Better control of public procurement procedures	Public scrutiny; status of public procurements can be checked by supervisors or auditors at any stage of the process.

6. Discussion

The electronic tool described in this paper can be viewed as a step further in implementing an integrated approach to curing and preventing corruption and designing a step-by-step anti-corruption "intervention" in the area of public procurement. In the previous paper, the authors illustrated the initial steps and a need for a long-term learning process. With the advanced steps shown here, we are moving forward from the "classroom techniques", establishment of an institutional framework (public procurement offices) and "on the job training" to more practical and process-oriented solutions reached via a set of lessons learned and conclusions obtained from the initial institution and capacity building activities and an analysis of the results of the post-training intervention survey. This is not to say that good, process-oriented training is not necessary when the electronic tool is deployed to a public procurement office or organisation. In fact, used together, both effective training and the software tend to empower and support public procurement workers to act more professionally and resist corrupt influences. Combined with other anti-corruption strategies in a holistic approach, as suggested by the following graphic, these tools can be powerful means to reduce or eliminate corruption.



Public Procurement Intervention: From Basic to Advanced Steps

Properly established and trained institutions are the basic "building blocks" which ensure minimum compliance with the legal/ethical requirements. However, though important as initial steps, mere provision of legislation, ethical guidelines, training and institutional framework do not sufficiently address the anti-corruption aspect, *per se*. It is unlikely that public procurement officials will be able to turn these into practice, unless they are given appropriate process-oriented tools which clearly distinguish among the parts of the process and guide them to the desired outcomes and impacts. While the outcomes can be summarized as proper implementation of the Law and compliance with the public procurement principles and procedures, the impacts are related to clear, documentable cost-savings of public funds, transparency as an established model of behaviour and increased competition as a firmly adopted and respected underlying principle of market economy.

Modernisation of public procurement processes and adoption of regulations in line with commonly accepted, international requirements should ultimately lead to development of an anti-corruption system which will be marked by reduction in illegal activities and increased awareness of society that corruption has harmful and costly consequences.

Currently, the software described in this paper is being implemented by the Serbian municipality of Vračar and will be introduced in several other Serbian municipalities[44]. The decision to introduce the software is generally being made by democratically oriented, forward thinking political leaders, who have a realistic understanding of the political points they gain by introducing such a transparent and efficient tool. Embracing pre-accession agreements with the European Union, the Republic of Serbia itself has recently taken steps towards introducing e-government, in co-operation with a number of academic institutions[45]. This top down approach might be conceptually wrong, because it does not contain an understanding of the processes which happen on the implementation level. The authors believe that, in order to capture the process in an integrated manner, e-government solutions must be sought bottom-up and should be based on practitioners' insight into a system as a whole, including its "corruption focal points".

The learning process and holistic interventions are yet to be developed. As public servants' positions in Serbia are not secure and are dependant on political changes, experienced public procurement officials are frequently replaced by persons who have no or little public procurement knowledge. Furthermore, there are still a number of municipalities which have received no training in the public procurement process[46]. The new Law on Public Procurement will be adopted soon[47]. Therefore, the demand for trainings in procurement processes is always greater than "supply". In order to be able to properly use the software, future users first need to be trained in how to operate it. This will require significant efforts put in organising the instruction and meeting the needs of a large number of ordering entities in Serbia[48].

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44 Valjevo, Sombor, Pećinci.

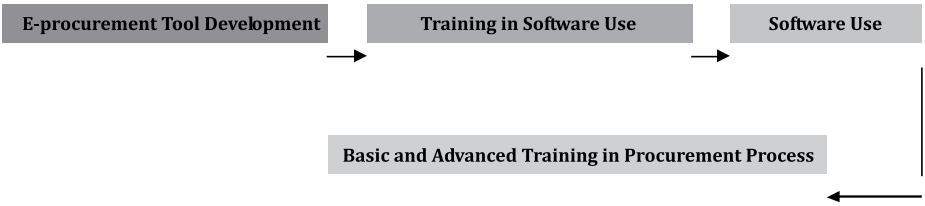
45 In early 2008, The Ministry of Telecommunications and The Information Society of the Republic of Serbia engaged several academic institutions to provide ideas for the design of Serbian e-government, including e-procurement software. The concepts were publicly presented at a conference Belgrade, in April 2008. http://www.mtid.sr.gov.yu/code/navigate.php?Id=490.

46 Serbian Public Procurement Agency and other, primarily, national level public institutions frequently organise trainings, but those are by no means process-oriented, interactive workshop-type trainings. Most of the time, they focus on specific legal provisions which are interpreted and discussed at various forums.

47 A draft is currently being considered by the Assembly – its adoption has been delayed due to the upcoming elections. Changes in the Law should not affect the designed software, since it is a process oriented tool, based on the universally applied public procurement procedures.

48 Currently, there are 12,000 ordering entities in Serbia. Originally, our software was designed for use by local governments but it is, generally, applicable to all public institutions, on all levels.

But, the software can also be viewed as a useful training tool – a medium for future basic and advanced courses in the public procurement processes.



Further Training Intervention Steps

As a part of the regional anti-corruption initiative, Development Consulting Group translated the book *Corrupt Cities*[49] and the manual/toolkit *Restore the Health of Your Organisation*[50] into Serbian language[51]. Another grant has recently been received by OSI/LGI to organise an anti-corruption awareness conference for Serbian mayors[52]. The public procurement software will be presented at the conference as an example of a process-based anti-corruption tool, tested and now used by the Serbian Municipality of Vračar[53].

Next planned steps include the selection of pilot local governments and implementation of an anti-corruption intervention, based on the methodology outlined in the book *Corrupt Cities* and the manual *Restore the Health of Your Organisation.* The results of these interventions, particularly in the area of public procurement, including an in-depth analysis of "corruption focal points", are expected to add new highlights and provide a basis for a definition of public procurement corruption indicators, which will be the subject of further research of the authors.

49 Klitgaard, Robert, Ronald McLean Abaroa and H. Lindsey Parris. 2000. Corrupt Cities: A Practical Guide to Cure and Prevention. The World Bank Institute and Institute for Contemporary Studies, Washington, D. C.

50 Fisher, Fred. 2006. Restore the Health of Your Organisation: A Practical Guide to Curing and Preventing Corruption in Local Government Communities. Volume 1: Concepts and Strategies. UN Human Settlements Programme and Partners Foundation for Local Development (FPDL).

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51 The effort was co-funded by DAI, Washington and OSI/LGI Budapest.

52 The Conference will be organised in co-operation with the Standing Conference of Towns and Municipalities.

53 The conference will host one of the authors of the book Corrupt Cities, Mr. Ronald Mc Lean Abaroa, the former Mayor of La Paz, Bolivia, and the Mayor of Vračar, Mr. Branimir Kuzmanović as keynote speakers.

7. Conclusion

A public process offers one or more "corruption focal points" to be exploited by persons responsible for maintaining and operating a system, or those who seek to use that system for their personal gain. Corruption focal points are steps, milestones or points at which persons with authority make decisions or take actions which have material consequences to both the institution which maintains the system and/or external entities affected by it. Those persons who work within the public process system and who have any authority or discretion over corruption focal points can use them for personal gain by allowing their discretion to be bought and subverted by outsiders, or by themselves taking actions or making decisions that materially benefit them. Powerful individuals or interests can subvert and use the entire system to materially benefit them or allies.

A public procurement software system, such as the one described in this paper, makes it harder for persons working within a public procurement system to manipulate corruption focal points; and more difficult for persons outside of the public procurement system to manipulate those inside the system, by limiting as much as possible, certain discretionary options at the corruption focal points; while, at the same time, shining the light of public scrutiny on some of the decisions and actions that are perceived as corrupt. Simultaneously, a public procurement e-system can offer real time savings and ease of operation to public procurement officials and practitioners. By emphasising and supporting good public procurement process, the public procurement software tool attacks corruption from the bottom up, complementing and supporting the "legislated ethics" approach that seeks to make people ethical via training them about ethical standards and good conduct.

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Annex 4

The Rule of Transparency in Financial Declarations Submitted by Heads of Communes in Podlasie Voivodship

– Case of Poland –

Jarosław Ruszewski, Piotr Sitniewski

In 2008, the Association "Centre for Social Activity PRYZMAT"[1] monitored fulfilment of the obligation to file financial declarations by Heads of Communes. These actions were undertaken within the project "*Transparency and competence – monitoring fulfilment of the rule of transparency by self-government administration of Podlasie Voivodship*" financed by the Stefan Batory Foundation[2].

Monitoring activities covered, in particular, the fulfilment of the obligation to make financial declarations filed by Heads of Communes public on the Internet websites of a given l.s.u.[3]. Taking a political system into consideration, there is no difference between a head of a commune, mayor and president. The name of an executive body depends on the size of the municipality. Therefore, although the term "Head of Commune" is used throughout this study, it refers to mayors and presidents of cities too.

Pursuant to Art. 24i of the m.s.a.[4], anyone interested may access a declaration filed by a self-government official. The information about a property's localisation or the residential address of a person filing a declaration is not disclosed. This is a new situation in Polish self-government, which originated only a few years ago because prior to that, filed financial declarations had been officially classified. Therefore they were not placed on any Internet websites and their accessibility was considerably

1 www.pryzmat.org.pl

2 The entire report may be downloaded from www.jawnosc.pl in a Polish version.

3 l.s.u.'s – the abbreviation for a local self-government unit. In the Polish system there are municipalities/communes, poviats/districts and voivodships/regions. The research covered only the basic level of self-government, which is municipality.

4 The Act on Municipal Self-Government of 8 March 1990, i.e. Journal of Laws – Dz. U. of 2001, No. 142, item 1591. This Act is abbreviated to m.s.a.

limited. The current legal status concerning filing financial declarations by local self-governments is a result of legislative changes that have been in force since 2003, according to which data included in the declarations are made available to BIP[5]. The central system of access to public information via the Internet website www.bip.gov.pl has been created, via which we will find a website of any public institution in Poland that is obliged to have its own Internet website.

The research covered declarations filed for 2006 and was carried out between 14 and 28 February 2008. The research dates coincided with the end of April 2008, which was the deadline for filing declarations for 2007. That is why in many cases they were not yet placed on the Internet websites. The research results have not been verified subsequently. Therefore, if after that time, filed declarations have been modified or amended in any way, such changes have not been included therein.

At the beginning, it is worth summarising Polish valid laws regulating the discussed issues.

The procedure for filing declarations (legal bases)

Below, we are graphically presenting general rules of filing financial declarations by obliged self-government officials, including Heads of Communes.

I. Who Files a Financial Declaration? *(Art. 24 h item1 of m.s.a.)*

1. councillor
2. Head of Commune
3. deputy Head of Commune
4. chief administrative officer
5. treasurer
6. head of organisational unit
7. executive officer and member of an organ managing a municipal legal person
8. person making administrative decisions on Head of Commune's behalf

II. To Whom? *(Art. 24 h item 3 of m.s.a.)*

1. councillor – council chairman
2. Head of Commune, municipal council chairman – voivod[6],
3. deputy Head of Commune, chief administrative officer and treasurer

5 Hereinafter referred to as the abbreviation BIP.

6 Head of Commune is a representative of the Government in a local area who is appointed by the Prime Minister; at the same time they perform the function of a watchdog over l.s.u.'s located within the territory of a given voivodship.

4. head of municipal organisational units (head of commune)
5. executive officer and member of an organ managing a municipal legal person
6. person making administrative decisions on Head of Commune's behalf

III. When? *(Art. 24 h item. 4 of m.s.a.)*

a) Councillor and Head of Commune
   - file their first financial declaration within 30 days from the day they have taken their pledge;
   - file subsequent financial declarations every year by 30 April as of 31 December of the previous year, as well as 2 months before the end of their term of office.

b) Deputy Head of Commune, municipal chief administrative officer, municipal treasurer, head of municipal organisational unit, executive officer and member of an organ managing a municipal legal person and person making administrative decisions on Head of Commune's behalf
   - file their first financial declaration within 30 days from the day they have been appointed to the post or employed therein;
   - file subsequent financial declarations every year by 30 April as of 31 December of the previous year, as well as on the day they have been dismissed or their employment contract has been terminated.

IV. Who Analyses Financial Declarations? *(Art. 24h item 6,7,8 of m.s.a.).*

1. Data included in financial declarations are analysed by their recipients. They hand over one copy to the Inland Revenue competent over the place of residence of a person filing a financial declaration.
2. Data included in financial declarations are also analysed by the Inland Revenue competent over the place of residence of a person filing a financial declaration.

Analysing a financial declaration, the Inland Revenue also reviews a tax return on income obtained in a tax year (PIT) of the spouse of a person filing the declaration.

V. The Rigths of the Subject Analysing Declarations *(Art. 24h item 7–10)*

1. The subject carrying out the analysis (…) is entitled to compare the content of the analysed financial declaration and the enclosed copy of a tax return on income obtained in a tax year (PIT) with the content of previously filed declarations.
2. In case of any doubts or suspicions as to the accuracy or truth of the information provided by a person filing a financial declaration, the subject carrying out the

analysis files a motion to the head of the Fiscal Inspection Office for the declaration's revision.

3. By 30th October of each year the subject carrying out the analysis of financial declarations provides the municipal council with information about:
   a) persons who have failed to file a financial declaration or filed it after the deadline,
   b) inaccuracies found in analysed financial declarations
   c) actions undertaken in connection with found inaccuracies

VI. Who Keeps Declarations? *(Art. 24 i of m.s.a.)*

Head of Commune – voivod and municipal council chairman hand over copies of financial declarations they have received to the Head of Commune.

Financial declarations are kept for 6 years.

VII. The Effects of Failure to File a Declaration on Time *(Art. 24k of m.s.a.)*

1. councillor

Art. 190 item 1 point **1a) of the Electoral Law to Commune Councils, District Councils and Regional Assemblies of 16 July 1998 set forth the following:** failure to file a property statement within time frames specified by separate provisions (…) **RESULTS IN THE EXPIRY OF A MANDATE (since 30. 10. 2006).** The expiry of a councilor's mandate is ascertained by council's resolution taken not later than within 3 months from the day the cause of the expiry has occurred.

This provision was **found to be inconsistent with Art. 31 item 3 and Art. 2 of the Republic of Poland's Constitution** by the judgment of the Constitutional Tribunal of 13 March 2007, **AND IS NOW NULL AND VOID.**

2. Head of Commune

Art. 26 item 1 point 1a) of the Act of 20 June 2002 on Direct Elections of Heads of Communes, Mayors and Presidents of Cities set forth the following: failure to file a property statement within time frames specified by separate provisions (…) **RESULTS IN THE EXPIRY OF A MANDATE (since 30. 10. 2006).**

The expiry of a mandate is ascertained by municipal council's resolution taken not later than after 1 month from the day the prerequisites for the mandate's expiry have occurred.

This provision was **found to be inconsistent with Art. 31 item 3 and Art. 2 of the Republic of Poland's Constitution** by the judgment of the Constitutional Tribunal of 13 March 2007.

VIII. What Should Be Enclosed With a Financial Declaration?

Head of Commune – is obliged to enclose with the first financial declaration the information about discontinuance to conduct economic activity if he or she conducted such an activity before the day he or she was elected.

The research results

The research has been divided into two parts.

The first part of the research – contained 4 questions whose purpose was to examine the fulfilment of the obligation to file a declaration with regard to punctuality, availability of the Internet website, comprehensiveness and technical issues. The first part did not refer to the content of filed declarations as such. It covered the following questions:

Question number one

'Which sub page contains a financial declaration?'

Our task was to examine the scope of availability of a financial declaration. How many categories on a website must be searched to find it?

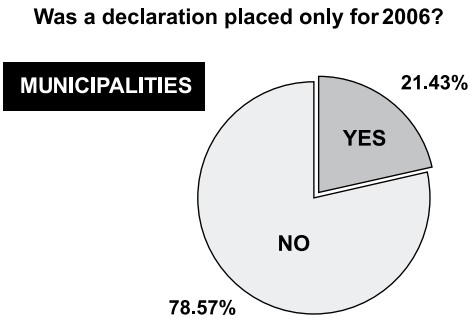
The most frequent result was 3 (in 39 municipalities). Generally, finding a declaration filed by the Head of Office did not cause problems, even though it often required much time. Sometimes only the surnames of individuals were given without their posts. On Kulesze Kościelne municipality's website we can see that Ms. Barbara Wasiulewska, MA Eng., is Head of Commune. After opening one by one the following sections: *financial declarations, property statements and heads*, it might have seemed that these were the right places to look for a declaration of Head of Office that the Head of Commune undoubtedly is. It turns out that the declaration of Ms. Wasiulewska is in the section *employees*, which is not inconsistent with valid laws because Head of Commune is also a self-government employee. Nevertheless, it would have been more intuitive to have placed Head of Commune in the section *office executives*.

Question number two

'Do these declarations refer only to 2006?'
'If not, what years do they refer to?'

Relevant valid laws do not contain any regulations on whether the Internet website should include declarations for the current year only or for previous years as well. Declarations are kept for 6 years. However, it is hard to interpret this entry as a basis for the principle according to which it also refers to the obligation to place the declarations on the Internet website. In our opinion, due to the lack of an unequivocal position thereon by the legislator, we should adopt a rule according to which state-

ments filed by officials for a given term of office are stored on the website. The term of office covers a period of 4 years beginning from the day of election that is called by the Prime Minister. Therefore, self-governments should be expected to create examples of good practices in this scope. In the discussed scope the situation is satisfying. The vast majority of l.s.u.'s not only places declarations on the Internet for a given year but also for previous years.



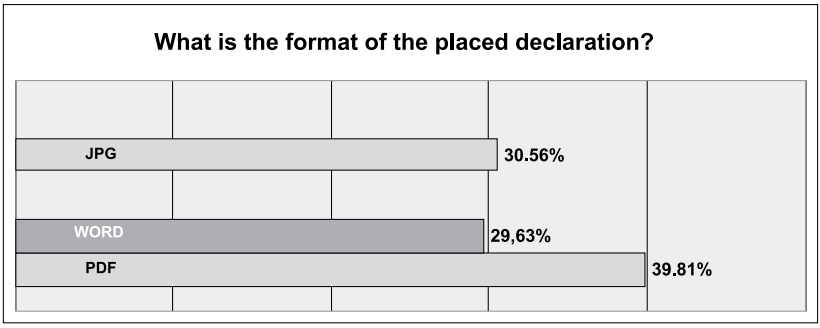
Question number three

'What format were the accessible declarations placed in?'

WORD and PDF were the prevailing types of file formats. Some declarations were also placed in a JPG format.

It is difficult to say which format is the most appropriate. It is most important that a file not to be too large as, otherwise, it effectively discourages users from downloading it. There were cases when the entire declaration was placed in a 10 MB file.

In our opinion, the best solution is to scan the original copies of filed declarations so that it is possible to access an original document and not just the information about it.



Question number four
'Is the date of submission visible on the placed declaration?'
'If yes, how many days before 30 April was it submitted?'

Pursuant to valid regulations, the declaration must be submitted by 30 April of the year following the year it refers to.

The term for submitting the declaration has been linked with the term to settle natural persons' income tax. Such a situation is very important for individuals who obtain additional income, apart from income obtained for holding a mandate of Head of Commune or councillor, or being employed in a self-government office. If, on the other hand, employment in a self-government (broadly understood, including performance of a representative mandate) is the only source of income, the declaration may already be submitted at the beginning of January.

We took the information about the date a declaration has been submitted from a note included on the declaration itself, provided the form's scan had been placed on a website. In such a case there were no doubts as to the term since each declaration was affixed with a seal. On the other hand, if a document about the content of the declaration was placed on a website instead of an original copy, we relied on the date given there. **We hereby postulate that all submitted declarations are scanned** and placed in their original versions on Internet websites after they have been appropriately edited to be minimised.

Among the examined l.s.u.'s **all declarations have been filed on time**.

Regarding the number of days before the deadline, the situation was very varied.

We have divided the time of declaration submission into **3 time brackets**:

1–10 April,

11–20 April,

21–30 April.

MUNICIPALITIES	
Time period	Number of l.s.u.'s
1–10 IV	16
11–20 IV	24
21–30 IV	58

There are considerable discrepancies between individual l.s.u.'s. A large number of declarations were submitted on the last day of the statutory term (20 l.s.u.'s). Even though this is consistent with the law, **we hereby postulate that submitting declarations should not be done on the very last day**, which will help avoid unnec-

essary misunderstandings in case of any doubts as to the punctuality of a submitted declaration.

The second part of the research – in this part we have *stricte* examined the content of a financial declaration and it contained 11 questions.

In this study we will present the results of only 7 basic questions concerning the content of the declaration.

For a better understanding of the economic situation in Poland, it is worth knowing that the average monthly remuneration in the sector of enterprises in Poland amounted to PLN 3241.81[7] in October 2008.

Question number one

"Does the declaration include information about pecuniary means possessed by Heads of Communes in PLN?"

If yes:

"What amount is it?"

"Is it given precisely or is it rounded up/down?"

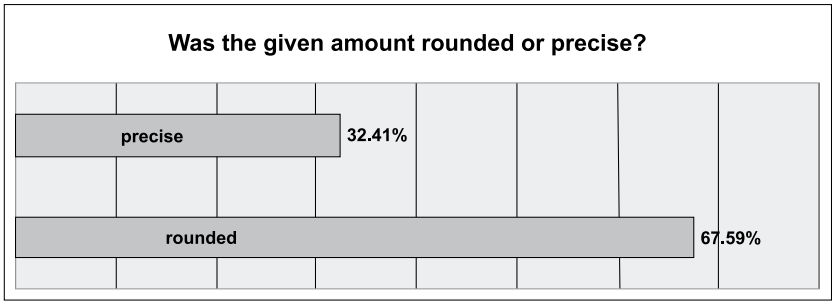
This question was to show whether a person submitting a financial declaration declares possession of any pecuniary means on his or her account in PLN. If any amount was declared, the research result was positive. The l.s.u. whose heads did not declare any amount were treated as negative results. Second, this question's aim was to establish the average amount declared in the declaration. The Act was constructed unfortunately in the sense that it requires information about pecuniary means on one's account as of 31 December of the previous year. Therefore, stating the possession of PLN 0.00 may be true, because it was a factual amount of money held on one's account at this time.

The construction of the second part of the question assumed that individuals who were giving a precise amount were closer to the real declared amount than those who gave rounded amounts. Life experience proves that the money on one's personal account very rarely equals even sums as, for example, 20000 or 45000. Generally, the account one uses every day oscillates between *precise amounts* (as we called them in the research), that is, e.g. 34555, 12345, 23999, etc.

Nevertheless, the results of this part of the research provide the material upon which we may draw certain conclusions, which, however may not be generalised.

In 67.59 % of the declarations in municipalities, the declared amount was rounded up/down whereas in 32.41 % - it was precise.

7 www.stat.gov.pl



Over 70 % of Heads of Communes declared the pecuniary amounts they possessed in their declarations. Others wrote in this column that they had no money. Very interesting situations sometimes resulted from the declarations' contents. One mayor said he had no money on his account, despite the fact he revealed an income of approximately 160 000. Is working as a Head of Commune therefore unpaid? This is more proof that the relevant laws are apparently not perfect.

The average declared amount in the financial declaration was PLN 53655.

Question number two

'Were any securities declared?'
If yes: *'In what amount?'*

As few as 5 % of declarations contained information about securities held by Heads of Communes. The average declared value of securities amounted to PLN 107 193, which is quite a significant amount. It is worth noticing, however, that this value is considerably overestimated by declarations of two heads of commune, where they declared values amounted to 334156 and 217000 respectively. Taking into consideration all examined l.s.u.'s, the information about securities was provided only in 6 cases.

Question number three

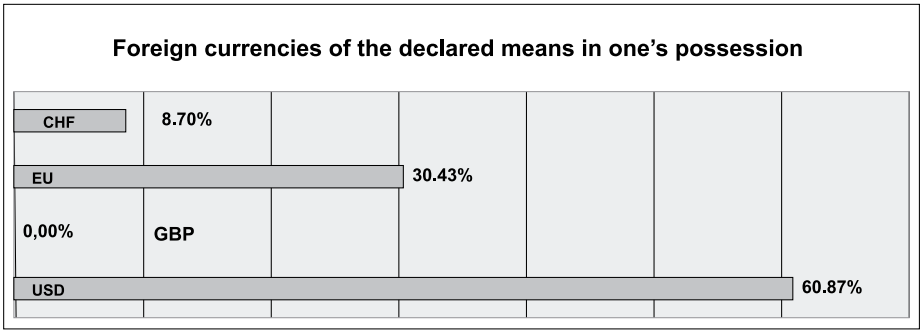
"Was the possession of pecuniary means in foreign currency declared?"
If yes:
"In what amount?"
"Is it given precisely or is it rounded up/down?"
"What is the currency of the declared means?"

The person submitting the declaration is obliged to provide information on the pecuniary means he or she has collected in a foreign currency. The research refers to foreign currency in one's possession, but additionally we have examined which foreign currency the means were most often collected in.

In over 21 % of all financial declarations there appeared information about means possessed in a foreign currency.

American Dollars (USD) proved to be the most common currency with over 60.87 % of all cases. Euros (EU, 30.43 %) were the second most common currency as well as Swiss Francs (CHF, 8.70 %). None of the declarations contained information about money possessed in British pounds.

The average value of the collected foreign currency amounted to 4942. In 18 out of 23 declarations the given amount was rounded up/down whereas in 5 – it was given precisely.



Question number four

'Does the person submitting the declaration conduct an economic activity?'

If yes:

'What income has he or she obtained from this activity?'

The form of a financial declaration sets forth the duty to provide information on any conducted economic activity, its legal form, subject, and whether it is conducted in person or together with other individuals. At the same time, valid regulations ban Heads of Communes from conducting economic activities for their own account or together with other individuals during their terms of office, as well as managing such an activity or being a representative or an authorised person to conduct such an activity. Additionally, it should be emphasised that violation of the statutory ban on carrying out an economic activity by a Head of Commune takes effect upon the expiry of his or her mandate. If a Head of Commune had carried out an economic activity before the day he or she was elected to this post, they are obliged to terminate it within 3 months from the day they take their pledge. If a Head of Commune does not terminate an economic activity in this timeframe, the municipal council ascertains the expiry of his or her mandate by resolution taken not later than one month into this term.

It seems that **the legislator has wrongly formulated the content of the financial declaration in this respect**. If a Head of Commune provides information about any economic activity, it would only be the activity he or she "conducted" before it was terminated in connection with taken his/her pledge. The economic activity re-

ferred to in point V of the form excludes a productive activity in agriculture and in plant and animal produce in the form and scope of a family farm. Income obtained from this activity should be revealed in a separate point VIII. Thus the whole point V of the form of the financial declaration for Heads of Communes lacks rationale in self-government practice, and should be amended as soon as possible. For the above reasons, **none** of the examined financial declarations **provided information about conducting an economic activity**, which seems to be the correct phenomenon and the correct reaction to the legislator's inconsistency in this respect.

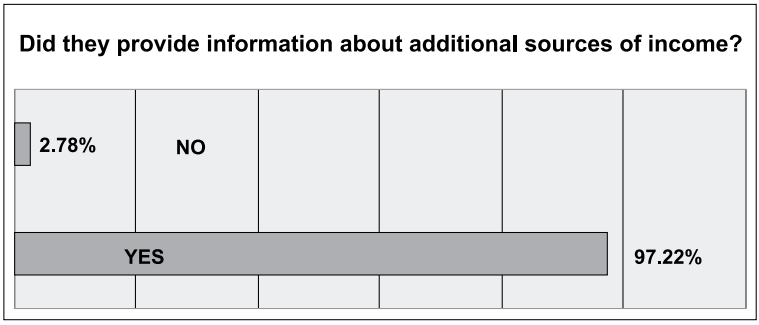
Question number five

'Did the person submitting the declaration obtain other income from employment or other earnings or activities?'

If yes:

"What was the amount of the obtained income?"

The obligation to provide information on this results from point VIII of the form of the financial declaration. All other sources of income, apart from those which have already been included in this declaration under other points, should be revealed here.



Only in three l.s.u.'s did the person submitting the declaration provide information about the lack of any additional sources of income. The Head of Janów commune possesses no pecuniary means, either in Polish or foreign currency; what is more, he has not obtained any other income. This would mean that his work in this post is unpaid, which, of course, is not out of the question, as there have already been such cases in Poland. Whereas the Head of Perlejewo commune declared he possessed PLN 70 000 on his account he declared that he had not obtained any other income either. Having 15 000 and paying off instalments for a car, the Head of Juchnowiec Kościelny commune did not obtain any income either. *Ipso facto*, we deal with cases where performing the function of Head of Commune is totally unpaid. The Head of Krypno commune earned PLN 980 in a year; he did not have any cash on his account but possessed a car worth 17000. Thus the question arises – what is

the main source of income of the Head of Krypno commune? It is highly unlikely that these people perform the function of Head of Commune unpaid. It is probable they might have filled in their declarations incorrectly, as in point VIII of the form they should have provided information about any income they have obtained from performing the function of Head of Commune, as was reported by the vast majority of Heads of Communes in other municipalities of the Podlasie Voivodship.

The above, as well as other cases, again prove that the obligation to submit declarations is not always treated appropriately. Declared data certainly does not reflect reality. This situation is similar to the time of regulations prior to 2003 when declarations were not public, and actually many of them contained entirely fictitious information as there was no legal mechanism to verify them at that time.

We hereby postulate that all declarations be filled in exclusively in bold letters, or typed on a computer or a typewriter, then scanned and placed on the Internet. Sometimes the declared amounts are so illegible that it is hard to read the content of a declaration.

The situation in individual l.s.u.'s is presented below. We have limited ourselves to presenting 6 l.s.u.'s with the lowest and highest incomes declared.

Krypno	988,67
Śniadowo	6212
Lipsk	10475
Burmistrz Hajnówki	**175384**
Poświętne	**175551**
Sejny wójt	**212845**

The average declared value amounted to 98373.56.

Question number six

'Does the person submitting the declaration possess an element of movable property of value exceeding PLN 10.000?'

If yes:

"What is its value?"

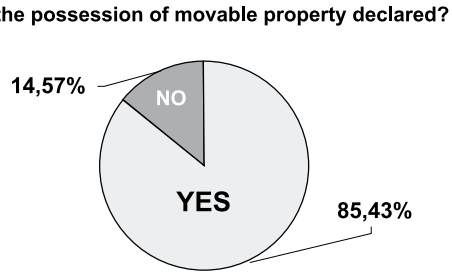
"Is it a motor vehicle?"

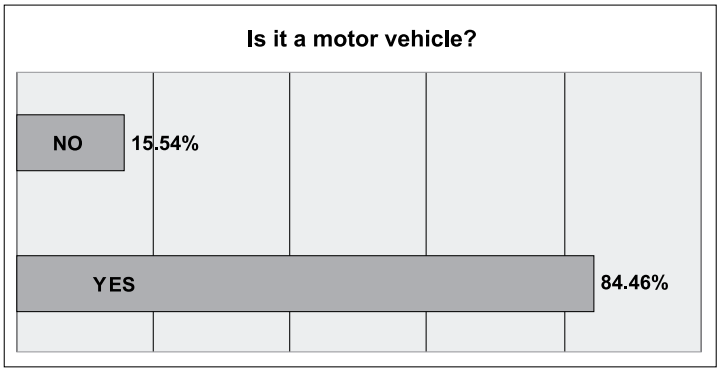
"If it is not a motor vehicle, what other movable property is it?"

The person submitting the declaration is obliged to provide information about the elements of movable property exceeding a value of PLN 10 000. If this is a motor vehicle – the make, model and year must be provided too. If someone declared possession of several vehicles, we added their total value.

In the research conducted, over 85 % of the examined declarations contained a positive answer. In over 84 % cases it was a motor vehicle. Other cases most often included a tractor, agricultural machines, furniture or engines. In one case it was a collection of books.

Only in 23.86 % of positive answers was the information about the value of the declared property also provided. More often than not, the declaration only contained a vehicle's make and the year without its value. Such a statement, however, may hardly be treated as a reproach since none of the valid provisions specifies which source is reliable in order to estimate the value of property in one's possession. Therefore we often come across the word "approximately (…)".





The average value of the declared movable property amounted to PLN 25750.

Question number seven

"Did the person submitting the declaration provide information about pecuniary liabilities exceeding PLN 10 000?"

If yes:

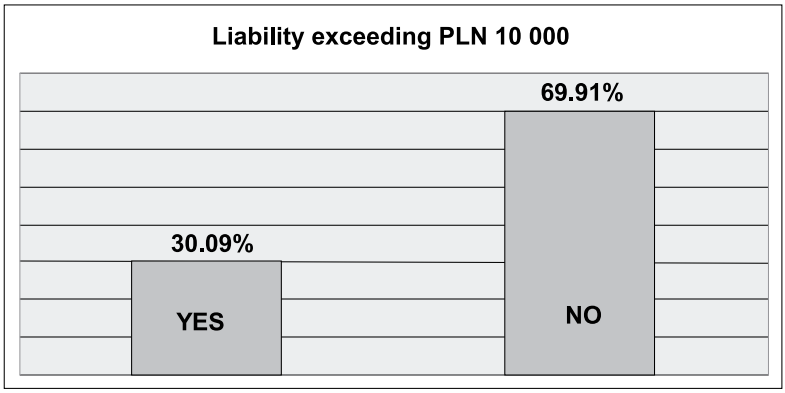
"Is it a credit or a loan?"

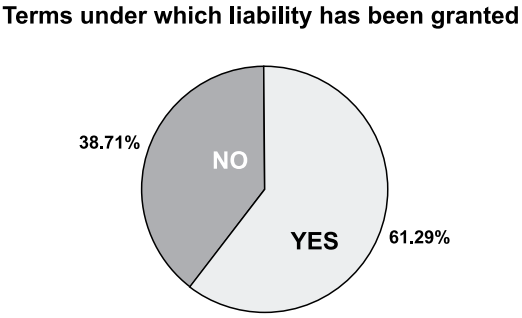
"What is the value of this liability?"

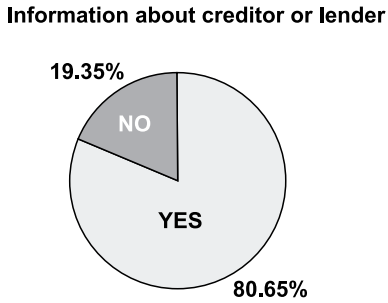
"Is there information about the terms under which they have been granted?"

"Is there information about a creditor or a lender?"

Over 30 % of the persons submitting declarations have incurred a liability of value exceeding PLN 10 000. The vast majority of incurred liabilities concerned a credit whereas a loan was taken only in a few cases (93.55 % - a credit, 6.45 % - a loan). The average value of incurred liabilities amounted to PLN 78616. Over 61 % of those submitting a declaration provided information about the terms under which they had been granted these liabilities, whereas over 80 % informed about creditors or lenders.







Summary

Despite some critical remarks, on the whole, the conclusions from the conducted monitoring activities are positive. This obligation is fulfilled appropriately, and occurring deficiencies should not be generalised. A great interest in the content of filed financial declarations as well as the specific "media capacity" of this issue made the vast majority of those obliged to fulfil this duty correctly. From a time perspective, making the content of the declarations public appears to have been a move in the right direction. Making this information public enables anyone interested in it to access its content.

Negative Phenomena

1. Wrong terminology

The collective term *declarations/statements of city office* is used. It is a substantial mistake because the office, as such, does not submit any declarations, only the individuals employed there. Therefore such a collective term should be replaced by *office employees*, whereas with reference to Heads of Commune and other executive officials (treasurer, chief administrative officer, deputy Head of Commune) the term *office executives* would certainly be more appropriate. A Head of Commune's declaration is very often placed in a large group of other employees, and if we do not specify who the Head of Commune is at the beginning, we will not know whose declaration it is. Such a situation raises suspicions as to whether it is an attempt to conceal the contents of the declaration in a mass of other documents.

2. Illegible filing

We postulate that the declarations should be typed on a computer or a typewriter. Some of them have simply been impossible to decipher.

3. Mixing the year of submitted declarations

There were cases where the year 2006 was described as a category referring to the year a declaration had been submitted instead of the year it had been submitted

for. In our opinion, the issue should be standardised in this respect, and the date included in a category on a website should refer to the year a given declaration is filed for.

At the same time we postulate that it should be clearly distinguished which declarations have been filed at the beginning of the term of office, which have been submitted annually by the end of April, and which have been submitted towards the end of the term of office. The best solution would be to connect declarations filed in those three different periods directly with a given person, which would make the situation clear and simple.

4. Improper concealment of declarations

Pursuant to Art. 24i item 1 of m.s.a., the information included on the financial declaration is public, excluding the information about the place of residence of the person filing it, as well as localisation of immovable property/real estate. Other information should be commonly accessible. In one municipality, the information about the Head of Commune's birthday was blacked out, which is absolutely inexplicable.

A fundamental postulate addressed to persons fulfilling the above mentioned obligations – financial declarations should be assigned to one person instead of being placed in a large group. The possibility to track declarations for given years, corrections and possible information from a supervisory body should be provided in the same place. Unfortunately, it is often not the case. On the one hand, the existing deficiencies are the obliged persons' fault, whereas others are the result of the legislator's negligence because there is no standardisation in this respect. This is why many issues are regulated differently, which means that the same obligation may assume a different form.

Annex 5
Prosecution Cases

Anna Hermaniuk

Please find below the cases and regulations of three criminal codes which should be applied. Please answer the questions.

CASE 1: A government official who is in charge of the construction of new infrastructure projects decides to use his office and carry out a project which could result in a bribe for him. He tells one of the contractors that the contractor can be awarded the project on a non-competitive basis if the contractor includes in the contract price a payment for him personally of an amount equal to 25 % of the contract price. To take the major bribe, the official makes sure that the design will result in a project which is unnecessarily large and complex. The contractor agrees to pay the bribe and is awarded the contract.

Should the prosecuted government official face the higher penalty for maximising the bribery?

CASE 2: Mr Pierre Amelie is an officer in a local authority, where he is responsible for making a list of companies which fulfil conditions to sign contracts with local authorities. He receives a call from Mr Henry Rogers, who is the owner of a company which tries to sign important contracts with the authority. Mr Rogers invites Mr Amelie for lunch the next day. They meet, drink a glass of wine and have a conversation about cooking. Mr Rogers pays the 30 Euros bill for their lunch. The situation repeats itself every Wednesday for six months. Mr Amelie puts Mr Roger's company on the authority contract list. This helps for Mr Roger to apply for a very lucrative contract and finally sign one.

Should Mr Amelie be prosecuted for taking a bribe?

Analyse the regulations below and:

- Compare who can be prosecuted for passive bribery under the provisions of German, Polish and Latvian criminal codes.
- Decide which regulations provide the most "appropriate" penalties for passive bribery in your opinion.

Criminal Code of the Federal Republic of Germany

Title Two – Terminology

Section 11- Terms Relating to Persons and Subject Matter

1) Within the meaning of this law:

2. *a public official is whoever, under German law:*
   - *(a) is a civil servant or judge;*
   - *(b) otherwise has an official relationship with public law functions or;*
   - *(c) has been appointed to a public authority or other agency or has been commissioned to perform duties of public administration without prejudice to the organisational form chosen to fulfil such duties;*
3. *a judge is, whoever under German law is a professional or honorary judge;*
4. *a person with special public service obligations is whoever, without being a public official, is employed by, or is active for:*
   - *(a) a public authority or other agency, which performs duties of public administration; or*
   - *(b) an association or other union, business or enterprise, which carries out duties of public administration for a public authority or other agency, and is formally obligated by law to fulfil duties in a conscientious manner;*
5. *an unlawful act is only one which fulfils all the elements of a penal norm;*
6. *the undertaking of an act is its attempt and completion;*
7. *a public authority is also a court;*

Chapter Thirty – Crimes in Public Office

Section 331 Acceptance of a Benefit

(1) A public official or a person with special public service obligations who demands, allows himself to be promised, or accepts a benefit for himself or for a third party for the discharge of a duty, shall be punished with imprisonment for no more than three years or pay a fine.

(2) A judge or arbitrator who demands, allows himself to be promised or accepts a benefit for himself or a third party in return for the fact that he performed, or would in the future perform a judicial act, shall be punished with imprisonment for no more than five years or pay a fine. An attempt shall be punishable.

(3) The act shall not be punishable under subsection (1), if the perpetrator allows himself to be promised or accepts a benefit which he did not demand and the competent public authority, within the scope of its powers, either previously authorises the acceptance, or the perpetrator promptly makes a report to it and it authorises the acceptance.

Section 332 Taking a Bribe

(1) A public official or person with special public service obligations who demands, allows himself to be promised or accepts a benefit for himself or for a third party in return for the fact that he performed or would in the future perform an official act, and thereby violated or would violate his official duties, shall be punished with imprisonment from six months to five years. In less serious cases the punishment shall be imprisonment for no more than three years or a fine. An attempt shall be punishable.

(2) A judge or an arbitrator, who demands, allows himself to be promised or accepts a benefit for himself or for a third party in return for the fact that he performed or would in the future perform a judicial act, and thereby violates or would violate his judicial duties, shall be punished with imprisonment from one to ten years. In less serious cases the punishment shall be imprisonment from six months to five years.

(3) If the perpetrator demands, allows himself to be promised or accepts a benefit in return for a future act, then subsections (1) and (2) shall already be applicable if he has indicated to the other his willingness to:

1. violate his duties by the act; or

2. to the extent the act is within his discretion, to allow himself to be influenced by the benefit in the exercise of his discretion.

Criminal Code of the Republic of Poland

Chapter XIV. Explanation of terms of the law

Article 115.

§ 19. A person performing public functions is a public official, a member of the local government authority, a person employed in an organisational unit which has access to public funds, unless this person performs exclusively service type work, as well as another person whose rights and obligations within the scope of public activity are defined or recognised by a law or an international agreement binding for the Republic of Poland.

Chapter XXIX Offences against the Functioning of the State and Local Government Institutions

Article 228.

§ 1. Whoever, in connection with the performance of a public function accepts a material or personal benefit or a promise thereof, or demands such a benefit shall be subject to the penalty of deprivation of liberty for a term of between 6 months and 8 years.

§ 2. In the event that the act is of a lesser significance, the perpetrator shall be subject to a fine, the penalty of restriction of liberty or the penalty of deprivation of liberty for up to 2 years.

§ 3. If the act specified in § 1 has been committed in connection with a violation of law, the perpetrator shall be subject to the penalty of deprivation of liberty for a term of between 1 and 10 years.

§ 4. The penalty specified in § 3 shall also be imposed on anyone who, in connection with his official capacity, makes the performance of his official duties conditional upon receiving a material benefit.

§ 5. Whoever, in connection with the performance of a public function accepts a material benefit of considerable value or a promise thereof, shall be subject to the penalty of deprivation of liberty for a term of between 2 and 12 years.

The Criminal Code of the Republic of Latvia

Chapter XXIV – Criminal Offences Committed in State Authority Service

Section 316. Concept of a State Official

(1) Representatives of State authority, as well as every person who permanently or temporarily performs his or her duties in the State or local government service and who has the right to make decisions binding on other persons, or who has the right to perform any functions regarding supervision, control, inquiry, or punishment or to deal with the property or financial resources of the State or local government, shall be considered to be State officials.

Section 320. Accepting Bribes

(1) For a person who commits accepting a bribe, that is, intentionally, illegally accepting the offer of material value, property or benefits of another nature, where commission thereof is by a State official personally or through an intermediary, for the performing or failure to perform some act in the interests of the giver or offerer of the bribe or the interests of other persons by using his or her official position, the applicable sentence is deprivation of liberty for a term not exceeding eight years, with or without confiscation of property.

(2) For a person who commits the same acts, if commission thereof is repeated or on a large scale, or if a bribe is demanded, the applicable sentence is deprivation of liberty for a term of not less than three and not exceeding ten years, with confiscation of property.

(3) For a person who commits the acts provided for in Paragraphs one and two of this Section, if they are associated with extortion of a bribe, or if commission thereof is by a group of persons pursuant to prior agreement, or by a State official holding a responsible position, the applicable sentence is deprivation of liberty for a term of not less than eight and not exceeding fifteen years, with confiscation of property.

Annex 6
Concept of Control Within the Public Entity
– Case of Romania –

Adriana Tiron Tudor

Abstract

We refer in our research to control within entities by the intermediate specific topics of internal audit and internal control. Only in the last half of the twentieth century, has so much attention been directed to them.

One of the main management tasks is to keep under control the whole entity. It is now well established that management itself is directly responsible for the design, maintenance and evaluation of its internal control systems. Developing these management tasks, management is mandatory to make periodic evaluations of the control systems and to report on weaknesses. Doing so provides management with opportunities to understand its own programmes and operations. Neglecting understanding often leads to serious problems. Internal auditing focuses on evaluation of the system of internal control.

Our initial hypothesis was formulated as follow:

In a modern public entity, these two activities are developed, the role of internal controller and internal auditor are well defined and known by the internal and external environment. The internal controller and auditor conduct their activities guided by an ethical code and professional standards.

Our intention was to check if these hypotheses are valid in the Romanian public sector entities.

The research was carried out on the basis of the available sources and research methods (historical analyses, benchmarking with international references). First of all we analysed the degree of correspondence between international and national codes of ethics. The second step in our research was the determination of how internal audit, a new activity for Romanian public entities, was implemented and

perceived in public entities. For the second step we collected data by interviewing internal auditors and managers of public entities, by analyzing the country reports about implementing PIFC and Finance Minister reports about the harmonisation degree of the national legislation with the acquis communautaire and the development of the institutional infrastructure necessary for its implementation by the time of accession.

The main results of the research are that in Romania, for public sector internal audit and controls, there exists a legal and an institutional framework harmonised with international regulation. Following the recommendations of international professional organisations and due to national differences of culture, language, and legal and social systems, the Romanian Ministry of Finance developed its own Code of Ethics for internal public auditors, which best fits the Romanian environment. Another result regards the way internal audit is perceived and about the independency of internal auditors.

We conclude that by norms, public internal audit is functionally independent. Practically, the public internal auditor is not entirely viewed as the first advisor of the entity manager. A misconception exists at the level of the entity's manager. There is also negative behaviour which faces the public internal audit role and functions: the public internal audit is simply assessed as being a common component of the internal control system under the entity's manager. Unfortunately, the internal control and audit is not totally implemented and operated. The functional independence of the public internal control (face to the entity's manager) is more declared and non-rejected than understood. As result, many audit reports are only convenient and do not have the expected impact on the improvement of the entity's activity, and the internal auditor did not receive any feedback from the manager on the activity.

Introduction

The New Public Management has the intention of modernising the administration by taking, as a model, the best practices of private sector management. By this creative adaptation, concepts such as financial control, internal control or audit take on a new meaning.

PIFC (or Public Internal Financial Control) is a concept that had been developed by the European Commission in the early years of accession negotiations with applicant countries (1996–1999). PIFC is the acronym chosen by the European Commission to refer to a comprehensive, well defined and — on first sight — rather simple system of public internal control, based on international standards such as the COSO-model, the Institute of Internal Auditors, and the Guidance on Internal Control standards established by INTOSAI. Since no comprehensive European concept existed prior to the end of the 20 century, to assist the Commission in guiding applicant countries, the EC had to develop a set of standards which could serve as

a vehicle for introducing the principle of sound financial management in the public sectors of new Member States. PIFC is composed of internal public control, internal public audit and external public audit. In our research, we are focused only on the two first components of PIFC performed in the entity by the employee.

Internal Audit[1] is defined as an activity by which the managers of an entity receive an assurance from internal sources that the processes for which they are accountable are operating in a manner which will minimise the probability of the occurrence of fraud, error or inefficient and uneconomic practices. It has many of the characteristics of external audit but may properly carry out the directions of the level of management to which it reports.

Internal audit is an independent, objective assurance and consulting activity designed to add value and improve an organisation's operations. It helps an organisation accomplish its objectives by bringing a systematic, disciplined approach to evaluate and improve the effectiveness of risk management, control, and governance processes.

Internal Control[2] is composed of the entire system of financial and other controls, including organisational structure, methods, procedures and internal audit, established by management within its corporate goals, to assist in conducting the activity of the audited entity in a regular economic, efficient and effective manner; ensuring adherence to management policies; safeguarding assets and resources; securing the accuracy and completeness of accounting records; and producing timely and reliable financial and management information.

Accountancy professionals generally perform these two activities. They are distinguishable through certain characteristics including: mastery of a particular intellectual skill, acquired by training and education and acceptance of a duty to society as a whole (usually in return for restrictions in the use of a title or in the granting of a qualification) but, at the same time, they have in common a code of values, some techniques and procedures.

Professional accountants have an important role in society. Investors, creditors, employers and other sectors of the economic community, as well as the government and the public at large, rely on professional accountants for sound financial accounting and reporting, effective financial management and competent advice on a variety of business and taxation matters. The attitude and behaviour of professional accountants in providing such services have an impact on the economic well-being of their community and country.

Professional accountants can remain in this advantageous position only by continuing to provide the public with these unique services at a level which demonstrates that the public confidence is firmly founded. It is in the best interests of

1 www.theiia.org – Institute of Internal Auditors.

2 idem 2.

the worldwide accountancy profession to make known to users of the services, provided by professional accountants, that they are executed at the highest level of performance and in accordance with ethical requirements that strive to ensure such performance.

Members' duty to their profession and to society may, at times, seem to conflict with their immediate self-interest or their duty or loyalty to their employer. Against this background it is beholden on member bodies to lay down ethical requirements for their members to ensure the highest quality of performance and to maintain public confidence in the profession.

International organisations of accountancy professionals promote codes of ethics, standards and guidelines for all individuals working or who are involved in accountancy activities. Internal Auditors and internal controllers have a duty to conduct themselves in a professional manner at all times and to apply high professional standards in carrying out their work to enable them to perform their duties competently and with impartiality.

1. Code of Ethics

A Code of Ethics is a comprehensive statement of the values and principles, which should guide the daily work of internal auditors and controllers. The independence, powers and responsibilities of the public sector auditor and controller place high ethical demands on the personnel involved. A code of ethics for internal auditors and controllers in the public sector should consider the ethical requirements of civil servants in general and the particular requirements, including the latter are professional obligations.

The distinguishing mark of a profession is the acceptance of its responsibility to the public. The accountancy profession's public consists of clients, credit grantors, governments, employers, employees, investors, the business and financial community, and others who rely on the objectivity and integrity of professional accountants to maintain the orderly functioning of commerce.

This reliance imposes a public interest responsibility on the accountancy profession. The public interest is defined as the collective wellbeing of the community of people and institutions the professional accountant serves. A professional accountant's responsibility is not exclusively to satisfy the needs of an individual client or employer. The standards of the accountancy profession are heavily determined by the public interest. For example, internal auditors provide assurance about a sound internal control system, which enhances the reliability of the external financial information of the employer.

1.1 IFAC Code of Ethics for professional accountants

The International Federation of Accountants[3] (IFAC) believes that the identity of the accountancy profession is characterised worldwide by its endeavours to achieve a number of common objectives and by its observance of certain fundamental principles for that purpose. IFAC, recognising the responsibilities of the accountancy profession as such, and considering its own role to be that of providing guidance, encouraging continuity of efforts, and promoting harmonisation, has deemed it essential to establish an international Code of Ethics for Professional Accountants to be the basis on which the ethical requirements (code of ethics, detailed rules, guidelines, standards of conduct, etc.) for professional accountants in each country should be founded.

In International Federation of Accountants' (IFAC) opinion, due to national differences of culture, language, legal and social systems, the task of preparing detailed ethical requirements is primarily that of the member bodies in each country concerned and that they also have the responsibility of implementing and enforcing such requirements.

This International Code is intended to serve as a model on which to base national ethical guidance. It sets standards of conduct for professional accountants and states the fundamental principles that should be observed by professional accountants in order to achieve common objectives. The accountancy profession throughout the world operates in an environment with different cultures and regulatory requirements. The basic intent of the Code, however, should always be respected. It is also acknowledged that, in those instances where a national requirement is in conflict with a provision in the Code, the national requirement would prevail. For those countries that wish to adopt the Code as their own national Code, IFAC has developed wording, which may be used to indicate the authority and applicability in the country concerned.

The objectives, as well as the fundamental principles, are of a general nature and are not intended to be used to solve a professional accountant's ethical problems in a specific case. However, the Code provides some guidance as to the application in practice of the objectives and the fundamental principles with regard to a number of typical situations occurring in the accountancy profession.

The Code is divided into three parts:

- Part A applies to all professional accountants unless otherwise specified.
- Part B applies only to those professional accountants in public practice.
- Part C applies to employed professional accountants, and may also apply, in appropriate circumstances, to accountants employed in public practice.

3 www.ifac.org

IFAC recommend, in formulating their national code of ethics, member bodies should therefore consider the public service and user expectations of the ethical standards of professional accountants and take their views into account. By doing so, any existing "expectation gap" between the standards expected and those prescribed can be addressed or explained.

The Code recognises that the objectives of the accountancy profession are to work to the highest standards of professionalism, to attain the highest levels of performance and generally to meet the public interest requirement set out above. These objectives require four basic needs to be met:

- Credibility

  In the whole of society there is a need for credibility in information and information systems.

- Professionalism

  There is a need for individuals who can be clearly identified by clients, employers and other interested parties as professional persons in the accountancy field.

- Quality of Services

  There is a need for assurance that all services obtained from a professional accountant are carried out to the highest standards of performance.

- Confidence

  Users of the services of professional accountants should be able to feel confident that there exists a framework of professional ethics, which governs the provision of those services.

Fundamental Principles

In order to achieve the objectives of the accountancy profession, professional accountants have to observe a number of prerequisites or fundamental principles.

The fundamental principles are:

- Integrity

  A professional accountant should be straightforward and honest in performing professional services. Integrity implies not merely honesty, but fair dealing and truthfulness

- Objectivity

  A professional accountant should be fair and should not allow prejudice or bias, conflict of interest or influence of others to override objectivity. The principle of objectivity imposes the obligation on all professional accountants to be fair, intellectually honest and free of conflicts of interest.

- Professional Competence and Due Care

A professional accountant should perform professional services with due care, competence and diligence and has a continuing duty to maintain professional knowledge and skill at a level required to ensure that a client or employer receives the advantage of competent professional service based on up-to-date developments in practice, legislation and techniques.

- Confidentiality

  A professional accountant should respect the confidentiality of information acquired during the course of performing professional services and should not use or disclose any such information without proper and specific authority or unless there is a legal or professional right or duty to disclose.

- Professional Behaviour

  A professional accountant should act in a manner consistent with the good reputation of the profession and refrain from any conduct, which might bring discredit to the profession. The obligation to refrain from any conduct which might bring discredit to the profession requires IFAC member bodies to consider, when developing ethical requirements, the responsibilities of a professional accountant to clients, third parties, other members of the accountancy profession, staff, employers, and the general public.

- Technical Standards

  A professional accountant should carry out professional services in accordance with the relevant technical and professional standards. Professional accountants have a duty to carry out with care and skill, the instructions of the client or employer insofar as they are compatible with the requirements of integrity, objectivity and, in the case of professional accountants in public practice, independence.

1.2 The Institute of Internal Auditors' Code of Ethics

The purpose of The Institute of Internal Auditors' Code of Ethics[4] is to promote an ethical culture in the profession of internal auditing.

A code of ethics is necessary and appropriate for the profession of internal auditing, founded as it is on the trust placed in its objective assurance about risk management, control, and governance. The Institute's Code of Ethics extends beyond the definition of internal auditing to include two essential components:

1. Principles that are relevant to the profession and practice of internal auditing;
2. Rules of Conduct that describe behaviour norms expected of internal auditors. These rules are an aid to interpreting the Principles into practical applications and are intended to guide the ethical conduct of internal auditors.

4 www.theiia.org

The Code of Ethics together with The Institute's Professional Practices Framework and other relevant Institute pronouncements provide guidance to internal auditors serving others. Principles which internal auditors are expected to apply and uphold are the following:

- Integrity
- Independence and Objectivity
- Confidentiality
- Competency

It is of fundamental importance that the auditors are looked upon with trust, confidence and credibility. The auditor promotes this by adopting and applying the ethical requirements of the concepts embodied in the key words Integrity, Independence and Objectivity, Confidentiality and Competence.

a. Integrity

Integrity is the core value of a Code of Ethics. Auditors have a duty to adhere to high standards of behaviour in the course of their work and in their relationships with the staff of audited entities. In order to sustain public confidence, the conduct of auditors should be above suspicion and reproach. Integrity can be measured in terms of what is right and just.

Integrity requires auditors to observe both the form and the spirit of auditing and ethical standards. Integrity also requires auditors to observe the principles of independence and objectivity, maintain irreproachable standards of professional conduct, make decisions with the public interest in mind, and apply absolute honesty in carrying out their work.

The integrity of internal auditors establishes trust and thus provides the basis for reliance on their judgment.

Internal auditors shall perform their work with honesty, diligence, and responsibility, shall observe the law and make disclosures expected by the law and the profession, shall not knowingly be a party to any illegal activity, or engage in acts that are discreditable to the profession of internal auditing or to the organisation and shall respect and contribute to the legitimate and ethical objectives of the organisation.

b. Objectivity and Independency

Internal auditors exhibit the highest level of professional objectivity in gathering, evaluating, and communicating information about the activity or process being examined. Internal auditors make a balanced assessment of all the relevant circumstances and are not unduly influenced by their own interests or by others in forming judgments.

Internal auditors shall not participate in any activity or relationship that may impair or be presumed to impair their unbiased assessment. This participation includes those activities or relationships that may be in conflict with the interests of the organisation, shall not accept anything that may impair or be presumed to impair their professional judgment and shall disclose all material facts known to them that, if not disclosed, may distort the reporting of activities under review.

Auditors should strive not only to be independent of audited entities and other interested groups, but also to be objective in dealing with the issues and topics under review.

It is essential that auditors are independent and impartial, not only in fact but also in appearance.

In all matters relating to the audit work, personal or external interests should not impair the independence of auditors.

Independence may be impaired, for example, by external pressure or influence on auditors; prejudices held by auditors about individuals, audited entities, projects or programmes; recent previous employment with the audited entity; or personal or financial dealings which might cause conflicts of loyalties or of interests. Auditors have an obligation to refrain from becoming involved in all matters in which they have a vested interest.

There is a need for objectivity and impartiality in all work conducted by auditors, particularly in their reports, which should be accurate and objective. Conclusions in opinions and reports should, therefore, be based exclusively on evidence obtained and assembled in accordance with auditing standards.

Independence requires:

(a) Independence of Mind

The state of mind that permits the provision of an opinion without being affected by influences that compromise professional judgment, allowing an individual to act with integrity, and exercise objectivity and professional scepticism.

(b) Independence in Appearance

The avoidance of facts and circumstances that are so significant that a reasonable and informed third party, having knowledge of all relevant information, including safeguards applied, would reasonably conclude a firm's, or a member of the assurance team's, integrity, objectivity or professional scepticism had been compromised.

c. Confidentiality

Internal auditors respect the value and ownership of information they receive and do not disclose information without appropriate authority unless there is a legal or professional obligation to do so.

Internal auditors shall be prudent in the use and protection of information acquired in the course of their duties and shall not use information for any personal gain or in any manner that would be contrary to the law or detrimental to the legitimate and ethical objectives of the organisation.

d. Competency

Internal auditors apply the knowledge, skills, and experience needed in the performance of internal auditing services. Internal auditors shall engage only in those services for which they have the necessary knowledge, skills, and experience, shall perform internal auditing services in accordance with the International Standards for the Professional Practice of Internal Auditing, and shall continually improve their proficiency and the effectiveness and quality of their services. Auditors should know and follow applicable auditing, accounting, and financial management standards, policies, procedures and practices.

Likewise, they must possess a good understanding of the constitutional, legal and institutional principles and standards governing the operations of the audited entity.

The conduct of auditors should be beyond reproach at all times and in all circumstances. Any deficiency in their professional conduct or any improper conduct in their personal life places the integrity of auditors, and the quality and validity of their audit work in an unfavourable light, and may raise doubts about the reliability and competence of the office itself. The adoption and application of a code of ethics for auditors in the public sector promotes trust and confidence in the auditors and their work.

1.3 Romanian Codes of Ethics

Just like at the international level, in Romania there is a code of ethics issued by a professional organisation (CECCAR) for all accountancy professionals. The Finance Ministry issued a specific Code of ethics for internal public auditors, and CAFR[5] issued a specific Code of ethics for internal private auditors, both inspired from IIA Code of Ethics.

National Code of Ethics for all accountancy professionals

The Body of Expert Accountants and Licensed Accountants in Romania (CECCAR) is a self-regulating body for professional accountants in Romania. Its membership is obligatory for all expert and licensed accountants in this country.

CECCAR[6] as an IFAC member translated the IFAC Code of Ethics into the Romanian language and adjusted it to the local environment.

5 www.cafr.ro

6 www.ceccar.ro

The National Code of Ethics issued by CECCAR is revised permanently so that it conforms to the latest IFAC version. The first edition was issued in 2002 and now there is a third edition that translates into the national code the IFAC Code edition 2005.

Comparing the international and national codes of ethics for all accountancy professionals we conclude there are some minor differences between CECCAR and the IFAC Code of Ethics, due to the national environment and the applicability of some parts of the IFAC Code in Romania.

National Code of Ethics for internal public auditors

The national Code of Ethics for internal public auditors, adopted in August 2002 (Ord.880/2002 of Finance Ministry), comprise the fundamental principles for the audit professional practice: integrity, independence, objectivity, confidentiality, professional competence, political neutrality, and rules, which develop the principles. The IIA Code of Ethics inspires the National Code of Ethics for internal public auditors.

Comparing the international and national Codes of Ethics for internal public auditors, we observe that the national code is a Romanian version of the IIA Code of Ethics regarding the principles which internal auditors are expected to apply and uphold: Integrity, Independence and Objectivity, Confidentiality, Competency.

In the Romanian code of ethics for internal auditors new principles were added such as:

- political neutrality

It is important to maintain both the actual and perceived political neutrality of the auditor. Therefore, it is important that auditors maintain their independence from political influence in order to discharge their audit responsibilities in an impartial way. It is important that where auditors undertake, or consider undertaking, political activities, they bear in mind the impact which such involvement might have – or be seen to have – on their ability to discharge their professional duties impartially. If auditors are permitted to participate in political activities, they have to be aware that these activities may lead to professional conflicts.

- conflicts of interest

When auditors are permitted to provide advice or services other than audit to an audited entity, care should be taken that these services do not lead to a conflict of interest. In particular, auditors should ensure that such advice or services do not include management responsibilities or powers, which must remain firmly with the management of the audited entity.

Auditors should protect their independence and avoid any possible conflict of interest by refusing gifts or gratuities, which could influence or be perceived as influencing their independence and integrity.

Auditors should avoid all relationships with managers and staff in the audited entity and other parties, which may influence, compromise or threaten the ability of auditors to act and be seen to be acting independently.

Auditors should not use their official position for private purposes and should avoid relationships which involve the risk of corruption or which may raise doubts about their objectivity and independence.

Auditors should not use information received in the performance of their duties as a means of securing personal benefit for themselves or for others. Neither should they disclose information, which would provide unfair or unreasonable advantage to other individuals or organisations, nor should they use such information as a means for harming others.

- professional secrecy

Auditors should not disclose information obtained in the auditing process to third parties, either orally or in writing, except for the purposes of meeting the audit office or other identified responsibilities as part of the audit office normal procedures or in accordance with relevant laws.

- professional development

Auditors should exercise due professional care in conducting and supervising the audit and in preparing related reports.

Auditors should use methods and practices of the highest possible quality in their audits. In the conduct of the audit and the issue of reports, auditors have a duty to adhere to basic postulates and generally accepted auditing standards. Auditors have a continuous obligation to update and improve the skills required for the discharge of their professional responsibilities.

2. Legal framework of PIFC in the Romanian context

For Romania, as a state candidate to the EU, the harmonisation of internal regulations with EU legislation is a fundamental objective in the accession strategy and, at the same time, a legal obligation for Romania under the *Europe Agreement Romania-European Union, ratified by Romania by 1993 Law no. 20*. Romania accepted the Acquis Communautaire in the financial control domain and began to apply the entire acquis communautaire on Chapter 28 – Financial Control, in force on 31 December 2000.

Romania continued the harmonisation of national legislation with the acquis communautaire and the development of the institutional infrastructure necessary

to its implementation by the time of accession, according to the commitments made under the European Agreement. Romania unilaterally assumed the date of 1 January 2007 as a working hypothesis for completing the preparations for accession to the European Union.

2.1 Public Internal Financial Control (PIFC)

The purpose of PIFC[7], as defined by the law, implies the verification of the legality, regularity and conformity of operations, identifying the weak points of the internal control system that generated errors, the wrongs of fraud administration and to propose measures to remedy these aspects.

The PIFC in Romania is developed according to European and international standards and in order to ensure sound public funds management systems and appropriate administration of public patrimony, including community funds, does the following:

- Updating the current legal framework regarding the financial control according to the acquis and European and international standards in this field;
- Ensuring an effective functioning of the legal basis;
- Strengthening the public financial control system in order to effectively prevent irregularities and fraud and recover lost amounts;
- Developing and strengthening the institutional capacity;
- Training public financial controllers and auditors.

2.2 Internal Audit Institutional Framework

a. The Central Harmonisation Unit for Public Internal Audit (CHUPIA) is a distinct body within the Ministry of Public Finance, with functional independence, that is responsible for:
   - Harmonising the decentralised internal audit activities;
   - Drawing up the general methodological norms, procedures and guidelines;
   - Carrying out multi-sector internal audit missions.
   - Training activities according to the European standards.
   - Elaborating an Internal Auditors' Code of Conduct;

b. The Committee for Public Internal Audit (CPIA), having a consultative function, gathers experts in the field, including from the private sector, academic and university areas. As a professional body, they have the following main responsibilities:
   - Endorsing the legal framework elaborated by CHUPIA;

7 www.mfinante.ro

- Endorsing the annual report on the public internal audit activity to be submitted to the Government;
- Assessing and endorsing the reports on public internal audit of national, multi-sector interest, to be submitted to the Government;
- Analysing the pertinence of recommendations made in situations of conflict of interest between the manager of the public entity and the auditors, informing the Government on cases of non-compliance with the auditor's recommendations;

c. The internal audit units within public institutions, directly subordinated to the manager, will be strengthened. Their competence consists of: completing the methodological and procedural framework with specific elements, elaborating the audit plan and the effective carrying out of the audit work, as well as taking recovery measures in case of detected irregularities;

d. For small public institutions that operate with an annual budget of up to €100,000 and which are not subordinated to other public institutions, public internal audit is exercised by the structures of the Ministry of Public Finance;

e. Each implementing and paying agency for European funds will have its own structure of internal audit performing audits on the use of EU-funds and of national co-financing. In the case of the pre-accession funds, PHARE and ISPA, the internal audit units of the ministries concerned may perform the audit task.

This institutional framework will ensure the generalisation of public internal audit structures, one of the strategic objectives to be fulfilled in the future.

2.3 Internal Audit Legal Framework

Government Ordinance No 119/1999, on internal audit and ex-ante financial control, with its subsequent modifications and completions, regulates the role, scope, organisation and functioning of public internal audit and ex-ante financial control for every public institution. Since the internal audit section of the Law approving Government Ordinance No 119/1999 was eliminated by the new law on public internal audit, the remaining legal text will regulate ex-ante financial control.

The Auditor Manual, published by the Ministry of Public Finance in January 2003, is structured into three chapters. The first chapter emphasises the fundamental principles of the internal audit ethic code, and develop department functional rules such as activity planning based on risk analysis, human resource management and reporting audit activities. The second chapter presents the methodology for processing the audit mission detailed in phases, procedures, documents and other details and the methodologies for determining the risk level. The last chapter is a procedural guide.

The Ministry of Public Finance signed an Administrative Co-operation Agreement with DG Budget of the European Commission, by which all draft legal acts on public internal financial controls, drawn up by the Ministry of Public Finance, will be subject to consultations with DG Budget.

Law No 500/2002 on public finance, with its subsequent amendments and supplements, setting up the basic principles for the formation, use and control of public funds.

The new legal framework (Law 672–2002) is based on the Law on internal audit which regulates internal audits within all public institutions, regarding the formation and use of public funds and the administration of the public patrimony. The law defines the function of public internal audits according to the Policy Paper on Public Internal Financial Control and the EC Glossary of specific terms; the responsibilities in organising public internal audit structures; the types of audit; the rights and duties of auditors and their statute, thus ensuring the functional independence of internal audit, and strengthens the audit process related to the planning, carrying out, reporting and monitoring, according to internationally agreed audit standards

We can conclude that in Romania, for public sector internal audits, exist a legal and an institutional framework harmonised with international regulation.

Analysing the current regulations we underline some paragraphs directly linked with the independent characteristic of public internal auditor work.

- the appointing and revoking of internal auditors is carried out by the manager of the public entity, by the collective management organ, with the notice of the manager of the compartment of public audit
- internal auditors benefit from a bonus for the complexity of their work of 25 % of the monthly gross wage
- for their actions, carried out in good-faith in exercising their duties and within their limit, the internal auditors cannot be sanctioned or moved to another position
- individuals, who are relatives, including of the manager of the public entity, cannot be auditors in the same public entity
- internal auditors cannot be appointed to perform missions of internal audit to a public structure/entity if they are related, including to its manager or to members of the collective management body
- internal auditors must not be involved in any way in fulfilling the activities that they might audit, or in elaborating and enforcing the systems of internal auditing of the public entities

- internal auditors who have responsibilities in the development of the programmes of partial and integral financing on behalf of the European Union must not be involved in auditing those programmes
- the internal auditors must not be assigned missions of internal audit in the sectors of activity where they were employed or were involved in any other way; this interdiction can be cancelled after a period of three years

3. Conclusions

3.1 Public internal control and audit – public entities' institutional and legal framework

When the Ordinance 119/1999 regarding internal audit and preventive internal control was passed, together with the general methodological norms for organising and performing an internal audit, it may be said that in Romania, a legal framework for the development of the internal audit activity was created. The apparition of regulation was followed by a long string of modifications.

The terminology used in Governmental Ordinance 119/1999 is confusing, is defined too broadly and there is no link between regulation and its application. Many terms are insufficiently explained. As a consequence, there is a lack of understanding at entities level concerning the role of internal auditors in an organisation, what is his place and responsibilities.

At the entity level, the apparition of new regulation generates unexpected phenomena: instead of creating a new internal audit department, they simply changed the name of the financial control department in internal audit. The staff of this department was not only carrying out the same tasks as in the past, but also received new responsibilities. The same person will perform financial control activities and audit the control system, which is in flagrant contradiction of the well-known principle of duties' segregation. The auditor's independence is affected in the present conditions. In order to ensure an objective carrying out of the audit, the auditors must be independent from any objective of the audited and controlled subjects. Independence from the audit objective means that the auditor has no interested relationships with the audited entity, or disputed relations and he/she has no credit or other advantages from the entity, except those arising from the employment agreement for the audit office staff.

We believe that the internal audit legal framework was not sufficiently prepared before being issued, so it suffered many content modifications after its promulgation.

Romanian internal auditors have to respect the ethic code, the norms and guidelines and instructions issued by MPF. We do not believe that the MPF implication on a day-to-day basis on all of these matters in detail is welcome, and we

consider the guideline activities and the entire coordination of the internal auditors' work to be mastered by them through an independent organisation.

The internal control standards were adopted and distributed in July, 2005. The decentralisation of ex-ante financial controls from centralised financial control to budget spending units is following the envisaged timetable. Since 2006, a large number of auditors and financial controllers were trained, but this training is still insufficient and training plans still need to be implemented.

3.2 Perception of internal audit

Each organisation should design its own system of internal control to meet the needs and environment of the organisation. A major problem in Romanian public entities is the way internal audit was perceived.

a. the role of internal auditor and the role of internal controller

As was underlined, the internal audit concept overlaps financial control. The scope of internal auditing should encompass the examination and evaluation of the adequacy and effectiveness of the organisation's system of internal control and the quality of performance in carrying out assigned responsibilities.

The question is what concrete activities does internal auditor perform?

In general, internal audits have to:

- Review how internal rules and procedures established by managers are followed by members of the entity

  There is a custom for Romanian entities to have formal internal rules regarding general organisation, functioning and discipline issues. These should be developed in manuals of procedures for each department.
- Form an opinion as to whether or not management has reasonable assurance that:
  - Assets are safeguarded
  - Laws, rules, regulations, policies and procedures are complied with
  - Financial and management data is accurate and reliable
  - Business objectives are met
  - Operations are carried out efficiently and economically

  For the first three aspects, there are already tools, so data could be processed easily.

The internal auditor cannot express an opinion concerning the last two aspects because there are only a few entities that have organised an internal accounting and controlling programme operation.

We conclude that internal audit is without an object if the internal control does not work like a coherent system.

We consider that management, from its highest level to its lowest, is controlled by a network of controls designed for specific purposes. Control begins with the delegation of authority and the assignment of responsibility throughout the organisation. The physical arrangements of components, the facilities for employees to work in, the lines of communication, the management of people, procurement and data processing, all fit into the network.

Practically, the public internal control is not entirely viewed as the main (essential) advisor of the entity manager. This misperception induces[8], at the level of the manager of the entity, as well as at the level of the chief of the public internal audit structure, a very negative behaviour towards the public internal audit role and functions: the public internal audit is simply assessed as being a common component of the internal control system under the entity's manager.

We appreciate that the norm referring to the public internal audit does not mention the role and position of this form of financial control facing the entity's manager;

The public internal audit must be considered, really, as a type of internal control (because structurally it is inside the entity).

We believe that adequate training must be developed, first at the level of the entity's managers, but also at the level of the chiefs of the public internal audit structures, in order to set out clearly, the role and the functions of the public internal control: as a control of the internal control; this is a crucial idea and it must also be emphasised that the public internal audit can, only exceptionally, be considered as a species of internal control, strictly speaking, in the case where the entity's manager asks, or the chief of the public internal control suggests, special cases.

b. The independency of the internal public controller and auditor

At this stage, in Romania, there are regulations and codes of ethics so we can conclude that public internal audit is functionally independent.

From the normative analysis, as well as from the interview results, it seems that regulated, functional independence does not work as an own initiative of the public internal audit structures and we cannot find the "courage" in these structures to report to the entity's manager any mis-dealings of the entity (including managerial mis-dealing) etc.;

We believe that the functional independence of the public internal control (facing the entity's manager) is more declared and non-rejected than understood, but it is not totally implemented and operated and, as a result, many audit reports

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are merely convenient and to not have the expected impact on the improvement of the entity's activity;

Based on our research, the main problem that has to be resolved is the mentality.

In too many cases, the public internal audit is not functioning as a control component of the internal control but, strictly speaking, as a species of the internal control, that is, it is focused directly on the actions, operations or transactions of the entity's; the perpetuation of this situation will fundamentally obstruct the carrying out, not only of the public internal audit specific functions, but will also negatively affect the understanding of the true role of the public internal audit.

A dedicatory culture (of the entity's managers as well as of the public internal audit structures chiefs) concerning the public internal audit is still perpetuated; this situation could bring about great delays and distortions in understanding the real role and functions of the public internal audit.

It is important to find adequate institutional ways, by which the entity's managers and the public internal audit structures chiefs can understand the necessity and the usefulness of the role and working independence of the public internal audit;

c. The personnel involved in internal audit and control activities

Public servants in the public internal audit structures are qualified but insufficient in number. The perception that evolved from the interviews, as well as the information gained from other informative channels, led us to conclude that the personnel involved in public internal audit activities is now insufficient. Concerning the qualifications of this personnel, there is a perception that it could be differentiated according to the public internal audit missions; now it seems to be over-qualification for the minor components (phases) of these missions and, on the contrary, an under-qualification for those components of the missions that are more refined and more complex.

4. Proposals

a. Some proposals for enhancing the independency of internal public controllers and auditors

Unfortunately, limited understanding of new concepts, risk of confusion, scepticism and risks for the independence of internal auditors are the main characteristics of these new professions and activities in Romania. The major challenge is the introduction of an "audit culture" with the following points:

- Raising managers' awareness

- Establishing legitimacy and demonstrating the usefulness of internal audits by getting started with the actual audit work,
- Avoiding wrong priorities
- Creating the adequate co-ordination, support and networking activities for internal audit

For the public sector internal audit, a coherent and comprehensive legal basis harmonised with international standards and with Romanian realities is required. Reformed financial control systems and procedures for the public sector, including internal audit, do not result from a new legal and institutional framework, even with some technical recipes from external assistance. Romania will go through a long-term process to really adopt the internal audit function in the public sector. But, with a strategic approach, involving the administrative actors and the political decision-makers, we hope we will assimilate it and valuate it at its real value. This process implies first a cultural change.

Strengthening[9] the functional and organisational independence of the activity of internal audit should be achieved at the level of the entity bearing in mind the following "best practices":

- The internal audit units report directly to the highest manager of the public entity;
- The internal auditor may not perform operative or executive functions at the audited body;
- The appointment/dismissal of the internal auditor is the responsibility of the highest manager of the public entity, in agreement with the superior upper public entity; the agreement of the Ministry of Public Finance is necessary only in the case of the main credit-authorising institutions;
- The evaluation of the activity of internal audit in other public institutions is performed by the Ministry of Public Finance;
- A system under which the internal auditor can report his findings and recommendations to the Ministry of Public Finance, in case of unjustified non-compliance by the manager of public institutions of the auditor's recommendations;
- The establishment of an incentive system based on the performance of the internal auditors.

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b. The role and responsibilities of managers regarding ethics, internal audit and control

Managers are responsible for establishing an effective control environment in their organisations. This is part of their stewardship responsibility over the use of government resources. Indeed, the tone managers set through their actions, policies, and communications, can result in a culture of either positive or lax control. Planning, implementing, supervising, and monitoring are fundamental components of internal control.

It is essential that all managers in an organisation understand the importance of establishing and maintaining effective internal control. For this reason, the Internal Control Standards Committee of the International Organisation of Supreme Audit Institutions (INTOSAI) has prepared a booklet to provide an overall framework for establishing and maintaining effective internal controls, describe internal control roles and responsibilities for government managers and auditors and describe common internal control practices. The internal control standards have been adopted by MFP in Romania in July 2005.

The role and responsibilities of managers regarding the ethics of the Internal Controller can be resumed as:

- Create a positive control environment by setting a positive ethical tone, providing guidance for proper behaviour,
- Removing temptations for unethical behaviour, providing discipline when appropriate, preparing a written code of conduct for employees.
- Ensure that personnel have and maintain a level of competence to perform their duties.
- Clearly define key areas of authority and responsibility.

Managers should realise that a strong internal control structure is fundamental to the control of an organisation and its purpose, operations, and resources.

A positive and supportive attitude on the part of all managers is critical. All managers must be individuals of personal and professional integrity. They are to maintain a level of competence that allows them to understand the importance of developing, implementing, and maintaining effective internal controls.

Management establishes an independent audit function as a key part of the internal control structure. Management should establish objectives for the audit function and place no restrictions on auditors in meeting them. To ensure independence, the head of this audit unit should report directly to the manager heading the agency. Management should also select an experienced, well-qualified person to lead the unit and provide sufficient resources and a competent staff to carry out audit operations. In this regard, managers work constructively with auditors to

identify risks and design mitigating controls, and they give auditors responsibility for periodically evaluating internal control operations to identify weaknesses and recommend corrective measures.

Management often establishes an audit unit as part of its internal control and self-assessment framework.

Auditors are a part of a governmental organisation's internal control framework, but they are not responsible for implementing specific internal control procedures in an audited organisation. That is management's job. The auditors' role is to audit an organisation's internal control policies, practices, and procedures to assure that controls are adequate to achieve the organisation's mission. Although auditors may be part of the organisation they audit, it is important and necessary that the auditors' independence be maintained.

For its part, management can demonstrate its support by emphasising the value of independent and objective auditing. Management should also identify areas for improving performance quality and respond to information developed through audits.

Internal control should not be looked upon as separate, specialised systems within a public entity. Rather, internal control should be recognised as an integral part of each system that management uses to guide its operations.

The managers are responsible for developing a control environment in the entity, which should take into consideration the following ideas:

- establishing a positive ethic tone;
- offering guidance towards an adequate behaviour;
- moving any temptations to non-ethical behaviour;
- ensuring discipline, if necessary;
- ensuring personnel posts and keeping a certain level of competence towards performing the tasks;
- defining in a non-ambiguous way, the key areas of authority and responsibility;
- establishing adequate lines of reporting;
- using daily training programmes, communications with managers and different actions that involve all levels of management in order to strengthen the importance of the management control;
- monitoring the control operations of the organisation by annual assessments and reporting to top management;

5. Final remarks

The accession process of Romania to the EU signifies, in fact, a process that has as its final goal to give to the European Union the certainty that Romania has the capacity to enter the EU, by meeting the accession criteria, as well as the standards of these criteria. There is a special chapter regarding Public internal financial control for the negotiation of Romania's accession – Chapter 28, "Financial Control".

The main problems in the field of public financial internal control are brought about by specific cultural features. This means that it is not the legislation which represents the basic under-developed situation in Romania, but its implementation and its further development, as follows:

- many entities' managers are not yet entirely convinced about the usefulness of the public internal audit, as an own control component of the internal control and as its permanent and reliable advisor for the benefit of managerial performance (firstly concerning the public fund and assets management);
- many chiefs of the public internal audit structures consider that this type of financial control is some other name given to the common internal control (former control bodies of the entity's managers);
- many entities' managers do not have a clear understanding of the role, functions and procedures of internal control, as the main managerial function; as a result, many entities' activities are still designed and organised in the form of simple and passive recording structures.

There is a real danger, caused by the hurry (fully understandable, of course) of the Romanian authorities to adopt the acquis communautaire, by speeding up of some insufficiently prepared processes such as:

a) separation of public internal control from public internal audit (separation required by the philosophy of the public financial control, but which requires a preparatory stage related to cultural aspects, including the mentality of the personnel going to work in the two mentioned separate fields; consequently, there is a danger of performing the same functions in the two fields, i.e. a phenomenon that is inconsistent with the reason of the separation);

b) the Ministry of Finance's strategy to pass, by the 2006 year, from cash accounting to accrual accounting, a process that seems to have not been sufficiently prepared, neither from the point of view of the cost evaluation, nor from the point of view of its general impact;

At the mentality level (cultural attitudes) the entity's managers must understand the fact that the most efficient internal control system is the ad hoc one, designed and, consequently, strongly limiting the taking over (often under time or conditional pressures and more often without having the optimal functional condi-

tions) of systems, methods or procedures from outside (including the EU and the member states' experiences) the entity's managers must be concerned only with the proper working of the implemented methods, systems and mechanisms.

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Annex 7
The Protection of Whistlebowers
– Case of Romania –

Victor Alistar and Andreea Nastase

Abstract

This paper analyses the Romanian public policy on whistleblower protection using as a conceptual framework the policy cycle perspective (also known as the "stages approach") to delineate the relevant phases in the analysis. The authors explore the context surrounding the adoption of Law no. 571/2004, with a view to identifying the principal policy actors involved and their respective motivations, as well as the dynamics of agenda setting and negotiation processes. To account for the progress in implementation, the authors consider, in particular, the process by which the regulations of national were translated and diffused inside public organisations, as well as the linkages established to other anti-corruption instruments. Equally important, the paper gives an account of Transparency International Romania's advocacy strategy on this issue, in order to provide an example of effective non-governmental involvement in the policy process. The paper finds that, despite the initial success in getting whistleblower protection on the governmental agenda and constructing a strong legislative instrument, the policy is lagging in implementation and therefore not achieving the desired anti-corruption impact. The lack of appropriate institutional structures charged with overseeing implementation, as well as the absence of sanctions for non-compliance are the main causes which explain this regrettable situation. More importantly, however, the evolution of whistleblower protection policy in Romania confirms the lack of genuine domestic political will to fight corruption. It demonstrates that, although the establishment of an appropriate legal framework is certainly a crucial gain, it is only the first step in building an effective and sustainable anti-corruption effort.

Introduction

The term whistleblower[1] defines a person who exposes wrongdoing within an organisation. As far as anti-corruption policy is concerned, whistleblowing is extremely relevant for public and private organisations alike, since both face the risk of things going wrong or unknowingly harbouring corrupt individuals. And it is insiders – people who work in or with the respective organisation – that are best positioned to observe wrongdoing and signal it. However, these people also face sizeable risks of retaliation from those whom they expose, a fact which makes the protection of whistleblowers a must in any anti-corruption strategy.

The importance of whistleblowing in the public sector is widely acknowledged at the international level and established as best practice in Europe. The *Council of Europe Criminal Law Convention against Corruption*, under Article 22 ("Protection of collaborators of justice and witnesses") and the *Council of Europe Civil Law Convention against Corruption*, under Article 9 ("Protection of employees") both require the existence of protection measures for officials who report acts of corruption in good faith. Moreover, the Council of Europe's Committee of Ministers *Recommendation No. R (2000) 10 on codes of conduct for public officials* states under Article 12 "Reporting" the obligation of public officials to "report to the competent authorities any evidence, allegation or suspicion of unlawful or criminal activity relating to the public service coming to his or her knowledge in the course of, or arising from, his or her employment" and the corresponding obligation of public bodies to protect officials making a such a public disclosure in good faith and on reasonable grounds. At the international level, the *United Nations Convention against Corruption*, under Article 8 "Codes of conduct for public officials" requires the establishment of mechanisms to facilitate and protect reporting by public officials.

In Romania whistleblower protection was introduced in 2004 through *Law no. 571/2004 concerning the protection of personnel from public authorities, public institutions and from other establishments who signalise legal infractions*. The passing of the law in December 2004 did not encounter strong opposition from public or private actors. However, nearly four years after its adoption, one finds widespread lack of knowledge or even suspicion among its beneficiaries, but also several groundbreaking cases of successful whistleblowers. Nonetheless, all things considered, the law has yet to deliver on the generous promises which fuelled consensus at the moment of its adoption.

The purpose of this paper is to analyse the reasons behind the successful passing of whistleblower protection in Romania, but also the factors leading to its mixed implementation record. In doing so, the authors will explore the context surround-

1 Originating from the expression *to blow the whistle (on)* [Slang] = 1. to report or inform on 2. to cause to stop; call a halt to (according to Agnes, Michael (editor in chief).1999. *Webster's New World College Dictionary*, fourth edition, New York: Macmillan).

ing the adoption of *Law no. 571/2004* with a view to identifying the principal policy actors involved and their respective motivations, as well as the dynamics of agenda setting and negotiation processes. To account for the progress in implementation, the authors will consider, in particular, the process by which regulations of national coverage contained by *Law no. 571/2004* were translated and diffused inside public organisations (thus reaching their beneficiaries) and also the linkages established to other anti-corruption instruments. Equally important, the paper gives an account of Transparency International Romania's[2] advocacy strategy on this issue, in order to provide an example of effective non-governmental involvement in the policy process. Illustrating the manner in which the same key anti-corruption instrument is met with enthusiasm as well as resistance, the Romanian experience represents a source of relevant lessons for other transition countries struggling with corruption.

Conceptual framework

This paper uses the policy cycle perspective[3] (also known as the "stages approach") as a conceptual framework to delineate the phases which are relevant in assessing whistleblower protection policy in Romania. Although commonly contested today, the perspective that depicts public policy as evolving in a sequence of distinct stages, has served for a long time as the basic template the field of policy analysis. In doing so, it has developed a number of different variations in the stages typology – this paper follows the Jann and Wegrich (2005) article, which argues that today, the conventional chronology of the policy process differentiates between agenda-setting, policy formulation, decision-making, implementation, and evaluation.

As Jann and Wegrich (2005) explain, the policy process is set in motion with the recognition of a policy problem, for which the necessity of state intervention is expressed. The second step is to insert that problem on the government's agenda[4] so that it receives proper consideration for public action. During the stage of policy formulation, the objectives of the governmental intervention are established and multiple alternatives for action (i.e. policy alternatives) are designed, ideally to be mutually exclusive. Decision-making presupposes the selection of one policy alter-

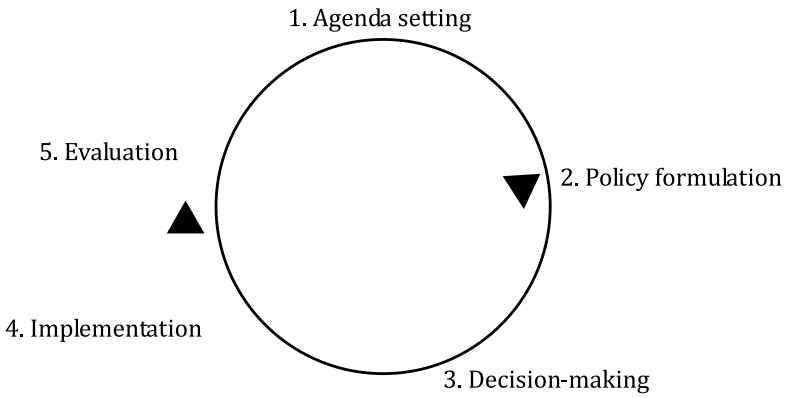
2 Henceforth referred to as TI Romania.

3 The model is often employed in public policy literature (academic or practice-oriented), for example: Anderson, James E. 1994. *Public Policymaking*, 2 edition, Princeton, NJ: Houghton Mifflin; Bardach, Eugene. 1996. *The eight step path of policy analysis. A handbook for practice.* Berkley: Berkley Academic Press; DeLeon, Peter. 1999. The Stages Approach to the Policy Process: What has it Done? Where Is It Going?, in: *Theories of the Policy Process*, edited by Paul A. Sabatier Boulder and Oxford; Young, Eoin and Quinn, Lisa. 2002. *Writing Effective Public Policy papers – a Guide for Policy Advisers in Central and Eastern Europe*, second edition, Budapest: Local Government and Public Service reform Initiative, Open Society Institute.

4 The governmental agenda is defined as "the list of subjects or problems to which governmental officials, and people outside the government closely associated to those officials, are paying some serious attention at any given time" (Kingdon 1995:3).

native, based on criteria of effectiveness, efficiency, equity, feasibility etc. (Young and Quinn 2002). Since not all policies become formalised into distinct governmental programmes, in practice it is often difficult to differentiate between the stages of policy formulation and decision-making. Policy implementation is 'the stage of execution or enforcement of a policy by the responsible institutions or organisations, which are often, but not necessarily always, part of the public sector' (Jann and Wegrich 2005:20). Ideally, this stage should include the construction of programme details (i.e. specific actions and sub-actions to be executed for accomplishing the policy objectives, responsible institutions, a calendar of implementation, evaluation indicators and monitoring procedures), and the allocation of resources (budget, personnel, technical equipment etc.). Finally, during policy evaluation, the intended outcomes of the governmental intervention are appraised against actual results and the policy is either terminated or adjusted to compensate for the setbacks. At the same time, policy evaluation leads to the discovery of new policy problems or the redefinition of previous ones, thus feeding back into the policy cycle by initiating a new process of problem definition and agenda setting.

Figure 1
The policy cycle



In the following, we analyse whistleblower protection in Romania with reference to each of the five policy stages identified by Jann and Wegrich (2005). On the one hand, the paper presents the policy development and the relevant contextual factors, which influenced its evolution. On the other hand, the authors put these elements into perspective, by illustrating the non-governmental response through a discussion of TI Romania's advocacy strategies and subsequent actions.

Stage 1: Agenda setting

Whistleblower protection became an issue on the governmental agenda in the context of widespread popular discontent with corruption. In 2004, Romania's score on the *Corruption Perception Index*[5] was 2.9 on a scale of 0 to 10 (where 0 means "completely corrupt" and 10 – "completely clean"), indicating the existence of systemic corruption in the country. This score is supported by domestic public opinion polls: a survey commissioned by Transparency International Romania[6] in 2004 concluded that most Romanians perceive corruption as being widespread in society – 61 % believed that most public sector employees are corrupt, 52 % considered bribery as a common part of their daily lives and 80 % declared that they knew at least one person who had paid a bribe. At the same time, social support for corruption in Romania was very low, with most respondents considering that corruption is never justified. The massive popular rejection of corruption is perhaps more visible in comparison with other European countries (in a ranking of 32 countries, Romania is placed at the 7 top position). At the same time, popular dissatisfaction with governmental performance in fighting corruption was extremely high, with 77 % expressing dissatisfaction on the matter[7].

However strong, popular rejection of corruption and demand for effective counter-measures should not be considered by itself a decisive factor in the introduction of whistleblower protection. Rather, this state of affairs has gained key importance in the context of upcoming general elections[8], where (anti)corruption proved to be a huge stake and a significant vote gainer. In this regard, it is illustrative that in 2004, 87 % of voters listed determination in the fight against corruption as the most important quality of the future president[9].

A number of international actors pressing the Romanian government for a more effective anti-corruption policy, with visible and convincing results, backed the domestic mood. The most vocal and important of these was by far the European Union. After the breakdown of communism in 1989, Romania set as a primary objective of its foreign policy, integration into the European Union. It officially applied for membership in 1995 and began accession negotiations in 2000; by 2005, all 31 negotiation chapters had been closed and effective membership commenced on

5 Transparency International's *Corruption Perception Index (CPI)* is a composite index drawing on corruption-related data from expert and business surveys carried out by a variety of independent and reputable institutions. The CPI ranks countries in terms of the degree to which corruption is perceived to exist among public officials and politicians.

6 Voicu, Bogdan, Mădălina Voicu, Cristina Băjenaru, and Claudia Petrescu. 2004. *Bribery in Romania. What Romanians say and think about petty corruption [Șpaga la români. Ce spun și ce cred românii despre corupția mică]*. Bucharest: Centre for Urban and Regional Sociology CURS.

7 Open Society Foundation Romania. 2004. *The Public Opinion Barometer [Baromerul Opiniei Publice]*. Bucharest: The Gallup Organisation Romania.

8 Local elections were held in June 2004, while general elections took place in November 2004.

9 According to *The Public Opinion Barometer* 2004.

January 1 2007. Throughout this period, the European Union has been extremely vocal in requiring Romania's effective action towards the containment of widespread corruption. In every *Regular Report on Romania's Progress towards Accession* from 1998 to 2004, corruption is singled out as a "widespread and systemic problem", undermining the legal system, leading to loss of confidence in public institutions and weakening the economy. Despite acknowledging the gradual development of a rather comprehensive legal framework, the *Reports* remained highly critical of the implementation potential displayed by newly created institutional structures in charge of the fight against corruption. As shown by the Government's *Head Note* to the draft law[10], but also during debates in Parliament[11], the introduction of whistleblower protection was, like many other anti-corruption measures, closely connected to Romania's calendar of accession to the European Union – more precisely, the closing of the "Justice and Home Affairs" negotiation chapter.

European pressure was supported by other international factors. By 2004, Romania had already ratified at least two international anti-corruption conventions, which provided specifically for the protection of public sector employees who report illegalities at their workplace, namely the *United Nations Convention against Corruption* (Article 8.4) and *Council of Europe's Civil Law Convention against Corruption* (Article 9). While the former requires merely the establishment of "measures and systems to facilitate reporting", the latter goes a step forward and explicitly provides for "appropriate protection against any unjustified sanction for employees who have reasonable grounds to suspect corruption and who report in good faith their suspicions". The ratification of these conventions in November 2004 and April 2002 respectively obliged Romanian authorities to operate a harmonisation of the internal legislation. The introduction of whistleblower protection fell squarely within the scope of this commitment.

Beyond the contextual factors, the introduction of whistleblower protection responded to a number of gaps in Romania's anti-corruption policy framework in force at the time. In 2004, the legal and institutional framework did not allow public sector employees to signal breaches of the law at their workplace without significant retaliation risks. Limited safeguards were available in the form of witness protection measures (introduced by *Law no. 682/2002*), applicable nonetheless to judicial proceedings only. The introduction of whistleblower protection would compensate for this shortcoming, by adapting and extending the mechanism to the everyday workings of public administration bodies, thus becoming a key element in the prevention of corruption. More specifically, the instrument would respond to the need to shield public employees who refuse to execute illegal orders (although refusal was

10 http://www.cdep.ro/proiecte/2004/600/50/1/em651.pdf

11 Transcripts available online at http://www.cdep.ro/pls/steno/steno.stenograma?ids=5768&idm=15

regulated by previous civil service legislation[12] in practice, opposition often resulted in elimination from the public system). Added to this, the draft law prescribed for a multitude of receptors of public interest disclosures, therefore doubling the internal channels of complaint (i.e. disciplinary commissions, hierarchical superiors and ultimately the prosecutor's office) with more responsive and effective exterior ones (civil society organisations, mass media etc.). Whistleblower protection would also shield the professional reputation of public sector employees, by allowing honest individuals to make a stand against corrupt fellow workers. Finally, whistleblower protection would facilitate a break with the tradition of silence and complicity in the Romanian public sector.

The context outlined above illustrates rather fortunate complex factors, which aided the introduction of whistleblower protection on the governmental agenda and supported a positive outcome of the public decision-making processes. The combination of internal and foreign pressures shaped the policy problem as one of non-conformity to international standards, but also as a political opportunity to boost the Government's anti-corruption credibility on the eve of national elections. Moreover, it created a sense of urgency among decision-makers, which ensured rapidity and smoothed out conflicts in the policy formulation and decision-making stages.

Under these circumstances, the window of opportunity for non-governmental advocacy was extremely favourable. Transparency International Romania used it to strike a memorandum of co-operation with the Romanian Government regarding a common platform for the fight against corruption. Supported by this formal agreement, a team of legal and policy experts in TI Romania worked to identify and prioritise the principal weaknesses in the Romanian national integrity system, which were thereafter addressed through a package of draft laws presented to decision-makers. *Law no. 571/2004* was part of this package, together with other six proposals:

- The ratification of the *United Nations Convention against Corruption*, which had the responsible public structures conduct an impact analysis and design an implementation plan and associated calendar (became *Law no. 365/2004*)
- The enlargement of the sphere of offences punishable as corruption crimes to cover all forms of abuse in office for private benefit (became *Law no. 521/2004*)
- The extension of the provisions of the *Code of Conduct for Civil Servants (Law no. 7/2004)* to other categories of state employees, thus creating a uniform ethics regime in the public sector (became *Law no 477/2004*)

12 According to *Law no. 188/1999 on the Statute of Civil Servants* refusing the accomplishment of a work-related task was punishable as disciplinary misconduct; the aggrieved person was allowed to file an administrative action for reversing the sanction.

- The enhancement of transparency and accountability in the activity of prosecutors by instituting an obligation to transmit to all interested parties the decisions for commencement, suspension or non-commencement of criminal pursuit (became *Law no. 480/2004*)
- The establishment of a specialised agency to control officials' wealth and sanction conflicts of interest and incompatibilities, together with the improvement of the legal definition of conflict of interest, the establishment of a unitary regime of incompatibilities in the public sector and the introduction of a more detailed format for interest and wealth declarations (TI Romania's proposals were, to a large extent, materialised by *Governmental Ordinance no. 14/2005*, which introduced a new format for wealth declarations, and through *Law no. 144/2007*, which established the National Integrity Agency).

Targeted specifically at bringing the Romanian legislative and institutional framework closer to international standards and requirements, the technical expertise provided by TI Romania matched the Government's needs and proved to be a rewarding advocacy strategy, which allowed for significant improvements to the Romanian anti-corruption legal framework.

Stage 2: Policy formulation

The introduction of whistleblower protection coincided with the implementation of Romania's first national anti-corruption strategy of the post-communist period[13], whose principal purpose and merit was to lay the building blocks of an anti-corruption legislative and institutional infrastructure. As Freedom House (2005:160) concludes in its assessment of the strategy, the period 2001–2004 has brought "an impressive arsenal of legal instruments of transparency, accountability and anti-corruption in Romania". Some of the most important are: the creation of the National Anti-corruption Prosecutor's Office in 2002[14]; the introduction of wealth and interest declarations for public officials and the regulation of conflict of interest and incompatibilities[15]; the introduction of codes of conduct for several categories of public sector employees[16]; the regulation of public procurement[17]; the introduction

13 The "National Programme for the Prevention of Corruption" (henceforth referred to as the National Programme) and the adjacent "National Action Plan against Corruption", covering the period 2001–2004. The National Programme was updated in December 2002 by a set of measures aimed at accelerating its implementation ("Combating Corruption in Romania. Measures for accelerating the implementation on the national strategy").

14 *Emergency Ordinance no. 43/2002 on the National Anti-corruption Prosecutor's Office*.

15 *Law no. 161/2003 on measures to ensure transparency in public positions, in the private sector, and on prevention and punishment of corruption* (the so-called *Anti-corruption Package*).

16 *Law no 7/2004 on the Code of Conduct for Civil Servants* and *Law no. 477/2004 on the Code of conduct for contractual employees in public institutions and authorities*.

17 *Emergency Ordinance no. 60/2001 on public procurement*.

of legislation ensuring access to information[18] and the transparency of decision-making processes in public administration[19]. The legislative overflow which characterised anti-corruption reform in Romania between 2001 and 2004 facilitated the acceptance and eventual adoption by decision-makers of yet another draft law, focusing on the protection of whistleblowers.

Added to this, whistleblower protection was entirely congruent with the objectives of the National Programme, despite the fact that the measure was never explicitly stated in governmental programmatic documents. The field of public administration had been repeatedly identified as highly vulnerable to corruption, and, connected to this concern, civil service reform was constantly prioritised in the government's anti-corruption efforts. In this regard, it is important to point out several lines of action established by the National Programme and reiterated or further developed by the 2002 supplementary measures: enhancing administrative efficiency and clarity through a reorganisation of the civil service system; de-politicising the administrative apparatus by establishing mandatory methodologies for competitive personnel recruitment and evaluation, and setting up internal disciplinary commissions and the so-called "parity commissions"[20]; and, finally, introducing, monitoring and enforcing codes of conduct for public sector employees. By the end of 2004 most of these measures, which contextualise and support whistleblower protection, had already been adopted and their implementation was well underway.

The draft law on whistleblower protection was formulated to respond to the gaps in the anti-corruption policy framework, while blending with reform measures already implemented in the field of public administration. Thus, the protection measures have national coverage and addresses civil servants and contractual employees working in virtually all public sector entities. The draft instituted a sound protection regime for public sector employees and also contained several strong provisions which discourage abuse of the mechanism.

The broad inclusive scope of the law is immediately visible in its generous definitions. Thus, Article 3 defines a pubic interest disclosure as "the disclosure made in good faith with regard to any action which involves a breach of the law, of the professional deontology or of the principles of good governance, efficiency, effectiveness, economy and transparency". The reference to general principles is especially

18 *Law no. 544/2001 on free access to information of public interest*.

19 *Law no. 52/2003 on the transparency of decision-making in public administration*.

20 The disciplinary commissions are internal bodies established in each public agency, tasked with investigating disciplinary misconduct and establishing the corresponding penalties. The "parity commissions" are internal bodies as well, which review the implementation of accords between civil servants' labour unions and heads of institutions, and participate with a consultative role in the negotiation of such accords. Both institutions have been established by *Law no. 188/199 on the Statute of Civil Servants* and regulated in detailed by *Governmental Decision no. 1210/2003 on the organisation and functioning of disciplinary commissions and parity commissions in public authorities and institutions*.

salient, as it ensures that the law indiscriminately covers grave criminal offences as well as contraventions and disciplinary misconduct. The fact that the whistleblower is defined by reference to the definition of public interest disclosure,[21] and not vice-versa, also ensures maximum law coverage.

Added to the encompassing definitions, the law has extensive coverage of illegalities which may be signalled by a public interest disclosure (as enumerated in Article 5): corruption and fraud offences, breach of legal provisions on conflict of interest and incompatibilities, preferential and discriminatory practices, abuse, incompetence or negligence in office, breach of the legislation governing access to information and transparency in public decision-making, fraudulent or deficient administration of public assets etc. Article 5 should not, however, be interpreted as exhaustive – the principles which govern the law, listed under Article 4 (especially the principle of legality, the principle of the supremacy of public interest, the principle of good governance and the principle of proper conduct) provide coverage for other types of illegalities not mentioned specifically in the legal text.

The Romanian whistleblower protection law is active on both the administrative and judicial tiers, thus guarding against reprisals in the form of both disciplinary sanctions and judicial verdicts. If undergoing disciplinary investigations as a result of blowing the whistle, the employee is assumed to be of good faith, until proven otherwise, which effectively means that the burden of proof for demonstrating ill faith lies with the investigators. Also, at the request of the whistleblower under disciplinary inquiry, the disciplinary commission or any other similar body is obliged to invite the media and a representative of the whistleblower's trade union or professional association to its sessions. The sessions are public and should be announced at least three working days before they are convened. Otherwise, the report or the disciplinary sanction is null. Added to this, when the reported subject is a hierarchic superior of the whistleblower, or is entitled to supervise, control or assess him/her, the disciplinary commission or similar body must assure the whistleblower's protection by concealing his/her identity. The provisions of *Law 682/2002 regarding the protection of witnesses* automatically apply to the whistleblowers in public interest. Plus, in case of labour or working relations litigations, the court can repeal the disciplinary or administrative sanction given to a whistleblower, if that sanction was decided following the reporting of breaches of the law and in good faith. Finally, the court must compare the extent of the sanction passed against a whistleblower with other sanctions passed in similar cases within the same authority, public institution or budgetary unit, in order to avoid future and indirect sanctions against whistleblowers.

21 "A whistleblower is the person who makes a public interest disclosure in accordance to letter (a) and is positioned in one of the public authorities, public institutions, or other budgetary units provided for by Article 2" (Law no. 571/2004, Article 3 (b)).

Added to the two-tier protection approach, the law shields employees by taking precedence in its application over any contrary deontological or professional norms (likely to be contained by general or sector-specific codes of conduct, the Labour Code – *Law no. 53/2003*, or the Civil Service Charter – *Law no. 188/ 1999*).

A commonly voiced concern in connection to whistleblower protection is the danger of abuse by malicious individuals seeking to denigrate their fellow colleagues or the public institution in its entirety (for example, Kinsella 2005). The Romanian law safeguards against the danger of high-jacking by conditioning the receipt of whistleblower protection on the existence of good faith. The fact that the good faith is presumed does not render the whistleblower unaccountable – in accordance to the principle of responsibility (Article 4 (c)), any person making a public interest disclosure is required to uphold it with concrete data or evidence he/she may have, the lack of which overthrows the presumption of good faith. On the other hand, in accordance with Romania's Criminal Code, the submission of false evidence is punishable by prison for a term from 6 months to 3 years.

Stage 3: Decision-making

The draft law presented by Transparency International Romania to the representatives of the Romanian Government in June 2004 was adopted by Parliament in November 2004 with little, if any, changes to the original text. Key to this achievement was the political homogeneity within the Government and the Parliament, both of which were controlled by the Social Democratic Party. This power configuration was decisive in structuring TI Romania's advocacy efforts, which targeted primarily the Executive as the key actor in the decision-making process. The non-governmental experts engaged in a sustained direct dialogue with representatives in the Government, thus ensuring a firm consensus of the parties on the final text eventually sent for adoption in the Parliament. It should also be noted that the requirement of legislative harmonisation to international anti-corruption conventions left little room for bargaining on the draft legal text.

All of these factors have significantly shortened the period for negotiation between decision-makers and ensured that the law suffered minimal modifications during parliamentary debates. Plenary debates in both the Chamber of Deputies and the Senate were marked by almost no divergence of opinions, which was clearly reflected in the final vote – the law was adopted with 211 votes for and 3 against by the Chamber of Deputies and 78 for and 1 against in the Senate[22].

22 As shown in the transcripts of the parliamentary debates in the Chamber of Deputies and in the Senate.

Stage 4: Implementation

In the case of whistleblower protection policies, successful implementation is very much dependent on the beneficiaries knowing and correctly understanding the measure. Blowing the whistle is essentially an individual choice, which by no means can be coerced by legislation, but merely incentivised through the institution of proper safeguards against retaliation. It is therefore an imperative prerequisite that policies in this field contain a strong awareness-raising component. *Law no. 571/2004* provides for this appropriately – according to Article 11, each public entity has an obligation to harmonise their *Interior Order Regulations* to the provisions of the law. Unfortunately, the complete lack of penalties for failure to comply with this measure has severely impeded the implementation of the law. A recent research report[23] focusing on the state of integrity in Romanian local governments shows that most public entities at the local level have not harmonised their internal regulations to cover issues of whistleblower protection, despite the fact that *Law no. 571/2004* – and, implicitly, the requirement for harmonisation – has now been in force for almost four years. Moreover, interviews with public employees have indicated widespread ignorance on the provisions of the law, suspicion and the recurrence of preconceived ideas. Apart from a lack of sanctions, large-scale unawareness can also be explained by the absence of government-sponsored campaigns to familiarise public sector employees with the provisions of the law and the specific mechanisms of protection.

Implementation of *Law no. 571/2004* was additionally hampered by the lack of an institutional structure to coordinate the process. Being closely connected to the area of ethics and conduct, the most likely institutional candidate for this function was the National Agency for Civil Servants[24]. According to *Law no. 7/2004 on the Code of Conduct for Civil Servants*, NACS is tasked with monitoring implementation and conformity to the *Code* in public institutions, developing studies on this subject and collaborating with NGOs whose mission is to protect citizens' legitimate interests in relation to civil servants. NACS issues a yearly report on the management of the civil service corps, which contains a distinct section on compliance with conduct standards and disciplinary sanctions incurred for failure to do so[25]. More importantly, NACS is empowered to investigate breaches of the *Code of Conduct* in public institutions (at its own initiative or at the request of an aggrieved person) and to recommend solutions, including the application of disciplinary sanctions. NACS's attributions of investigating and reporting on ethical breaches could have

23 Stan, Valerian, Adrian Sorescu, Andreea Nastase and Gabriel Moinescu. 2007. *The Integrity of Local Public Administration [Integritatea administrației publice locale]*. Bucharest: Didactic and Pedagogic Press.

24 Henceforth referred to as NACS.

25 The reports are issued on the basis of mandatory reports received form public institutions around the country. They are available at http://www.anfp-map.ro/strategii_rapoarte_studii.php?sectiune=Rapoarte&view=23.

easily been extended to cover the area of whistleblower protection – unfortunately *Law no. 571/2004* does not include such a provision in its text and the institution was reluctant to supplement the deficiency through its own subsequent regulations[26].

Implementation of whistleblower-protection measures at agency level is also weak. Little, if any, on-the-job training has been delivered to cover this issue with employees. Moreover, until recently there was no ethical guidance available at agency level in the Romanian public system. The situation changed with *Law no. 50/2007,* which introduced an obligation for all public entities employing civil servants to appoint a so-called "conduct councillor", who would provide assistance and advice on conduct norms, would monitor implementation of the *Code of Conduct* and report periodically on the level of compliance. The existence of a conduct councillor can definitely improve ethics policies at institutional level. Unfortunately, the legal provisions have several shortcomings that may limit the utility of this newly established position. First, the absence of a transparent and competitive appointment procedure, including clear, relevant and impartial selection criteria is liable to compromise the councillors' objectivity and credibility from the very beginning. Second, application of *Law no. 50/2007* is inexplicably limited to civil servants, leaving uncovered the equally important category of contractual employees, who are subject to a code of conduct very similar to that of civil servants[27]. Third, the law makes no reference whatsoever to the protection of whistleblowers, which is bound to be a crucial coordinate in the councillors' activity (they can offer information and guidance to employees regarding whistleblower protection measures and they can become recipients of public interest disclosures or be whistleblowers themselves).

The significant deficiencies in the implementation framework explain the general ineffectiveness of whistleblower protection regulations in Romania. Without a coordinated awareness-raising effort and strong institutional mechanisms to oversee implementation, both in central government and at agency-level, the law is not used and therefore not reaping results, despite its tremendous anti-corruption potential. Unfortunately, this state of affairs is not peculiar to whistleblower protection policies, but characterises other anti-corruption instruments as well, and is symptomatic of a purely formalistic approach of the Romanian government, which proved interested only in fulfilling international commitments and less so in the actual impact of an anti-corruption measure.

Soon after the passing of *Law no. 571/2004* TI Romania engaged in a series of activities aimed at assessing and supporting the implementation of whistleblower

26 The most obvious option would have been to require disciplinary commissions to specify in their annual reports cases of whistleblowers. The manner in which these bodies operate is regulated by means of a Governmental Decision, drafted at the initiative of NACS.

27 *Law no. 477/2004 on the Code of conduct for contractual employees in public institutions and authorities* is nearly identical to *Law no. 7/2004*. The similarity is explained in the *Preamble* as necessary to achieve uniformity of ethical standards throughout the public sector.

protection policies. This has been a constant concern of the organisation in the following years as well.

After the 30-day deadline for harmonisation of the *Interior Order Regulations* (i.e.: January 20 2005) had passed, TI Romania sent out to all ministries information requests soliciting copies of their internal regulations, where the articles adapted to the provisions of *Law no. 571/2004* would be distinctly indicated. In the same request to the ministries, Transparency International Romania solicited information on the harmonisation of interior regulations in all institutions and authorities subordinate to those ministries.

Only 13 of the 15 Romanian ministries answered our request. The analysis of the answers regretfully showed that the law was only partly implemented, in the best of cases. Several ministries[28] simply had not operated any changes to their interior regulations, nor informed their personnel of the protection measures contained in *Law no. 571/2004*. Others[29] had simply quoted formally the law in the preamble or first articles of the *Interior Order Regulations*, without actually changing the contents of these documents. As few as five ministries[30] had actually operated amendments to the regulations and introduced new legal provisions to meet the requirements of *Law no.571/2004*, although only one – the Ministry of European Integration – had done so before the official deadline. More importantly, however, no ministry had actually proceeded to the implementation of the law, by informing employees about the provisions of the new regulations, mentioning the procedures meant to ensure the protection of whistleblowers and asking the subordinate units to adapt their own interior order regulations.

Apart from assessment activities, TI Romania has supported the implementation of whistleblower protection measures through its *Advocacy and Legal Advice Centre (ALAC)*, mandated to offer legal assistance and counselling to victims and witnesses of acts of corruption, concerning the administrative and legal procedures of complaint. Since 2005 the Centre has set, as a priority, granting assistance to whistleblowers who notify breaches of law in good faith.

The activity of the ALAC is subject to a set of rules which limit strictly its engagement with clients. Thus, the Centre keeps and monitors only the intimations regarding exclusively acts of corruption or with a high potential of corruption in the public sector. It takes notice of the evidence presented, advices the petitioners, sends the cases to the competent authorities and monitors their solutioning, draws up periodical reports, and makes public the cases monitored. However, the

28 The Ministry of Defence and the Ministry of Administration and Internal Affairs.

29 The Ministry of Labour, Social Solidarity and Family, the Ministry of Education and Research, the Ministry of Transports, Constructions and Tourism.

30 The Ministry for European Integration, the Ministry of Culture and Religion, the Ministry of Environment and Water Management, the Ministry of Communications and Information Technology, and the Ministry of Health.

ALAC does not grant legal assistance and counselling to the cases being judged in courts and cannot decide, instead of the criminal investigators or prosecutors, on the existence or non-existence of the acts of corruption, or on any other violation of the laws. The Centre does not mount campaigns against individuals or institutions. Also, the Centre is not entitled to represent its clients in court and does not draw up procedural documents on its clients' behalf. Moreover, it does not perform criminal inquiries or expert surveys. However, for clients who meet the legal requirements to be considered whistleblowers, the Centre applies a slightly different procedure, namely it issues a document which certifies that the respective person has notified an issue of public interest[31]. This document can subsequently be used by the ALAC client in front of a disciplinary commission or/and a court of law to prove his/her status as whistleblower and therefore benefit from the specific protection measures.

Since 2005, the number of whistleblowers who visited the Centre and were willing to continue the procedures, by offering evidence in support of their petitions, has increased (29 in 2005, 11 in 2006 and 18 in 2007, compared to 2 in 2003 and 3 in 2004[32]). The majority of the petitions submitted to the Centre are made by people who have suffered directly from the abuse or disrespect of the laws or rules of conduct. They are forced to choose between their fear of retaliation and the need to solve a pressing personal problem. In 2005, the Centre had obtained permission to use publicly two successful cases of whistleblowers, which were repeatedly presented in the public awareness campaign run that year by TI Romania, convincingly demonstrating the existence of successful precedents and thus boosting the credibility of the new instrument among public sector employees. In the following years more cases of success followed[33], some of which are presently used in a new advocacy campaign centred on the issue of whistleblowing[34].

Stage 5: Evaluation

To date there has been no official policy evaluation of whistleblower protection measures in Romania. This was to be expected in view of the lack of viable institutional structures to coordinate policy implementation and the government's disinterest with the concrete impact of anti-corruption instruments.

31 See Annex 1.

32 According to ALAC internal records. In the period 2005–2007 around 5 to 10 % of total caseload in the Centre was represented by whistleblowers.

33 For a brief presentation of several whistleblower profiles processed through TI Romania's ALAC, please see Annex 2.

34 The campaign, entitled *"Think you can't fight corruption? Now you can make the difference!"* unfolds principally at local government level, and is supported by monitoring reports on the implementation of the law, a series of training sessions with public sector employees, journalists and NGOs, and a dedicated website (www.avertizori.ro). The project is supported by the European Union, through PHARE 2005.

The principal avenue by which TI Romania has evaluated the impact of whistleblower protection policies is the experience of the Advocacy and Legal Advice Centre. As shown before, the number of clients who come forward with complaints about illegalities at their workplace is increasing. However, many are unaware of their rights as whistleblowers and learn of these only when they reach the Centre, a state of affairs that only confirms that the implementation of whistleblower protection policies is practically non-existent at agency level. The several groundbreaking cases of success hosted by the ALAC over the years demonstrate clearly that the legislative instrument is correctly constructed and can work successfully in practice. Therefore, decision-makers should prioritise the adoption of subsidiary measures with the potential to increase the impact of whistleblower protection policies.

To improve implementation at agency level, several actions are in order. First, a set of criteria should be developed to be used by the public institutions to harmonise their internal regulations with the provisions of this law, in order to avoid the preferential implementation or reference to certain articles, while passing over others. Moreover, institutions should be obliged to organise training sessions presenting the provisions of *Law no. 571/2004* and promoting the social values defended by it. Furthermore, the new office of conduct councillor, established by *Law no. 50/2007*, should be tailored to have consistent attributions in the area of whistleblower protection. More specifically, conduct councillors should be empowered to receive public interest disclosures and offer assistance to future or actual whistleblowers, while respecting strict confidentiality terms. The reports sent by these councillors to the heads of their respective institutions and to the NACS should include detailed information about pubic interest disclosures, including the follow-up on these cases.

Another reason for critical deficiencies in implementation is the lack of a strong central institution to coordinate the process. The National Agency for Civil Servants can accomplish this role in relation to the civil service corps. More specifically, it should include in its periodic reports consistent information on the state of agency-level implementation of *Law no. 571/2004* and on cases of recorded whistleblowers. Going a step further, NACS could be empowered to supervise and eventually sanction the public institutions, which do not amend their internal regulations according to the provisions of *Law no. 571/2004*. Moreover, NACS's attributions of investigation of ethical breaches should be extended to cover the area of whistleblower protection.

Apart from these measures, several improvements to the legal text are also in order. First and foremost, clear and compulsory administrative responsibilities and sanctions should be established for public institutions that do not implement the provisions of *Law no. 517/2004*, for example by not harmonising their internal regulations. Sanctions and legal consequences should be established for other instances as well. For instance, if the disciplinary commission or any similar body does not

publish the invitation for the media and a representative of the trade union, the law now stipulates that the report and disciplinary sanction given are null; it should also stipulate sanctions for the members or chairman of that Commission who did not observe the law, as well as the sanctioning procedure. Were such provisions included in the law, the whistleblower would feel safer, knowing that those guilty of violating his rights would be punished. The law should also include clearly defined administrative sanctions for the heads of public authorities who "hunt" minor errors made by the whistleblowers, but do not sanction similar errors made by other employees. This does not mean the whistleblowers cannot be given disciplinary sanctions; it only avoids discriminatory treatment or exaggerated disciplinary measures being taken against the whistleblowers.

Conclusion

In Romania, whistleblower protection measures were relatively easy to introduce, principally owing to a remarkably favourable political context, both inside the country and internationally. The advocacy strategy adopted by TI Romania relied heavily on these contextual advantages, linking the measure tightly to Romania's calendar of measures for EU accession and harmonisation with international anti-corruption conventions, especially the United Nations' Convention against Corruption. Reliance on favourable international pressures, coupled with a direct and sustained dialogue with decision-makers proved to be a profitable advocacy strategy, since the law on whistleblower protection was adopted by Parliament with almost no modifications less that seven months after TI Romania first presented it to experts in the Ministry of Justice. However, the high hopes generated by this very promising start were not confirmed during policy implementation. Today, whistleblower protection measures are virtually unknown to potential beneficiaries as well as receptors of public disclosures. The lack of appropriate institutional structures charged with overseeing implementation, as well as the absence of sanctions for non-compliance, are the main causes which explain the present regrettable situation. More importantly, however, the evolution of the whistleblower protection policy in Romania confirms the lack of a genuine domestic political will to fight corruption. It demonstrates that although the establishment of an appropriate legal framework is certainly a crucial gain, it is only the first step in building an effective and sustainable anti-corruption effort.

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Annex A

Document Issued to Whistleblowers by the Advocacy and Legal Advice Centre at Transparency International Romania

TRANSPARENCY INTERNATIONAL ROMANIA

CENTRUL DE ASISTENŢĂ **ANTICORUPŢIE**

Str. Horaţiu, nr. 12, Bucureşti, cod 010834, România Tel/fax: +4(021) 222-2812
email: centru@transparency.org.ro; http://www.transparency.org.ro

To_____

On _____2005, you forwarded to the Advocacy and Legal Advise Center the intimation filed under no. _____/_____2005, and notified our Center according to the provisions of Law 571/2004, Articles 5 and 6, letter i.

In your intimation you presented cases of violation of the laws, of the ethical and professional code, of the principles of good management, efficiency, effectiveness, economy and transparency. Thus _____
_____
_____
_____

If you wish to continue the efforts meant to increase public integrity in the _____ system of _____, we invite you to the **Center's office, following scheduling by phone, no. (021) 3177170, Mondays to Thursdays, from 10:00 to 12:00 and 16:00 to 18:00**, for assistance and counseling, according to the enclosed mandate.

From the point of view of the Advocacy and Legal Advise Center of Transparency International Romania, Protection of whistleblower program, your intimation represents a notification of public interest, according to Article 3, letter a of Law 571/2004.

Annex B

Profiles of whistleblowers counselled at the Advocacy and Legal Advice Centre at Transparency International Romania

The Public Radio

Immediately after the entry into force of *Law no. 571/2004* a group of editors working in the Romanian Public Radio signed a protest which was brought to the public's attention. The editors complained of misadministration, inadequate use of financial resources, the breaking of deontological regulations by censorship and preferential and discriminatory practices in the human resources policy. As a consequence of the public protest, a parliamentary inquiry commission was set up. The commission finally decided to dismiss the President and the entire Board of Administrators of the Public Radio. The editors who had signed the protest received no disciplinary sanctions whatsoever.

The National Administration Institute

In July, 2005, a group of over 30 civil servants of the National Administration Institute within the Ministry of Administration and Internal Affairs drafted a memo which was sent to the Head of the Ministry as well as the ALAC. Following the inquiry ordered by the Minister of Administration and Internal Affairs, the Head of the National Administration Institute was dismissed from his position. Despite the organisational culture based on hierarchy and confidentiality, none of the 30 civil servants received any disciplinary sanctions, as they were protected by *Law no. 571/2004*.

The Ministry of Public Health

An engineer working at the Technical Office for Medical Equipment within the Ministry of Public Health notified the ALAC with regard to a number of offences perpetrated by the manger of this unit – negligence in office, preferential and discriminatory treatment, abusive and fraudulent use of public patrimony etc. The manager had given the whistleblower a subjective personnel evaluation and had applied successive disciplinary sanctions, ending with dismissal, but also reverted to threats, blackmail and breach of correspondence. The ALAC gave the whistleblower a certificate and assisted him through the legal action brought against the institution for abusive dismissal. The court recognised that the engineer was, in fact, a whistleblower and consequently annulled all disciplinary sanctions and had him reinstated in his previous job.

The Ministry for Small and Medium Enterprises, Commerce, Tourism and Liberal Professions

A civil servant notified the ALAC of irregularities perpetrated during a public contest for the occupation of several posts within the Ministry for Small and Medium Enterprises, Commerce, Tourism and Liberal Professions. This person had participated in the respective contest and observed that all viable candidates, including him, were under-evaluated in order to install pre-determined persons in the vacant posts. The ALAC issued a "whistleblower certificate" to this person and is supporting him through the legal action to have the contest annulled. At this moment the case is still being judged in the administrative courts of law.

Annex 8

Example of Training Programme

Hans Joachim Rieger

INTEGRITY AND ANTI-CORRUPTION SEMINAR

Time frame: Three days

Objective: To sensitise the participants on the topic of anti-corruption and provide them with prevention strategies.

Methods to be used in the seminar

The following methods will be used in the seminar

- lecture with visual aids
- question and answer methods,
- case studies from the EU and the country in question
- exercise with presentation of the results by the participants
- discussion and exchange of experience
- training with video

The following media/equipment is needed:

- flipchart
- overhead projector with transparencies
- video equipment
- room with chairs and tables in U-shape

Day 1

09:00 – 09:30	Welcome and opening remarks Introduction of the trainers and participants Review of the expectations of the participants Discussion and agreement of the purpose, contents and outputs of the seminar
09:30 – 12:00	**Module 1**: Definitions, causes and effects of corruption • Types of corruption • Causes of corruption • Consequences for society and politics **Module 2**: Legal aspects of fighting corruption • The role of law in combating corruption (general considerations), with a focus on local government • Preventing corruption • Administrative norms and guidelines regulating the conduct of public servants • Focus on the legislation in force in the country in question
12:00 – 13:30	Lunch
13:30 – 16:00	Continuation of Module 2: • Sanctioning corruption • Criminal Law: a) Interpretation b) Problem areas and reforms • Procedural issues • Practical issues Methods: presentation, discussion, group work, case studies

Day 2

09:00 – 12:00	**Module 3**: Organisational aspects of fighting corruption, including preventive measures • Areas at risk of corruption

- Conditions favouring corruption
- Indicators of corruption

12:00 – 13:30 Lunch

13:30 – 16:00 Continuation of Module 3:

- Methods of prevention
- Corruption prevention plans
- Corruption register
- Review of specific examples of prevention plans of local governments in the EU, especially in Germany

Methods: presentation, discussion, group work, case studies

Day 3

09:00 – 12:00 **Module 4**: Conflict of interests/code of conduct Conflict of interests

a) Examples

b) Strategies to manage conflicts of interest

12:00 – 13:30 Lunch

13:30 – 16:00 Continuation of Module 4:

- Development and implementation of effective Codes of conduct

  a) Framework

  b) Content
- Promotion strategies
- Dilemma situation game

Evaluation of the seminar by the participants

Closing remarks

Methods: presentation, discussion, group work, role play, case studies

Annex 9

Ethics Code of Public Servants (CZ)

Preamble

In order to contribute to gaining and maintaining the trust of the public, every public servant should respect certain core values. These are, first of all, the legality of all decisions made and equal approach to all individual and legal entities. Each and every public administration employee is concerned about the efficiency of public administration and therefore enhances his/her expertise by continuous training.

The purpose of this code is to promote desired standards of behaviour among public servants and to inform the public about the standards of behaviour that citizens have a right to demand from public administration employees.

Article 1.

Basic enactment

1. The Code serves as a recommendation for employees of the state administration and for employees of regional self-governed entities (who are hereafter referred to only as "employees").
2. The employee works in conjunction with the Constitution of the Czech Republic, laws and other legal regulations. At the same time he/she does everything possible to act in conformity with the enactments of the Code.

Article 2.

Basic principles

1. Work in public administration is a service to the public. The employee performs at a high-level of qualification that he/she continuously improves. His/her work

should be accompanied by the highest extent of kindness, understanding and willingness possible and should refrain from any kind of prejudice.

2. The employee treats other employees in his/her office, as well as employees of other offices of public administration, correctly.
2. The employee makes his/her decisions and deals with matters objectively based on their merits of the case, taking into consideration only legally relevant facts and acting without unnecessary delays. He/she does not act wilfully towards the detriment of any person, group of persons, body or component of legal entity. On the contrary, he/she asserts the rights and legitimate interests of citizens.

Article 3.

Conflict of interests

1. The employee does not permit his personal interest to come into conflict with his/her position as an employee of public administration. Private interests include any kind of advantage for him/her, his/her family, relatives, friends, individual and legal entities with which he/she has or has had a business or political relationship.
2. The employee does not take part in any activity that is not in accordance with the correct performance of his/her work duties or that limits in any way such performance.
3. If the employee has doubts about whether some activity is compatible with his/her participation in the administration of public affairs, he/she discusses the matter with his/her superior.

Article 4.

Political or public activity

1. The employee of public administration exercises his/her work in a politically disinterested manner.
2. The employee will not exercise such political or public activity that could corrupt the trust of citizens in his/her ability to exercise his/her service duties in an impartial manner.

Article 5.

Gifts and other bids

1. The employee neither demands nor accepts gifts, services, favours or any other benefits that could influence or seemingly influence his/her decisions in certain matters or corrupt his/her professional approach to certain matters. Moreover, the employee does not accept gifts or benevolence that could be considered to be a reward for the work whose administration is his/her duty.
2. The employee avoids situations in which, because of his/her position in public administration, he/she is bound to serve out any other person's favour, or in which he/she is accessible to improper influence of other persons.
3. If the employee is offered any advantage because of his/her position in public administration, he/she rejects it and informs his/her superiors.
4. In private life, the employee avoids such activities and behaviour that could scale down the public's trust in public administration. He/she must avoid his/her actions to be a cause for his/her own extortion based on his/her activities that are in conflict with legal or ethical norms.

Article 6.

Abuse of official status

- The employee does not use advantages, which stem from his/her official status, or information obtained due to his/her position, for his/her personal benefit. His/her duty is to avoid any conflicts of interest as well as situations that could lead to suspicion of conflict of interest.
- Unless legally, the employee does not offer, or provide any advantage that would be in any manner associated with his/her position in public administration.
- The employee does not knowingly mystify the public or his/her colleagues in the office.
- The employee treats the information learned, due to his position in public administration, with all necessary confidence and provides it with adequate protection. At the same time, he/she takes into account citizens' rights of access to information as specified by particular laws.

Article 7.

Inadmissible activity notification

- The employee makes every effort to assure maximally effective and economical administration and utilisation of financial resources, equipment and services that have been entrusted to him/her. In the case that he/she locates a loss or detriment to public property or property belonging to territorial self-governed entities, or he/she discovers an act or acts of fraud or corruption, he/she notifies his/her supervisor, and respectively, the authority acting in criminal proceedings.
- If the employee is asked to act in contrast with legal regulations or in a manner that represents a possibility of abuse of power, stemming from his/her position, he/she refuses to do so and announces such an incident to his/her supervisor.

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