Efim Obreja, Viorelia Gâscă, Teodor Potîrniche

Public Procurement and Public Ethics: a focus on fighting corruption

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AUTHORS:
Efim Obreja
Viorelia Gâscă
Teodor Potîrniche

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Adrian Cazacu

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Content

1. CORRUPTION IN PUBLIC PROCUREMENT

In a society based solely on common ownership, such as the one of former soviet era, centralized regulation was the underlying principle of economic development. Government decided on who would produce, what would be produced and in what quantities; to whom the goods would be supplied, at what price, in what quantities and form, etc. There is a rather vast documented evidence to prove the fact. The hallmark of the era was a closed state and uncontrolled power; the economy and government were subordinated to the system of centralized regulation of economy. Thus, competition, a typical feature of market-based economy, was absent, as was the potentiality for sustainable economic development.

Once independence was proclaimed and development based on market principles started, the Republic of Moldova entered a period of transition in which the principle of centralised control was not immediately abandoned. Activity of many sectors, in particular economy, for years on end were based on indeterminate measures, which were practically a compromise between the two principles of development – the old and the new one. The difficult step-by-step implementation of market principles has entered its incipient stage being accompanied by the struggle between the supporters and adversaries of such. It was in this very period that measures to successfully implement market principles have failed to be taken and favourable environment was created for corruption to thrive. For this reason, in the said period the economy not only failed to become competitive but also lost its prior inherited potential.

This was to be expected since corruption is destructive of economic development.[1] Corruption is always on a rise when a country undergoes a process of transformation. Problems that

[1] Donald Strombom, Corruption in procurement, USIA Electronic Journal, Vol. 3, No. 5, November 1998.

give rise to corruption are typical of most developing countries, especially of those undergoing transition from centrally regulated economy to market-based one. The problems are rather numerous with major ones confined to: difficulty in overcoming the heritage of totalitarianism (departure from closed and uncontrollable power of the state is slow; fusion of power and economy – typical of a totalitarian system with a centrally regulate economy – is still in place); imperfect and contradictory legislation; inefficient government institutions; immature civil society, government's isolation from society; painful implementation of democratic norms[2], and, of course, non-competitive economy, because the most corrupt are the states with non-competitive economies.[3]

„Transparency International – Moldova" carried out research that has revealed a rather high level of corruption - permeating various sectors of life in the Republic of Moldova – as well as aggravating trends. The negative impact on social and economic development of Moldova and on political safety of the state was clearly demonstrated. The research highlighted a number of problems that need to be solved for the action against corruption to be effective.[4]

A 2000 survey showed that corruption was one of the most pressing problems in Moldova i.e., it ranked second after poverty.[5] On a scale of 0 to 6, where 6 denotes utmost

[2] International experience of combating corruption: from failures of China to successes of Israel, Clean Hands No. 3, 1999.
[3] Ivan Crastev, Are the post-communist governments sincere in combating corruption?, Clean Hands No.3, 1999.
[4] Lilia Caraşciuc, Corruption and quality of government: Moldova's case, TI-Moldova, Chişinău, 2002.
Efim Obreja, Lilia Caraşciuc, Corruption in Moldovafacts, analysis, proposals, TI-Moldova, Chişinău, 2002.
[5] Lilia Caraşciuc, Corruption and quality of government: Moldova's case, TI-Moldova, Chişinău, 2002.

corruption, the corruption is evaluated at 5.34, by degree of corruption public sectors rank as follows (from the highest): health, customs service, police, tax inspectorates, local governments – the City Hall, education, judicial.

An effort was made to examine public procurement in the Republic of Moldova in order to evaluate the situation and to effectively prevent and contend with corruption in this sector. For this purpose, regulations, legislative acts, materials of the National Agency for Public Procurement, of the office of the Chamber of Accounts (Auditor General) and the legal bodies, international documents and other sources were used.

1.1 Corruption in public procurement: international experience

In the concluding part of his report to the 2nd European Conference of the specialised service to contend with corruption, Carlos Castresena[6] - the main speaker on the issue of corruption in public procurement – pointed out that corruption had changed its characteristics, expanded its presence in all public governments and exceeded the limits, causing systematic deterioration of the state of public budgets. Governments of all levels procure goods and services; make public procurements in the process of which enormous public resources are placed under the control of individual public agents – the privileged pivot of the phenomenon of corruption.

Donald Strombom[7], the ex-director of the procurement service of the World Bank, stresses that there is hardly any other area where corruption is more widely spread and has more serious consequences than in public procurement. Government

[6] Carlos Castresena Fernandez, II Conference Europeenne des Services Specialises dans la lutte contre la Corruption (Tallinn, 27-29 octobre 1997), La corruption dans les marches publics.

[7] Donald Strombom, Corruption in procurement, USIA Electronic Journal, Vol. 3, No. 5, November 1998;

contracts for public procurement create favourable conditions for acts of corruption. The motives are simple. Apart from wages of public servants and social benefits, public procurements typically account for the largest chunk of expenditure in the budget of government of all levels. Both total expenditure and individual contracts are rather big and so is the possibility of corruption. As a rule, corruption takes on the form of bribes to officials, return of a part of the amount of the contract, and others. The size of a bribe to a public official for awarding procurement contract to the right person may exceed by far his lifetime salary. The temptation is high while the risk of punishment is often relatively small. The largest and most notorious of the known cases of corruption in the world are traditionally public projects of civil construction i.e., airports, dams, highways, metro stations, water ducts. Other important projects are the procurement of expensive vehicles and equipment i.e., bus fleet, construction equipment, aircraft, turbines and generators, other equipment, medicine, text-books, uniforms procured on annual basis in enormous quantities. Amongst the new areas, information technologies provide the best terrain for corruption as on the one hand, few people are knowledgeable on it, and on the other, a lot of high-priced contracts are signed in this very domain. The notorious cases attract most attention i.e., when millions of dollars change hands by way of reward for the same contract, or when bribe scandals are made public and cause the fall of governments and political parties.

How does corruption in public procurement occur? According to Donald Strombom, mass conscience pictures a would-be entrepreneur approaching the office of a minister or that of a mayor with a case full of money just before the final decision on contract award is taken. In reality, there may be an electronic transfer to certain account with an offshore bank, a stake in company's shares or a paid place in a prestigious

university for someone's son or daughter. Combating corruption becomes much more difficult as the beneficiary uses this reward for a good deed.

Further on Donald Strombom mentions that cases of corruption on stages preceding public procurement are frequent: e.g. to get the company included in the shortlist, or to reward the client for formulating tender specification in such a way that the decision on who is the winner be precluded. Corruption may also take place exclusively between the competing companies by way of collusion and distortion of bids without any participation of the client who does not necessarily know about what goes on. Companies can collude in order to predetermine who will make a bid and what price will be offered, who will win and how the profit will be divided.

The highest level of corruption, involving huge money, seems to take place once the contract is awarded. Charity is not the purpose of corruption: undoubtedly 'winners' are inclined to reimburse their expenses on bribes, and to that end resort to various means. At first stage, taking into account terms of tender agreement, it is done by exaggerating the offered price. Later on, at the stage of contract execution expenses can be recovered by submitting overstated invoices for supplies of goods or works; or by using materials of inferior quality in construction works; by supplying goods of cheaper makes; as well as by supplier insisting on increasing the volume of the contract for supplying more goods or services at an exaggerated unit price. After presentation of the contract corruption may arise with the consent of officials from the client agency, or by well-disguised initiatives of the supplier (entrepreneur).[8]

[8] Donald Strombom, Corruption in procurement, USIA Electronic Journal, Vol. 3, No. 5, November 1998.

In this context Castresena[9] mentions that corruption in public procurement causes project prices to escalate, quality of services to deteriorate, and anti-economic or downright useless projects to be implemented. And a far greater concern is the deterioration of the society's ethics, and loss of citizens' trust in public services and democratic institutions because of corruption.

What is the real damage inflicted by corruption in public procurement? According to Strombom, one way of estimating damage is to compare real prices of similar goods and services supplied under other conditions, e.g. under contracts signed as a result of negotiations or a closed tender, with prices formed through open bargain or tender organised in a proper way. As a rule, difference in prices is 20, 30 or even more per cent. According to the most optimistic estimate, systemic corruption may increase public procurement expenditure by at least 20 to 25 per cent. In some cases, after corruption was disclosed in public procurement, the price of a supply of works on large projects went down by more than 50 per cent. Given the fact that annual public procurement budgets amount to millions of dollars, sums of corruption are enormous.

The argument about who bears responsibility for corruption in public procurement is to a certain extent pointless since there is no single model. In some cases it is the client, who initiates corruption by demanding overtly the return of a part of the price, or the inspectors, who confirm the wrong price of payment to suppliers. In some other cases a tender participant would be the first to offer a material incentive. In most cases

[9] Carlos Castresena Fernandez, II Conference Europeenne des Services Specialises dans la lutte contre la Corruption (Tallinn, 27-29 octobre 1997), La corruption dans les marches publics; GMC (2000) 32 Final, Groupe Multidisciplinaire sur la Corruption, rapport d'activite dun GMC (1994-2000).

the extent of the involvement of the client and a contender, or a supplier, is evident. It is the society as a whole and the taxpayers who ultimately lose in all cases.[10]

Strombom also reports that serious actions are being taken to demonstrate that the system of public procurement can operate efficiently and be free of corruption. An efficient mechanism for procurement is being developed in order to eliminate the phenomenon of corruption in public procurement.

What are the characteristics of a good system of public procurement? According to Strombom, the system of public procurement should ensure supply of goods and services, required by government for fulfilling its functions, timely and at reasonable prices. That is, the system should be economic, operational and efficient. It is necessary to make general public aware of the would-be contracts. It is recommended that priorities of entering into contracts be given to those who meet the requirements and criteria while offering the best terms. Rules should be clear and above board, the whole process should be transparent, and results should be predictable. The whole system should build on the understanding that public officials are responsible for the efficient use of public resources and shall not seek to enrich illegally by performing their duties.

Further Strombom gives his opinion about international experience, which demonstrates that these characteristics are put in the limelight in a system, which is based on proper methods of competition between suppliers of goods and services. There is also a rather broad consensus on the main elements of a competitive tender, which has to comprise the following:

[10] Donald Strombom, Corruption in procurement, USIA Electronic Journal, Vol. 3, No. 5, November 1998.

- Public announcement about a possibility of participating in a tender;
- Documents with clear description of the requirements; description of tender procedure; terms and conditions of the contract; and winner selection criteria;
- Only safely sealed bids should be submitted; bids should be opened in the presence of all tender participants in the appointed place at the appointed time;
- Impartial evaluation and comparison of bids by competent experts free of the influence of tender participants or other parties;
- Award of contract to a tender participant who met all the requirements and offered the best terms of the contract in conformity with the published selection criteria.

In his conclusions presented at the conference in Tallinn Castresena[11] shows that procedures of public procurement should be economic, fair, impartial, transparent and operative. They should follow the objective to put an end to corruption, to facilitate its identification, and to take particular care of various sensitive issues i.e.,

- The records of invitation to public procurement should be clear, precise, accessible and non- discriminating;
- Selection requirements should be objective, and as little as possible should be left to discretion;

[11] Carlos Castresena Fernandez, II Conference Europeenne des Services Specialises dans la lutte contre la Corruption (Tallinn, 27-29 octobre 1997), La corruption dans les marches publics; GMC (2000) 32 Final, Groupe Multidisciplinaire sur la Corruption, rapport d'activite dun GMC (1994-2000).

- Envelopes should be opened, as a general rule, in a public place, public officials and suppliers should be present to evaluate the bids, preferably representatives of civil society (of consumer association, professional associations, mass media, etc.) should participate;
- Decision on determining procurement by one person should be avoided as much as possible; decisions should be rather taken by a panel which make evaluation collectively, independently, free of pressure from administration or private sector;
- When competition and publicity of procurement are impossible due to the nature of the contract (e.g. national security or defence) alternative mechanisms of control should be put in place to avoid corruption;
- Those responsible for procurement should be aware of their decisions;
- Independent panels should be available to supervise over proper application of public procurement procedures; suppliers and other interested persons should be able to notify such panels;
- Local government should provide adequate mechanisms of internal and external audit and procedures of the auditing of accounts.

With view of intensifying action against corruption in public procurement, the participants of the conference in Tallinn[12] arrived to the conclusions as follows:

[12] Carlos Castresena Fernandez, II Conference Europeenne des Services Specialises dans la lutte contre la Corruption (Tallinn, 27-29 octobre 1997), La corruption dans les marches publics; GMC (2000) 32 Final, Groupe Multidisciplinaire sur la Corruption, rapport d'activite dun GMC (1994-2000).

- Prevention and awareness are the key elements of an efficient long-term strategy to contend with corruption in public procurement. Preventive measures, such as splitting decision-making process into a number of steps, taking decisions on important issues by groups of several persons; change-over of officials in major administrative positions; regular declaration by senior government officials of their property followed by audits of the submitted information, proved to be effective;

- Adequate legal sanctions should be applied to public procurement contracts which were awarded by means of corruption i.e., cancellation of contract, arrest of the pledge; damages and interest; black books of companies and officials engaged in corruption;

- Permanent surveillance and firm application of sanctions to acts of corruption discourage such offence rather efficiently. To this end, judges and prosecutors should be independent and impartial in exercising their functions; have sufficient knowledge to deal with such criminal offence; and have sufficient means and resources to achieve this goal;

- Due consideration should be given to the fact that in many countries organised crime increasingly introduces corrupt practices in public procurement, getting contracts awarded not only by giving bribes, but also by threat, and other criminal means;

- Experience shows that corruption in public procurement is frequently linked to illegal funding of political parties and election campaigns. This results in squandering of public funds and is harmful to the functioning of democratic institutions;

- According to the declaration of the UN General Assembly of December 16, 1996 *against corruption in international commercial transactions*, states should provide full co-operation to governments in information-gathering process as

part of criminal investigation, or any other judicial procedure, in relation to corruption, or bribe and, in general, share all the available experience in this area;

- Multilateral organisations should especially promote international exchange of information and experience. Such co-operation will benefit from the implementation of database accessible to all profession organisations.

Strombom[13] informs that agencies of law and order of many states and at various levels have developed public procurement procedures based on the identified main elements and successfully implement such. The mechanisms of implementing public procurement procedures were adopted by a number of transition economies of Eastern Europe: e.g. in Romania, by Government Decree No. 60 of April 45, 2001 on public procurement, followed by Government Decree No. 461 of May 09, 2001[14], and by Government Decree No. 20 of January 24, 2002 on public procurement by means of electronic auctions, followed by Government Decree No. 182 of February 28, 2002[15]; in Russian Federation by Decree of the president of the Russian Federation No. 305 of April 08, 1997[16].

[13] Donald Strombom, Corruption in procurement, USIA Electronic Journal, Vol. 3, No. 5, November 1998.

[14] Urgent Government Decree No.60 din 25.04.2001 public procurement; Government Decision No. 461 of 09.05.2001 approval of application norms of O.U.G. 60/2001 on public procurement.

[15] Government Decree No.20 of 24.01.2002 on public procurement through electronic auctions; Government Decision No. 182 of 28.02.2002 list of contracting authorities obliged to enforce provisions of O.G. 20/2002 on public procurement through electronic auctions and products due to be procured through electronic auctions.

[16] Presidential Decree of Russian Federation Federației No. 305 of 08.04.1997 on priority measures to prevent corruption and cutting down budgetary expenditures on organizing procurement of goods for the state's needs.

Ibrahim Shihata, a law professor and vice-president of the World Bank, says that corruption is known in practically all societies as a social evil, if not a sin. With liberalisation of trade and investment climate, stepwise globalisation of markets, implementation of information technologies corruption became rather international than national problem. If corruption does not affect economic development directly and negatively, it affects the price of transaction, inflow of foreign investment, sustainability and predictability of the investment climate.[17]

In 1995 James D.Wolfensohn, the president of the World Bank, declared in Moscow that after the end of the cold war corruption became the main impediment in the way of democratic development.[18]

As far as international economic co-operation goes corruption arises when enterprises with foreign investment are set up; investment projects are implemented; public property is privatised; problems of distribution of products are examined, etc. Not a single state can escape this type of corruption. Corruption exists in the international organisations because they deal with distributions of funds (e.g. assistance to member states or to clients of these organisations); funds are distributed by bureaucrats who are not the owners of these resources.[19]

Strombom[20] mentions that all major international banks for development, including the World Bank and European Bank

[17] Ibrahim Shihata, World Bank against corruption, Clean Hands No. 3, 1999.

[18] International experience of combating corruption: from failures of China to successes of Israel, Clean Hands No. 3, 1999.

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[19] International experience of combating corruption: from failures of China to successes of Israel, Clean Hands No. 3, 1999.

[20] Donald Strombom, Corruption in procurement, USIA Electronic Journal, Vol. 3, No. 5, November 1998.

for Reconstruction and Development, have adopted procurement rules to be applied in the projects financed by them. Borrowers must apply these rules in order to gain access to the proceeds of the credits. Banks, in turn, introduce supervision to ensure that the rules are implemented. Non-compliance with the rules can mean the loss of loans. According to Strombom, to combat corruption in public procurement banks for development spend a lot of working time and a sizeable part of their administrative budget on supervision of every credit operation and, moreover, on surveillance over and approval of procedures and decisions in public procurement. Despite this, it may be presumed from the recently reported cases that in some states at least 20 per cent of credit resources are wasted as a result of money "drain" due to corruption, the money going into the pockets and personal bank accounts of officials. International financial institutions had taken specific measures to consolidate their capacity in combat against corruption even before these findings were published. They had expanded their procurement rules, to explicitly forbid fraud and corruption and to introduce severe sanctions for violating the rules, by way of sanction the banks shall cancel contracts with delinquent suppliers, forbid them to participate in future tenders for contracts funded by the banks, deny payments on contracts illegally awarded, and, as a last resort, cancel the loan. Beside the required supervision and financial audits of the project, the international banks for development hire foreign companies to conduct additional audits in order to determine how debtors comply with the established rules and procedures. Alongside with tightening the monitoring of and supervision over the project the banks take measures to make sure that the borrowers really conscientious and are able to correctly apply procurement procedures. The two key areas, the object of this examination, are the

correspondence of procurement rules with general practices and presence of signs of corruption.

Ibrahim Shihata[21] testifies that together with the steps to contain internal corruption, the World Bank takes a series of measures to eliminate corruption in the process of extending credits, to avoid any possibility of corruption penetrating into the Bank's projects. To this end, at the initial stages of project development for the Bank the focus is on the participation of all the interested persons and non-government organisations. In the process of project implementation the focus is on control and monitoring. In the context of combat with corruption the Bank's rules referring to public supplies of goods and services funded out of the proceeds of the Bank's credits have probably the greatest importance. New strict regulations and procedures concerning the fight against corruption were adopted in addition to the existing ones:

- The Bank can at any moment cancel the financing of a credit contract not only in case of government supplies by also in all other cases when an act of corruption or fraud is established to have taken place, involving representatives of the borrower or beneficiary of the credit at the time of making or implementation of the contract for public supplies, unless the borrower undertakes adequate and timely measures satisfactory to the Bank;
- Any supplier (entrepreneur), consultant supported out of the proceeds of the bank's credit who, upon audits, was recognised by the Bank to have been involved into an act of corruption and fraud will be declared non-qualifying for participation in the implementation of the Bank's projects by the decision of the president of the Bank for a definite or

[21] Ibrahim Shihata, World Bank against corruption, Clean Hands No. 3, 1999.

an indefinite period of time, subject to the gravity of the offence;

- The Bank is also in the right to reject a proposal of the borrower to transfer the contract for public supplies if the candidate of the borrower was found to have been involved in acts of corruption or fraud while competing with other contenders for winning the right to participate in the said contract.

Ibrahim Shihata mentions that the main means to assist the member–states to combat corruption are the lending policies of the bank and technical assistance loans.

To enhance efficient action against corruption on both national and international level various international organisations have adopted a number of acts, containing basic provisions on combating corruption.

In 1993 the UN Commission on international commerce laws adopted a model law on supplies of goods and execution of construction works. The international banks for development formulate their procurement rules, administrative and judicial procedures of examining decisions on procurement on the principles provided by this law, which is an important step towards the development of uniform international rules and procedures.[22] The law in question is the UNCITRAL Model Law on procurement of goods and services adopted in July 5 through 23, 1993 in Vienna with the Recommendations for implementation.[23] The model law was made with view to provide assistance to countries reorganising their systems of public procurement.

[22] Donald Strombom, Corruption in procurement, USIA Electronic Journal, Vol. 3, No. 5, November 1998.
[23] UNCITRAL model law on procurement of goods, construction and services, New-York, 1995.

Strombom considers that the Agreement on Government procurement done at Marrakesh on 15.04.1994[24], a component part of the general Agreement on trade and tariffs, was the most important success. This Agreement became effective on January 1, 1996 for the countries signatories and is often referred to as procurement rules of the World Trade Organisation. Observance of these rules by the governments of the WTO member-countries is encouraged, although is not a condition of membership.

On November 6, 1997 the Committee of Ministers of the Council of Europe adopted the 20 guiding principles of fight against corruption. One of the guiding principles of fight against corruption is the straightforward attitude to public procurement. In accordance with this principle respective procedures of public procurement should be adopted, securing adequate transparency to facilitate fair competition and discourage bribers.[25]

On 27.01.1999 the Council of Europe adopted the Criminal Law Convention on Corruption[26], which deals with criminal offence, acts of active and passive corruption in private and public sectors, traffic of influence, laundering of money coming form corruption, participation (complicity) and stipulates the liability of legal persons, liability for offence in accounting, etc; and the Civil Law Convention on Corruption was adopted on 04.11.1999.[27]

[24] WTO, Agreement on Government procurement, done at Marrakesh 15.04.1994.
[25] Resolution (97) 24 portant les vingt principes directeurs pour la lutte contre la corruption (adoptee par le Comite des Ministres le 6 novembre 1997, lors de sa 101 session), Conseil de l'Europe.
[26] Penaal convention on corruption, Strasbourg, 27.01.1999.
[27] Civil convention on corruption, adopted on 04.11.1999 in Strasbourg.

On the basis of Resolution (98) 7 of the Committee of Ministers of the Council of Europe dated May 5, 1998[28] the Council of Europe adopted resolution (99) 5 of May 1, 1999 by which the Group of States against corruption was founded (GRECO).[29]

The Council of Europe and the European Commission did more than that, to this end they launched some programmes, such as the Octopus I Programme for 1998, the Octopus II Programme "Fight against corruption and organised crime in countries in transition" for 1999 – 2000, in which the Republic of Moldova took part. And in February 2000 the Anti-Corruption Initiative in the framework of the Stability Pact in south-eastern Europe (SPAI) was adopted.

In order to make the anti-corruption effort in international trade more efficient the Organisation for Economic Cooperation and Development (OECD) adopted a Convention on fight with corruption of foreign public officials in international commercial transactions on November 21, 1997[30]; the Convention also deals with penal offence, acts of corruption of foreign public agents in international trade, complicity in acts of corruption, laundering of capital accumulated by act of corruption, provides for liability of legal persons,; deals with international co-operation in the fight with corruption, etc. Additionally, on May 23, 1997 the OECD Council adopted Recommendations on combating corruption in international commercial transactions. Among them are recommendations on transparency in public procurement, on suspension of

[28] Resolution (98) 7 portant autorisation de creer l'accord partiel et elargi etablissant le "Groupe d'Etats contre la corruption – GRECO" (adoptee par le Comitee des Ministres le 5 mai 1998, lors de sa 102e session).
[29] Resolution (99) 5 instituant le Groupe d'Etats contre la corruption (adoptee le 1er mai 1999).
[30] Convention sur la lutte contre la corruption d'agents publics etrangers dans les transactions commerciales internationales, OCDE, 21.11.1997.

enterprises involved in corruption of foreign public agents from access to public procurement. [31]

We believe it is necessary that our country adhere to these international tools and that the national legislation be adjusted to meet the international requirements; this fact will contribute to making anti-corruption an action more efficient both on national and international levels.

Strombom[32] states that according to the experience of both international financial institutions and other agencies of public procurement can not be contained or tackled solely by efficient rules. He believes that other concerted effort is required to affect corruption, such as and efficient system of monitoring and audits, a law and order system which has capacity and will to act against offenders disregarding their position. A non-corrupt judicial system, which is capable of passing decisions on guilt and implementing them, is a prerequisite. A cadre of professionals – which are politically impartial in decision making and contract awarding process - should be trained for public procurement system. Wages should be adequate to motivate honest behaviour and contain the temptation of corruption.

Strombom further stresses that creative thinking and innovative attitudes are a must for the combat against corruption to be effective. Movement for the implementation of transparency in public procurement is a promising trend. It will we rather tragic if good intentions will turn out to be merely indeterminate measures taken in a hurry; in this case corruption in public

[31] Recommandation revisee du Conseil sur la lutte contre la corruption dans les transactions commerciales internationals, adopte par le Conseil OCDE le 23.03.1997.

[32] Donald Strombom, Corruption in procurement, USIA Electronic Journal, Vol. 3, No. 5, November 1998.

procurement will persist, while the reformers will be further discouraged.

1.2 Regulation on public procurement in the Republic of Moldova

With the scope of securing national economy and enhancing efficiency of public procurements it was necessary to elaborate and implement in the Republic of Moldova respective mechanism that would allow to avoid purloining, abuses and bribery encountered in this domain.

Prior to adoption of a law designed to regulate public procurement mechanism this activity in the Republic of Moldova was governed by the regulatory acts adopted through Government Decisions.

Thus, approved through Government Decision No. 534 of August 24, 1993 was a provisional Regulation on the arrangement and display of tenders and auctions for public works.[33]

Adopted through Government Decision No. 658 of September 20, 1995 was a mechanism of holding public procurement and such at the expense of foreign borrowings. However, this Decision was abrogated on December 31, 1997. According to this Decision[34] the „mechanism of public procurement and such displayed at the expense of foreign borrowings" was made effective. To that end instituted within "Moldova-EXIM" company was the Bureau for Projects Assistance and Public Procurement (BAPAP) having scope to arrange and display public procurement.

[33] Government Decision No.534 of August 24, 1993 on approving provisional Regulation on the arrangement and display of tenders and auctions for public works.

[34] Government Decision No.658 September 20, 1995 on the mechanism of public procurements and such at the expense of external borrowings.

Government Decision No. 310 of June 10, 1996 has stipulated application of a mechanism for procuring medicines and other articles for medical purposes through the same BAPAP. [35]

Analysis of the last two Government Decisions inevitably raises a question of corruption phenomenon. To what extent the government can be assured that public procurement (done at the expense of public funds and for public needs) will be carried out by a private company without being engaged in abuses, purloining and corruption/bribery under such conditions when all the Government can do is just sending to that company some recommendations. For instance, point 3 of the Government Decision No. 658 of September 20, 1995 stipulates that „it is recommended that „Moldova-EXIM" presents proposals on modifying its charter so as to include functions prescribed for the Bureau for Projects Assistance and Public Procurement". Such a mechanism of public procurement was inevitably leading to purloining or inefficient use of public funds. For example, the Chamber of Accounts has revealed a whole number of infringements which practically prove the case. One of such cases has been described in Chamber of Accounts Decision No. 60 of June 21, 2001[36]. It has been stated that the Ministry of Agriculture has contributed to offering public funds for purchasing technological equipment for the needs of Moldovan-German JV „Semger" SRL from „KVS" (Germany), which holds 50% stake in said JV. Despite provisions set forth under the contract, the beneficiary abstained from using his own assets (including equipment) as

[35] Government Decision No.310 June 10, 1996 on the mechanism of procuring medicines and articles for medical purposes at the expense of budgetary funds and government lending for 1996.

[36] Decision of the Chamber of Accounts No. 60 of 21.06.2001 on the results of auditing certain aspects of the activity displayed by the Ministry of Agriculture and Processing Industry during 1999-2000 and spending in 2000.

collateral for debts repayment, while in due time JV "Semger"'s debt has amounted to approximately 3.4 millions DM. As a result 3.1 millions DM was paid at the expense of state budget to procure technological equipment for a non-state structure with no liability whatsoever on behalf of the latter. And here comes the question: was this procurement procedure based on the act of corruption or not?

Besides the above mentioned measures, Government Decision No. 711 of December 19, 1996 has stipulated procedure of arranging auctions (tenders) on projection and implementation of public investments.[37]

On March 30, 1997, to ensure proper regulatory framework for public procurement the Parliament of the Republic of Moldova has adopted the Law No. 1166-XIII on procurement of goods, works and services to cover the state's essential needs. The objective of this law is to secure national economy and to enhance efficiency of procurement. It is also to expand participation of the suppliers (entrepreneurs) in procurement procedures, to promote competition, objectiveness and impartiality in public procurement and to ensure public credibility in such.[38] The law in question stipulates the principal notions as well as the domain of its application, the subjects and objects of procurement, the government regulation on procurement, basic requirements to the procurement and auction procedures, specifics of service procurement, disputes and other relevant aspects.

Based on article 5 of the law (government regulation on procurement) and with the scope of law execution in the domain of public procurement, as well as to ensure inter-

[37] Government Decision No.711 of December 19, 1996 on arrangement of auctions (tenders) on projection and implementation of public investments.
[38] Law on procurement of goods, works and services for the state's needs No. 1166-XIII of April 30, 1997.

departmental regulation and coordination, instituted within the Ministry of Economics and Reform through Government Decision No. 1217 of December 31, 1997[39] was the National Agency for Public Procurement. In compliance with the above article, the Procurement Agency shall arrange auctions or alternative procurement procedures for public needs. Based on the provisions of the same article was institution of Task force for procurement purposes, which shall be a group of experts within public administration authority or within certain business, involved in procurement procedure at the expense of public money. The Task force is entitled to prepare invitations to participate in pre-selection or in auctioning, elaborate tender documents, carry out examination, evaluation and comparison of bids submitted by the suppliers (entrepreneurs), write reports on the procurement procedure, sign procurement contracts with the suppliers (entrepreneurs) and manage contracts. All the documents elaborated by the Task force, as well as the results of pre-selection shall be approved by the Procurement Agency.

Government Decision No. 1217 stipulates that the ministries, departments and other state institutions (state beneficiaries) shall institute Task forces for procurement of goods, works and services arising from the established number of personnel and available wages fund. The National Agency for Procurement jointly with the Task force was due to arrange for the entire process of procuring goods, works and services for the state's needs on the basis of a tender. Furthermore, approved was the Regulation on the National Agency for Public Procurement.

From the above specified regulations it follows that public procurement in the Republic of Moldova is actually organized and displayed by two structures: the National Agency for Public Procurement affiliated by the Ministry of Economics

[39] Government Decision No. 1217 of December 31, 1997 on the National Agency for Public Procurement.

and the Task forces for public procurement affiliated by the public administration authorities.

It looks rather puzzling that the law, although stipulating institution of Task forces for public procurement and setting regulations for their activities, fails to stipulate the notion of the contracting authority and does not set regulations for the activities displayed by the latter. However, it is the contracting authority that shall be treated as the main party responsible for carrying out public procurement. Lack of the notion as well as of provisions on the contracting authority produces a rather negative effect onto the main aspects of the law and as a result provisions on who shall conclude procurement contract, who shall bear responsibility for the observance of law, whose decisions shall be appealed, who shall be liable for recuperation of inflicted prejudice, etc. sound rather doubtful and unrealistic. Hence, a conclusion can be drawn on the necessity of making changes and amendments to the Law No. 1166-XIII of April 30, 1997, which shall clearly define the contracting authority and envisage for it some of the provisions that were wrongly attributed to the Task forces and hence, identify the contracting authority as the one assuming responsibility of the legality of public procurement displayed.

While examining herewith mentioned provisions of the law one can conclude that the structures in question (the Procurement Agency and the Task force) are to some extent doubling their activities. The mere fact that public procurement is displayed between Task force (or better say contracting authority) and the supplier (entrepreneur) through the Procurement Agency implies that the latter represents an intermediary structure for the other two parties involved in procurement: the public institution and the supplier (entrepreneur). At the same time, the Law No. 1166 of April 30, 1997 does not include provisions on the involvement of the Ministry of Finance into the process of public procurement. Thus, the Ministry of

Finance as a specialized body obliged to manage public funds becomes a neutral one when it comes to public procurement issues. Since the Procurement Agency is affiliated by the Ministry of Economics and has no direct influence onto the Ministry of Finance, the described mechanism of public procurement in Moldova seems to be lacking efficiency. This is bound to the fact that on the one side procurements, being done through the Agency are centralized, while on the other side inclusion of the Procurement Agency into the framework of the Ministry of Economics and lack of regulation that would stipulate Ministry of Finance's obligations under procurement may lead to a certain disruption of that link between the Ministry of Finance and the public institution (whenever there is a need to solve public procurement issues) and thus trigger appearance of problems in co-operation between the public institution (as a beneficiary), the Procurement Agency and the Ministry of Finance.

In many countries public procurement is decentralized, procurement being arranged and displayed by the contracting authority (beneficiary) without intermediary. Envisaged in some cases are central authorities responsible for carrying out (financial) supervision and control over the public procurement.

According to the UNCITRAL Model Law on procurement of goods (works) and services, elaborated by the UN Commission, provisions stipulated under this law are applicable to the two parties involved in public procurement, i.e. beneficiary and supplier. To exclude certain errors or such problems that can possibly appear it would be desirable that intermediary decisions on public procurement are approved by the supreme instances. The like function can be exercised by a body within the Ministry of Finance or Commerce or by any central independent body possessing expertise in public procurement. It is also advisable to attribute supervisory and

control functions to these instances, or distribute such functions between two or more bodies or institutions. The following can be referred to such functions: general supervision over the implementation of legislation on procurement, rationalization and standardization of procurement procedures and practices, control over the display of procurement procedures and functioning of the legislation on procurement, improving skills/training persons responsible for procurement.

Based on the above specified one may conclude that in order to insure efficient performances in public procurement it is necessary to define powers of the Ministry of Finance in finances management problem when carrying out public procurement. Likewise, it is necessary to decentralize public procurement by modifying the status and the empowerment of the Procurement Agency as well as the respective powers of the contracting authorities and such of the Task force.

Under this context we believe that in order to display efficient activities in public procurement in Moldova and to ensure respective equilibrium between the independence enjoyed by public institutions and control over their performances it will be necessary to make changes and amendments to the Law No. 1166-XIII of April 30, 1997, as herewith suggested:

- to define obligations and powers of the Ministry of Finance in carrying out financial supervision over the public procurement displayed by the contracting authority;

- to gradually decentralize public procurement by offering relative independence and attributing responsibility in what refers to law observance to the contracting authority, taking over from the Procurement Agency such competencies as auctions arranging or displaying procurement procedures;

- to attribute to the Procurement Agency a status of an independent body within the Government by ensuring its

gradual transition from a body in charge of arranging auctions or carrying out procurement procedures to the one having its main function confined to general supervision over the implementation of law on procurement, rationalization and standardization of procurement procedures and practices, control over of the legislation referred to procurement, offering training in procurement issues to the responsible persons, setting up database and record keeping in the domain of public procurement, co-operation on public procurement issues with the Ministry of Finance, public institutions, law enforcement and controlling bodies.

Furthermore, the Law on procurement of goods, works and services to secure state's essential needs stipulates that falling under the incidence of that law are all types of procurement made for the state's needs in the Republic of Moldova at the expense of public money.

Subjects participating in procurement can be physical and legal entities of the Republic of Moldova as well as of other states irrespective of the title and legal or organisational form of the enterprise.

Objects of procurement are goods for specific consumption, works and services imported for public needs.

The law provides that procurement can be made by means of:

a) public auction;

b) two-stage auction;

c) auction by tender;

d) special auction with limited participation;

e) invitation for bids of price;

f) procurement from a single source.

Public auction is the most preferable method of procurement of goods and works.

In public auctions all suppliers (entrepreneurs) who wish to take part in the auction are invited to submit their bids, or price offers, for pre-selection. The law requires that supplier should submit documents certifying his qualification in order to be allowed to participate in the procurement procedure. The qualifying requirements should be set out in the pre-selection paper if it exists, in tender documents, and in other documents inviting bids, they are equally applicable to all suppliers. The Task force shall not identify any other criteria, requirements, or procedures for suppliers to qualify, nor criteria, requirements or procedures that discriminate against certain categories of suppliers.

The Procurement Agency sets up tender committee for procurement of goods, works and service; the responsibility of the committee is to open the bids and submit them to the Task force for examination, evaluation and comparison.

Bids shall be open at the time indicated in the tender documents as the deadline, or at the time of the extended deadline for submitting bids, in the place and according to the procedure established in tender documents. All bidders or their representatives shall be present at the bids opening procedure. The name and contact data of every bidder, whose bid is opened, and the price of the bid shall be announced to those present at the bid opening session, as well as to those who are absent, or whose representatives are absent, at their request, and shall be registered in the minutes of the procurement procedure.

The Task force shall evaluate the submitted bids and compare them to determine the winner, applying the procedure and requirements formulated in the tender documents. They shall not apply any criteria not formulated in the tender

documents. The results of examination, evaluation and comparison of bids shall be submitted to the Agency for Procurement for approval.

The winning bid shall be:

a) the one which offers the lowest price, taking account of any preferential mark up;

b) the one with the lowest estimated price if provided so in the tender documents.

The information about examination, evaluation and comparison of bids shall not be disclosed to bidders or to any other parties who are not officially involved in these procedures, or in the appointment of the winner.

No negations on the bid shall take place between the Agency for Procurement and the Task force, on the one side, and the bidder, on the other side.

Procurement by means of the auction by tender may be applied if:

a) Goods, works and services are of complex or special nature and a limited number of suppliers have them available;

b) The estimated value of the procurement contract is below 225 thousand lei while the expenses on examination and evaluation on many bids shall not exceed the value of commissioned goods, works and services.

Procurement can be carried out at special auction with limited participation if the object of procurement is arms, or goods, works and services for defence and national security, or if confidentiality should be observed.

Procurement of available goods and services which are not manufactured, or are supplied on restricted specification, and for which a market exists, can be made by inviting bids of price, provided the estimated price is less than 45 thousand lei, or any other amount stipulated by procurement regulations. Each supplier may submit a single bid without the right to make further changes. The Procurement Agency and the bidder shall negotiate on this bid. The bid that meets all the requirements at the lowest price wins.

Rules of procurement of goods and services by the procedure of inviting bids are stipulated by the Regulation on procurement of goods and services by inviting bids, approved by the Government Decree No. 832 of August 13, 2001 and drafted according to the Law No.11166-XIII of April 30, 1997. The Regulation provides a legal framework for organising and holding the procedure of inviting bids to ensure the economy and efficiency of procurement, to meet the needs of beneficiaries in goods and services, to ensure wide participation in the procurement procedure and to promote competition. This Decree[40] stipulates that ministries, departments, local governments and other beneficiaries shall submit contracts made in the process of inviting bids to the Procurement Agency for approval.

In some cases during selection of bids for services the Agency may resort to the procedure of selection by consecutive negotiations with bidders. The Procurement Agency and the Task force shall examine bids confidentially avoiding contents of the bids disclosure to competitors. Negotiations shall be confidential. None of the negotiating parties shall disclose any information, brought to their knowledge during the

[40] Regulation on procurement of goods and services by inviting bids # 832 of 13.08.2001.

negotiations, to a third party without the consent of the other parties.

The Agency for Procurement shall make procurement from a single source if:

a) there is an urgent need for goods, works and services as a result of emergency;

b) only one supplier has the required goods, works and services, or only one supplier has the priority rights over them and there is no alternative;

c) the Task force, procuring goods, equipment, technology or services from a certain supplier decides to make additional procurement from the same supplier, provided the volume of new supplies shall not be more that 30 per cent of the initial contract;

d) the contract with the supplier is made for research, experiments, prospecting or development, except for cases when the contract stipulates manufacturing of goods in the quantities to provide a commercial mark up or to reimburse their expenses on the purposes identified above;

e) after the implementation of the procurement procedure the Agency for Procurement received one bid but the holding of another auction procedure is not expedient.

The law does not have any provision for the amount of procurement from a single source, thus the procedure is applicable in all cases when the requirements are met.

It should be mentioned that Lithuania, unlike Moldova, provides for a ceiling of annual amount of public procurement from a single source. When the amount of procurement from a single source exceeds 150 000 litas for goods and services and 500 000 litas for works, it can be made only with the permission of the Government. We believe that the

implementation of a ceiling is expedient for Moldova as well (given the specifics of public procurement in Moldova).

Should we examine the procurement methods, we state that the Moldova's legislation does not provide for the implementation of the negotiation procedure, while the latter is in use in other countries. For example, in Romania, together with other procedures, the contracting authority may apply negotiating procedures, such as:[41]

a) Competitive negotiations on the procedure by which the contracting authority has consultations and negotiates on contract clauses with a number of bidders or suppliers;

b) Negotiation with a single source on the procedure by which the contracting authority has consultations and negotiations on contract clauses with a single bidder or a supplier.

Envisaged under the Lithuanian legislation are 5 methods applicable to procurement, one of which is procurement through negotiation.[42]

With due account for the objectives of the law (securing national economy and enhancing procurement efficiency) it looks rather feasible to make provisions allowing to apply, when appropriate, procurement through negotiation.

Furthermore, the law in question envisages signing the contract for the bulk value of public money attributed to procurement of certain type of goods, works and services sufficient to cover the yearly needs. Neither Procurement Agency nor Task force shall be entitled to break down procurement into separate

[41] Extraordinary Order of the Government of Romania #.60 of 25.04.2001: public procurement.
[42] National integrity system indicators: the Republic of Lithuania.

contracts with the scope of applying a method different from that stipulated under the law. Moreover, neither Procurement Agency nor Task force shall be entitled to increase the amount of goods, works and services specified under the contracts so as to avoid carrying out new procurement.

In compliance with requirements set forth under Art. 49 of the Law of Budget for 1999[43] and the Government Decision No. 50 of January 27, 1999[44] it has been stated that in case when the value of public procurement exceeds 100 thousand lei, the public procurement contracts shall be mandatory signed by the budgetary institutions in line with the results of procurement as stipulated by the Law No. 1166-XIII of April 30, 1997, approved by the National Agency for Public Procurement and registered with the State Treasury or with the respective financial authorities in charge of budget execution. Unduly registered/approved contracts shall be declared nil and void and not financed. Moreover, through its Decision No. 595 of June 25, 1999 the Government has stipulated that the state beneficiaries (identified under the Government Decision No.50 of January 27, 1999) shall, under no circumstances, be entitled to break down financial resources envisaged for procurement of goods and services, which can lead to deliberate reduction of the respective contracts value below 100 thousand lei for the same category of goods, works or services and thus evading procurement procedures stipulated under the Law No. 1166-XIII of April 30, 1997; The Ministry of Finance and the National Agency for Public Procurement ought to work out independently the mechanism of co-ordination and approval of documents required to finance the respective procurement in

[43] The Law on Budget for 1999, No. 216-XIV of December 12, 1998.
[44] Government Decision on procurement of goods, works and services for the state's needs for 1999 No.50 of January 27, 1999.

compliance with the accumulated financial resources.[45] Same regulations were preserved in the Law of Budget for 2000 (Art. 54)[46], and the Law of Budget for 2001 (Art. 39)[47].

Shall one refer to the need of stipulating in this law provisions on expanding advertising of major public procurements, ensuring public access to the rules envisaged under respective documents and monitoring decisions on procurement, then it would be appropriate to mention the following.

According to the Law on procurement of goods, works and services to secure state's essential needs, the Procurement Agency shall publish conditions of participation in public auction in advance so as to inform potential bidders on the event and to allow them to prepare their bids or file in application for pre-selection. Information shall appear in the state language in Agency's own edition (Bulletin of Public Procurement) comprising invitations to participate in the auction or pre-selection as well as publicity announcements and advertisement on procurement and relevant information on procurement procedure. Invitations shall be published in both Russian and English in the internationally broadcasted media in cases when:

a) the nature of the desired goods, works and services implies addressing foreign businesses, resources, technologies, commodity expertise services or attracting foreign competitors;

b) the estimated price of desired goods, works and services exceeds:

   - 450 thousand lei in case of goods;

[45] Government Decision No.595 of June 25, 1999 on the mode of managing and control over the public procurement procedures.
[46] The Law of Budget for 2000 No. 918-XIV of April 11, 2000.
[47] The Law of Budget for 2001 No. 1392-XIV of November 30, 2000.

- 900 thousand lei in case of works; and
- 225 thousand lei in case of services.

In some cases Government Decisions were adopted with the sole scope to ensure better transparency of government procurement. Thus, through Government Decision No. 50 of January 27, 1999, with the scope of ensuring "rational and efficient use of financial resources, creating sustainable and equilibrated market, promoting competition and improving performances of social infrastructure", the Government of the Republic of Moldova has approved a "list of the most essential needs of the government and its beneficiaries for 1999, rates and volumes for procuring major types of goods, works and services so as to satisfy the prior needs of the government for 1999, classifier of procurement groups featuring specific nature, which implies defence, public order and national security".

The Agency for Procurement offers tender documents to the supplier (entrepreneur) as envisaged under bidding invitation.

The Agency for Procurement publishes notification on entering procurement contract within 30 days from the date of its signing. Said notification shall include at least the name of the supplier (entrepreneur) to whom the contract is signed, the scope of the contract, the price or the estimated value of the contract. Not falling under the incidence of this law are the contracts valued at a price below 45 thousand lei as well as such concluded as a result of special auction with limited participation.

In what refers to contesting illegal acts or decisions resulting from government procurement it is worthy to notice that envisaged under the law was a procedure allowing to revise the decisions taken as well as a possibility of revising unfavourable decision at the court.

In compliance with the law, any supplier (entrepreneur) that has incurred or may incur certain losses resulting from procurement procedure shall be entitled to contest the actions or decisions taken by the Procurement Agency. Argued contest of actions, decisions or procedures applied by the Procurement Agency shall be first lodged with this Agency and is due to be examined by the latter. Upon receipt of a complaint notified on the fact shall be all the suppliers (entrepreneurs) involved in procurement procedure. The supplier (entrepreneur) or public institution whose interest can be prejudiced by said complaint shall be entitled to attend to court proceedings.

The most preferable way of solving complaints would be through a consensus. If a complaint can not be resolved in an amicable way, the manager of the Procurement Agency within 30 days from the date of filing a complaint shall issue an argued decision specifying arrangements done to straighten out the situation and due to be applied if the complaint has been integrally or partially proven.

In case when the Procurement Agency fails to issue a decision within the specified term or in case the supplier is not satisfied by the decision taken, the latter has the right to sue the Agency with the court. Once a court case is launched the Agency looses its competency in solving the complaint. Decision issued by the Procurement Agency shall be deemed final if the supplier does not proceed to suing it with the court.

Likewise, the Agency shall be liable for recovering prejudice caused to the supplier by illegal actions, illegitimate decision or by application of certain illegitimate procedure although not for the lost profit or missed opportunity to gain such.

Arising from prior proposals it is suggested to make modifications to the law so as to stipulate that it is not the Procurement Agency decisions that shall be contested with the court, but such taken by the contracting authority and therefore

supplier's complaints shall be addressed in the first place to that authority (and in parallel to the supreme body, i.e. to the Procurement Agency in its quality of a supervisory and control body). As a result, the contractual authority shall bear responsibility for observing the law and in case legal provisions are abused it shall be sanctioned and obliged to recuperate prejudice inflicted to the supplier.

In compliance with the Law on procurement of goods, works and services to secure state's essential needs, the Procurement Agency, the Task force and the subject of procurement that fail to observe provisions of the law shall bear material, administrative or penal responsibility.

Notwithstanding the fact, the administrative infringements Code and the penal Code do not envisage such responsibility.

Arising from the experiences gained elsewhere in the world we would like to support a proposal advanced by the Procurement Agency to amend the administrative contraventions Code and the penal Code of the Republic of Moldova with certain provisions that would legislate administrative and/or penal responsibility for the infringement of procurement procedure. The vital necessity in this case comes from the results of the auditing carried out by the Chamber of Accounts that has revealed numerous infringements in using public resources, including such in the domain of government procurements to secure the state's essential needs.

Based on the above specified, as well as on examining the draft Criminal Code prepared for its adoption by the Parliament in the second reading, the Transparency International – Moldova came up with a proposal to amend Chapter X (Economical Contraventions) with a new article (Article 281. Government

procurement)[48], so as to envisage criminal responsibility for the infringement of government procurement procedures, i.e. violation of bidder selection procedure (short-listing) or illegal selection of the supplier (entrepreneur).

The Law on procurement of goods, works and services to secure the state's essential needs does not envisage any "black" list of companies having a record of infringing requirements on display of government procurement procedures, moreover such companies that have a proven record of offering bribe in the process of government procurement. Basically such companies can be disqualified at any stage of the procurement procedure, since the law envisages pre-qualification procedure designed to establish supplier's (entrepreneur's) qualification. One of the conditions allowing for supplier (entrepreneur) participation in the procurement procedure is a recent 5 year clean record with any of the supplier's functionaries of any disciplinary, administrative and penal sanctions bound to their professional activities or to submission of non-authentic information with the scope of winning procurement contracts.

Arising from the worldwide experience and making use of such gained by some international institutions it looks rather appropriate to propose adopting the above amendments to the law, hence to draft a list of prohibitions so as to avoid risks. Included into such list can be the bidders failing to meet their obligations prescribed under procurement procedure or such engaged in corruption. It has been proposed that the companies appearing on that special (black) list be deprived of the right to take part in procurement procedures for a definite or indefinite time period (subject to the gravity of infringements revealed).

[48] Proposals advanced by Transparency International – Moldova to the penal Code draft prepaired for adoption by the Parliament in the second reading, 13.03.2002.

This can lay foundations to a reliable and sustainable market environment allowing for fair competition.

The Law on procurement of goods, works and services to secure the state's essential needs stipulates that the Procurement Agency is entitled to reject the bid once it has been stated that the supplier (entrepreneur) who has submitted a bid (seems to be inclined to offer), directly or indirectly to any of the official persons or to common employee (former or current) of the Task force or of the Procurement Agency a bribe in any form, an employment offer or any other service rewarding for certain actions, decisions or misusing certain procurement procedures to his advantage. Rejection of a bid as well as the reasons for so doing shall be entered into a report on procurement procedure followed by immediate notification of the respective supplier (entrepreneur). The Procurement Agency shall notify the competent authorities on every case of corruption disclosure.

The said law does not envisage any provisions that would allow preventing the phenomenon of nepotism and conflict of interests under government procurement procedures.

The Law on procurement of goods, works and services to secure the state's essential needs has no provisions for monitoring property, income and *modus vivendi* of the officials involved in government procurement process. Applicable in such cases to both public officials and those employed by the Procurement Agency or Task force are the provisions set forth under the Law of public service[49] and under the Law of combating corruption and protectionism[50], which stipulates that a functionary has no right to give groundless preference to certain physical or legal entities when working out and issuing

[49] Law of public service No.443-XIII of 04.05.95.
[50] Law of combating corruption and protectionism No. 900 of 27.06.96.

decision and other restrictions. With the scope of more efficient combat of corruption in public sector the Law of public service as well as the Law of combating corruption and protectionism envisage declaration and control over the estate owned by public servants. Due to failing attempts to adopt such mechanism there is actually no declaration and control over the public servant's estate.

It is worthy to notice that on November 29, 2001 the Parliament of the Republic of Moldova has passed in the first reading the draft Law on declaration and control over the estate owned by public servants, judges, prosecutors, and certain persons empowered with managerial competencies, which stipulates the mechanism of declaring and control over the estate (income) owned by the above mentioned public officials. Being firmly convinced that the adoption of such law is rather imperative for the efficient combat of corruption the „Transparency International – Moldova" came up with a number of comments to the draft that was passed in the first reading. The majority of our comments refer to the specifics of mechanism adopted as well as to chances of reaching the objectives stipulated under the law.

In compliance with the Code on administrative contraventions and the Criminal Code, the functionaries of Procurement Agency or those of Task force engaged in corruption (protectionism or traffic of influence, bribery, etc) shall bear administrative or penal responsibility.

The effective legislation of the Republic of Moldova does not stipulate penal responsibility for laundering income resulting from criminal activity, for corruption in case of foreign and international public agencies and/or officials. There is also no clear cut differentiation between corruption in public and private sectors. These and other aspects tend to produce a negative effect onto the efficiency of tackling corruption at

both national and international level. All these impede the process of lending, distort international economic transactions, discourage foreign investments, etc.

Arising from herewith mentioned motives and with the scope of bringing the national legislation in line with the international requirements and creating proper conditions for the Republic of Moldova to ratify Conventions to which it has signed and to adhere to the international mechanisms of combating corruption, Transparency International – Moldova has filed its proposals on modifying and amending the penal Code draft prepared for the adoption by the Parliament in the second reading: to amend Chapter X (Economical Contraventions) of the penal Code with Article 280 (Accounting contraventions) and to modify contents of Articles 255 (Money laundry), 346 (Inactive corruption), 347 (Active corruption), 348 (Traffic of influence), 356 (Inactive corruption in private sector), 357 (Active corruption in private sector).[51]

1.3 Actual aspects of government procurement in the Republic of Moldova

In order to evaluate consequences resulting from corruption in government procurement we shall start with a thorough analysis of data pertaining to the activities displayed by the National Agency for Procurement, law enforcement bodies and the Chamber of Accounts.

The National Procurement Agency has been founded in 1998 in virtue of the Law on procurement of goods, works and services to cover the state's essential needs No. 1166-XIII of April 30, 1997.

[51] Proposals advanced by Transparency International – Moldova to the penal Code draft prepaired for adoption by the Parliament in the second reading, 13.03.2002.

The Procurement Agency informs that this year besides fulfilling its ordinary activities it has managed to display 7 public auctions. Signed as a result of these auctions were procurement contracts to the value of 22.3 millions lei.

In 1999 the Procurement Agency displayed total of 75 public procurement auctions. Concluded as a result of these auctions were 114 procurement contracts worth 58 m lei, which is 41.8% of the total value of procurement contracts concluded by the Procurement Agency. The rest of the procurement contracts were signed based on price bidding procurement procedures and single source ones. Prevailing to that end was procurement of electricity, heating, natural gas, water and sewage. Totally, the Procurement Agency has approved and registered 531 contracts to the total value of 138.8 millions lei.

In 2000 the Procurement Agency held 139 public auctions signing contracts to the total value of 185 m lei, which amounts to 48.4% of the total value of procurement. Besides, approved and registered were procurement contracts resulting from price bidding procedures (98 contracts worth 33.5 millions lei – 8.8%) and single source ones (568 contracts worth 163.9 millions lei – 42.8%). Thus, the total value of the concluded contracts amounted to 382.4 millions lei.

In 2001, at the request of state beneficiaries the Procurement Agency has organized and displayed 165 public auctions, signing contracts to the total value of 101.8 millions lei (21.2% of the total value of procurement). Besides, approved and registered were procurement contracts resulting from price bidding procedures (508 contracts worth 58.6 millions lei – 12.2%) and single source ones (1980 contracts worth 320.9 millions lei – 66.7%). Thus, the total value of the concluded contracts amounted to 481.3 millions lei.

These data indicate that prevailing was public procurement from a single source. Procured from single source were

predominantly electricity, heating, gas, and water, which confirm the fact that these domains of the Moldovan market are monopolized. The share of public procurement done through public auctions is much lower in Moldova as compared to other countries. For the sake of comparison it looks appropriate to mention that in Lithuania procurement through open procedures in 1999 amounted to 70.4%, while such from single source to 8% only. Hence, the market in said domain shall be demonopolized allowing for a variety of suppliers and thus contributing to more effective use not only of public resources but of the resources available with businesses and real persons as well.

Envisaged under budgetary allocations for 1999[52] for procurement of goods, works and services were 467.6 millions lei. Out of this amount designed for public procurement total realized through the Procurement Agency in that year was 29.7%. The rest of over 70% of public procurement contracts were signed by-passing the Agency with payment settled through the State Treasury.

As it has been already mentioned, in compliance with the requirements set forth under article 49 of the Law of Budget for 1999[53] and the Government Decision No. 50 of January 27, 1999[54], and the Law on Budget for 2000 (Art. 54) and 2001 (Art. 39) it has been stated that in cases when the value exceeds 100.000 lei, the public procurement contracts shall be mandatory concluded by the budgetary institutions based on the results of procurement procedures stipulated under the Law No. 1166-XIII of April 30, 1997. Next, these shall be approved by the National Agency for Procurement and registered with

[52] Data of the National Public Procurement Agency, 2002.
[53] The Law of Budget for 1999 No.216-XIV of 12.12.98.
[54] Government Decision on procurement of goods, works and services to secure state's essential needs for 1999 No.50 of 27.01.99.

the State Treasury or with the financial authorities responsible for budget execution. The contracts that were not duly approved and registered shall be considered invalid and therefore not financed.

In compliance with certain estimations made by the Procurement Agency, in 2000-2001 the annual procurement of goods, works and services to cover public needs was up to 700 m lei. Further estimation shows that out of total value used for public procurement channelled through the Procurement Agency was 54.6% in 2000, and 68.7% in 2001.

Hence adoption of 100 thousand lei worth ceiling has failed to contribute as expected to state beneficiaries compliance with the respective provisions set forth under the Law No. 1166-XII of April 30, 1997 while public procurement process continued to by-pass the Procurement Agency.

The Procurement Agency reports that many of public procurement contracts were settled by the State Treasury without any consideration given to said provisions. For instance, Chisinau municipality authorities registering some 60% of total transactions since the date of Agency's institution and up to the end of 2001 did not care to sign a single public procurement contract through this Agency as envisaged under the law.

It is a proven fact that public institutions continue procurement of goods, works and services following their old practices, signing inefficient procurement contracts without recourse to legal tenders. *For example:*

1. As a result of auditing economical and financial activities displayed by the curative-spa and recuperation Association affiliated by the State Chancellery of the Republic of Moldova in 2000 it has been revealed that to do repair work on the Republican Clinics of the Association (I. Midrigan)

contracts worth 422.6 thousand lei were signed with Branch No.51 of SA „Consocivil" as well as such worth 256.7 thousand lei with SRL „Monintehsan". The contracts were entered without due account for the procedures stipulated under the Law on procurement of goods, works and services to secure state's essential needs and were not approved by the Procurement Agency. As a result during 2000 SA „Consocivil" has done repair works worth 393.6 thousand lei while such done by SRL „Monintehsan" was valued at 226.9 thousand lei. On 01.01.2001 accounts payable of the Republican Clinics due to these two companies amounted to 269.9 thousand lei and 42.8 thousand lei respectively.[55]

2. On December 28, 1999 the Ministry of Culture and the Publishing House Litera AVN SRL have entered a contract on preparing and printing 11 volume Eminescu's Complete Works valued at 600 thousand lei with a dead line for completion before 15.01.2000. The printing house „Litera" SRL has failed to meet its contractual obligations. At the moment of auditing volume IX worth 50.4 thousand lei was not printed yet, while volume VII worth 125.6 thousand lei was printed at the end of 2000 only.[56]

These data serve to highlight the fact that there is not much publicity on major public procurement within the private sector, which does not help to ensure transparency or to attract all the potential bidders while the legal requirements of carrying out public procurement are simply ignored. Situation observed in the domain of public procurement reflects weak

[55] Decision of the Chamber of Accounts No.84 of 04.10.2001 on the results of auditing economic and financial activities displayed by the curative-spa and recuperation Association affiliated by the State Chancellery of the Republic of Moldova carried out in 2000.

[56] Decision of the Chamber of Accounts No. 48 of 25.05.2001 on the results of auditing economic and financial activity of the Ministry of Culture of the Republic of Moldova in 2000.

attraction of the suppliers (entrepreneurs) to participate in procurement and by so doing set foundations for a sound competition specific of market economy.

It is probably due to the fact that the Moldovan legislation does not envisage specific administrative and penal responsibility for the infringement of public procurement rules.

Infringements of the legislation referred to public procurement have been disclosed by the Chamber of Accounts in herewith described forms:

Financial overspending. By application of this method a public institution procures goods, works and services to the value in excess of available resources. This leads to formation of debts, which are then repaid to the supplier (entrepreneur) complete with interest and thus contribute to price growth on procured goods, works or services.

Thus, in 2000[57] public institutions have registered overspending, the major part of which was attributed to procurement of goods, works and services: the Ministry of Home Affairs has admitted an overspending worth 1.03 millions lei, using meanwhile 2.4 millions lei at the expense of subordinated enterprises for maintaining central office (procurement of fixed assets, tangibles and servicing visiting guests), disclosed in 15 subdivisions of the Ministry was overspending worth 5.2 millions lei as well as payables worth 38.5 millions lei as at 01.01.2001; The Ministry of Defence has registered overspending worth 8.9 m lei with payables worth 30 millions lei as at 01.01.2001; some of the ministry subordinated institutions have exceeded actual expenditures by 6.8 millions lei; Information and Security Service has admitted overspending worth 2.7 millions lei; the Ministry of

[57] Decision of the Chamber of Accounts No. 66 of 10.07.2001 on the report of the Chamber of Accounts on managing and using public funds in 2000.

Agriculture and Processing Industry has admitted at the end of 2000 overspending worth 11.9 millions lei as well as financially uncovered payables worth 19 millions lei; with the Department of Penitentiary institutions overspending amounted to 29.1 m lei; with the Ministry of Education and Science (getting ready for 2000 Olympics in Sydney) overspending was 1.2 millions lei.[58]; with the Department of Civil Protection and Emergencies overspending amounted to 3.4 millions lei; with the Moldovan Embassy in Turkey overspending was US$ 124 thousand; with the Ministry of Environment and Town Planning it amounted to 0.15 millions lei.

Likewise, overspending was admitted by public authorities empowered by law with the right to carry out control over the properly earmarked use of state budget resources. Thus, the Ministry of Finance together with its subordinated structures has admitted overspending worth 11.2 millions lei.

Same situation applies at the local level. For example, overspending in Chisinau municipality in 2000 has amounted to approximately 96.4 millions lei, while in county Ungheni it was 2.4 millions lei; and in county Cahul 1.7 millions lei. The like examples are rather numerous.

It is evident that the major part of herewith specified amounts can be referred to overspending incurred with public procurement. For instance, in 2000 the curative-spa and recuperation Association affiliated by the State Chancellery has admitted overspending worth 1.4 millions lei, including 0.7 millions lei[59] on the article „Goods and services market".

[58] Decision of the Chamber of Accounts No. 44 of 18.05.2001 on the results of auditing use of budgetary resources allocated to the Ministry of Education and Science to prepare for 2000 Olympic Games in Sydney.
[59] Decision of the Chamber of Accounts No. 84 din 04.10.2001 on the results of auditing economic and financial activity displayed by the

Failure to define the amount of spending. Approved through Government Decision No. 1195 of 25.12.97 was the Program for preparing sportsmen for 2000 Olympics, while the amount of spending was not defined. Allocated for the purpose was 2.5 m lei without any estimation of spending.[60]

Irrational spending. The management of SOE „Calea Ferată din Moldova" (Moldovan Railways) (financed at the expense of public funds) during 1999-2000 has entered a number of contracts to the disadvantage of both the enterprise and the state. Irrational spending was used on stimulating extra staff specialists at the background of over 275 full time specialists employed with the Moldovan Railways Directorate. Thus, 882.4 thousand lei were paid for lawyers consultancy services offered by different legal and physical entities, as well as 882.4 thousand lei for the auditing services offered by „Audit-Sedan" SRL and „Evidența Internațională" SRL, both having the same and sole person as the manager and the executor of works (M. Dima).[61]

Procurement of goods and services for other institutions. a) Through joint stock company SAATM „Jildorsnab" (during the recent 5 years of its activity) SOE „Calea Ferată din Moldova" has immobilized public funds worth 24.4 millions lei for the procurement (against payment for the transportation services) of different goods with destination other than Moldovan Railways, including such from company „Stanis" SRL and worth 15.2 millions lei, without due documents and

curative-spa and recuperation Association affiliated by the State Chancellery of the Republic of Moldova in 2000.

[60] Decision of the Chamber of Accounts No.44 of 18.05.2001on the results of auditing use of budgetary resources allocated to the Ministry of Education and Science to prepare for 2000 Olympic Games in Sydney.

[61] Decision of the Chamber of Accounts No.45 din 24.05.2001 on the results of auditing certain aspects of the economic and financial activities displayed by SOE „Calea Ferată din Moldova" (Moldovan Railways).

specifications.[62] b) Operating on the grounds of the Moldovan State University is a number of "affiliated schooling institutions" (private schooling institutions), with certain public funds immobilized to maintain said institutions, although these are independent legal entities and due to be financed at the expense of their own proceeds. Thus, during 1999-2000 immobilized through SRL „Academia de Drept" were public funds worth 1.0 - 1.4 millions lei.[63]

Procurement of services included in cost of goods. Some 1.6 millions lei were groundlessly paid to the account of county Balti budget for gas supply/piping of county's Council building while the Law of gas envisages that expenditures incurred with gas supply network development shall be borne by gas suppliers.[64]

Procurement through third parties. Despite provisions set forth under the Law of Budget for 2000, certain debt offsetting transactions were made through the third parties in county Ungheni, mainly for energy resources and heating, which amounted to approximately 2.4 millions lei (SA „Sfinx-Impex" – 0.5 millions lei; SRL „Poteca" – 1.1 millions lei; SRL „Argos" – 0.8 millions lei). All the contracts on redemption of debts on energy resources were signed to the value higher than the actually existing debts and were not accompanied by verification documents. Through cessation certificate transferred to SA „Sfinx-Impex" were the debts of budgetary institutions for energy that exceeded the real debt value by 213.4 thousand lei; in case of SRL „Argos" this figure was

[62] Decision of the Chamber of Accounts No. 45 of 24.05.2001 on the results of auditing certain aspects of the economic and financial activities displayed by SOE „Calea Ferată din Moldova" (Moldovan Railways).
[63] Decision of the Chamber of Accounts No. 66 of 10.07.2001 on the Report of the Chamber of Accounts on managing and using public funds in 2000.
[64] Decision of the Chamber of Accounts No. 66 of 10.07.2001 on the Report of the Chamber of Accounts on managing and using public funds in 2000.

312.1 thousand lei and in case of „Energoresurse" company it was 198.9 thousand lei.[65]

Procurement of goods and services for personal needs. In 1999-2000 in violation of the provisions set forth under the effective regulatory acts Lapusna county budgetary resources were used to procure and repair apartments for A. Chetraru (the main credit manager), the Chairman of the county Council, as well as for V. Caraus, the county prefect, responsible for law execution at local level, despite the fact that when appointed to the respective functions both had sufficient residential space. In 2000 repair of apartment owned by A. Chetraru alone has absorbed 127.6 thousand lei; with 52 thousand lei used for procurement and 98 thousand lei for repair of V. Caraus' apartment .[66]

Prepayment. a) As a result of auditing carried out by the Chamber of Accounts in 2000 it has been established that by failing to settle payments for the goods and services delivered by some suppliers and worth 234.1 millions lei, the central public authorities at the same time have admitted immobilization of state budget resources by prepaying goods and services that were not delivered in agreed upon terms and hence, accumulating receivables amounting to a total value of 243.0 millions lei. b) By ignoring requirements of the Law No. 491-XIV, Ungheni county authorities when carrying out selling-purchasing contract No. 260 signed with SRL „Poteca" in favour of heating supply Networks Ungheni, have immobilized budgetary resources to the value of 343.2 thousand lei for a term exceeding 15 calendar months. The centre of diagnostics medicine has prepaid 100 thousand lei to

[65] Decision of the Chamber of Accounts No. 66 of 10.07.2001 on the Report of the Chamber of Accounts on managing and using public funds in 2000.
[66] Decision of the Chamber of Accounts No. 66 of 10.07.2001 on the Report of the Chamber of Accounts on managing and using public funds in 2000.

SA „Congaz Plus", while Ungheni county hospital has prepaid 400 thousand lei with no contract signed for a term of 3.5 months. [67]

Unfounded payment of compensations for goods, works and services. As a result of auditing carried out by the Chamber of Accounts it has been stated that in violation of provisions set forth under the Law of Budget for 2000 as well as other regulatory acts envisaging compensation of losses incurred by the enterprises of heat and energy supply complex and such extended to certain categories of population to compensate transportation expenses, the Ministry of Finance has admitted overspending worth 22.4 millions lei. Thus, unfounded compensations at the expense of public funds were paid to ARP „Termocomenergo" –9.5 millions lei, SA„Termocom" – 5.9 millions lei, SOE „Air Moldova" – 4.7 millions lei, JV „Moldavian Airlines" – 0.5 millions lei, and to other businesses – 1.8 millions lei.[68]

Failure to observe requirements set forth under the regulatory acts. In violation of the provisions set forth under regulatory acts on delivery of confidential correspondence (a function entrusted to specialized state services) the State Chancellery has issued certain instructions entrusting delivery of confidential correspondence for the Ministry of Internal Affairs to a private company SA „CC Spec", which uses for these services much higher tariffs as compared to such proposed by the specialized state services. The cost of services extended to the given ministry by this private company is

[67] Decision of the Chamber of Accounts No. 66 of 10.07.2001 on the Report of the Chamber of Accounts on managing and using public funds in 2000.
[68] Decision of the Chamber of Accounts No. 66 of 10.07.2001 on the Report of the Chamber of Accounts on managing and using public funds in 2000.

covered at the expense of financial resources available with SOE „Registru".[69]

The Chamber of Accounts mentions that the auditing carried out in 2000 on the use of public funds serves to confirm that the central and local public authorities, budgetary institutions and other economical structures financed at the expense of the state budget neglect the procedure established for using public funds, fail to observe expenditure limits established by the state for their maintenance and state programs financing, allow for inefficient and misplaced use of public financial resources, and allow for spending such in violation of provisions set forth under effective regulatory acts.[70]

It is evident that the majority of violations are based on acts of corruption pertinent to public procurements and pursue the objective of illegal seizure of public funds.

Types of infringement	**1996**	**1997**	**1998**	**1999**	**2000**	**2001**
Economic & financial infringements	2697	2992	3253	3483	3603	3712
Embezzlements	951	876	940	1022	831	910
Bribery	89	117	109	126	130	164

The actual spread of corruption in the domain of public procurement becomes more vivid when looking at the number of embezzlements through abuse registered by the law enforcement bodies. It is worthy to notice that in principle the major part of these embezzlements (purloining) represents acts of corruption in the domain of public procurement.

[69] Decision of the Chamber of Accounts No. 66 of 10.07.2001 on the Report of the Chamber of Accounts on managing and using public funds in 2000.
[70] Decision of the Chamber of Accounts No. 66 of 10.07.2001 on the Report of the Chamber of Accounts on managing and using public funds in 2000.

In compliance with the official statistics[71], the number of embezzlement through abuse amounts to approximately 1/3 – 1/4 of the total number of economical and financial infringements, which exceeds by far the number of registered bribery. The number of embezzlement through abuse is even greater than that of tax evasion and smuggling.

Total registered number of those engaged in embezzlement through abuse in 1999 amounted to 523 persons, with 765 registered cases in 2000 and 756 cases registered in 2001.[72]

These and other data eloquently indicate that, *embezzlement through abuse (**including acts of corruption bound to public procurement)** has become a „standard" for a number of persons entrusted with competencies.*

According to statistical data made available by the Ministry of Home Affairs prejudice caused by purloining in 1999 amounted to roughly 54.1 millions lei out of 229.1 millions lei registered as prejudice throughout the totality of economical and financial infringements, while in 2000 this figure was 36.2 millions lei out of 149.4 millions lei. For the sake of comparison we would like to mention that the prejudice caused by bribery amounted to approximately 0.4 millions lei in 1999, while in 2000 it has reached the figure of 1.72 millions lei.

Along with other types of infringements, corruption in public procurement has lead predominantly to inefficient use or purloining public finances, including foreign public lending, thus affecting state budget and contributing to creation of enormous external and domestic debts.

It may well be possible that the major source of corruption is energy supply sector, especially gas, electricity and heating supply. Disclosed in this very sector was the most considerable

[71] Statistical data of the Ministry of Home Affairs for 1998-2001.
[72] Statistical data of the Ministry of Home Affairs for 1999-2001.

purloining with a good share of debts covered at the expense of public funds. A perfect example can be purloining of some 28 m lei by the responsible persons of „Moldova Trans Gaz", designed in fact for settling natural gas delivery by „GAZPROM" of Russian Federation[73]. Serving as another example can be the known case of debt repayment by SOE „Moldtranselectro" to its Ukrainian supplier by use of different intermediary companies like „Ferren-M" and „Larist".[74]

It is important to notice that the materials made out by law enforcement bodies make no reference whatsoever to disclosure of bribery cases in the domain of public procurement. Likewise, bribery acts were not registered for the cases of embezzlement or for the cases of direct procurements done by the public institutions, not to mention cases of procurement done through the Procurement Agency, which comes in contradiction with the observed tendencies. We therefore believe that the law enforcement bodies have no or little awareness of the corruption phenomenon in the domain of public procurements and its consequences and are lacking methods and procedures of identifying and documenting such. Net result being failure to register the outcome of combating bribery cases in said domain. Another probability explaining lack of results on this issue lies with the insufficient co-operation between law enforcement and auditing bodies, as well as between the Procurement Agency and public institutions. A suggestion can therefore be derived to proceed with implementation of training programs in public procurement with the specialized schooling institutions and to undertake additional measures to enhance better co-operation between the above mentioned bodies and institutions.

[73] Data of the Department for Combating Organized Crime and Corruption.
[74] Newspaper FLUX of April 4, 2000.

Another problem bound to public procurements is the ***use of extra-budgetary funds***. Despite the fact that according to the Law on procurement of goods, works and services to secure state's essential needs[75], the public money notion implies state and local budgets resources as well as external loans contracted by the Republic of Moldova, state beneficiaries proceed to carry out public procurement at the expense of their own (extra-budgetary) and other funds. It is rather regrettable that the major part of extra-budgetary funds are spent by ignoring tenders and transparency and giving preference to entering contracts based on kinship, corruption, etc. On too many occasions extra-budgetary funds are not properly supervised and therefore used chaotically at the discretion of the respective manager. All these may give rise to cases of misfeasance and corruption.

Evidently, the subjective factor (personal interests of the engaged public functionaries) prevails over the necessity to provide essential public goods, works and services. This takes place despite of the fact that back on June 25, 1999 the Government has stipulated that the Procurement Agency jointly with the financial supervisory bodies shall carry out permanent control and supervision over the observance by the state beneficiaries of all such conditions as effectively envisaged for signing and execution of public procurement contracts..[76] It is that very motive that calls to expand the notion of public money and to extend this notion onto the extra-budgetary and other public funds.

[75] The Law on procurement of goods, works and services to cover essential state's needs No. 1166-XIII of 30.04.97.

Government Decision No. 832 of 13.08.2001 for the approval of the Regulation on procurement of goods and services by price bidding.

[76] Government Decision on the mode of managing and supervising public procurement procedures procedurilor de achiziții publice No. 595 of 25.06.99.

Same situation applies to ***realization of lending extended to the Republic of Moldova***. According to the Law on procurement of goods, works and services the procurement at the expense of these sources shall be done with the involvement of the Procurement Agency. Decisions adopted to that end[77] indicate that the Government of the Republic of Moldova has received a number of loans earmarked for the procurement of goods (works and services). Moreover, the Government has exempted these from value added tax, customs duty and customs procedure fees. Unfortunately the real status of things with public procurement differs a lot from that desired. According to the National Procurement Agency within the period of its activity (1998-2001) total registered number of tenders displayed to contract different goods, works or services at the expense of loans was not more than 3 or 4. Hence, public procurement at the expense of foreign lending is basically done in violation of the effective legislation and it is highly probable that realization of said loans was accompanied by cases of corruption. To a great extent this may well explain the inefficiency of implementation specific of many loans.

One of the parameters specific of public procurements in Moldova is ***claims to revise decisions taken on procurement***. Data available with the Procurement Agency indicate that in some 20% of cases the suppliers (entrepreneurs) who participate in public procurement procedures, demand clarification of the legality of procurement conditions and observance of requirements at bid opening. The claims were examined by the Procurement Agency in order to reach consensus with the suppliers (entrepreneurs). Until presently court appeals against Agency's decision amounted to 4 and in

[77] Government Decision No. 217 of 26.02.98; Government Decision No. 272 of 08.04.99; Government Decision No. 519 of 31.05.2000; Government Decision No. 83 of 05.02.2001.

all such instances the case was adjudicated in favour of the latter.

Another problem incurred with public procurement is ***low level of expertise displayed by the Task forces in public institutions.*** According to the effective regulatory acts the Task forces assigned by the state beneficiaries shall evaluate the bids and define the winner. However, due to the fact that such Task forces are represented by non-qualified or incompetent persons, the evaluation is done in a wrong way and on multiple occasions is based on subjective motives, which fact leads to delays in appointing the winner. The like cases took place during tenders displayed by the Ministry of Defence, Ministry of Health and Customs Control Department. Therefore, in order to ensure proper expertise and to exclude cases of corruption it is highly recommended to implement respective training courses for both members of the Task forces and managers of public institutions, while bids evaluation in the respective cases to be done by the Board of Experts. Arising from these considerations and to enhance competent procurement the Government approved its Decision No.1312 of December 28, 2000 and No.168 of February 26, 2001[78] on the estimation, acknowledgement and procurement of literary-dramatic, musical and fine art works and requested to institute a Board of Experts by the Ministry of Culture, approving respective Regulation for the purpose. Said practice shall now be disseminated to other domains of the activity as well.

It is worthy to mention the fact that the most pressing problem now lies with the ***implementation of public procurement at***

[78] Government Decision No. 1312 of 28.12.2000 estimation, acknowledgement and procurement of literary-dramatic, musical and fine art works to replenish state colelctions;
Government Decision No. 168 of 26.02.2001 on approving institution of a Board of Experts for the estimation, acknowledgement and procurement of literary-dramatic, musical and fine art works for 2001-2002.

local level. Even though certain sections for government procurement were created within county Councils, these were not provided by law and not properly equipped with competent personnel thus rendering impossible their immediate involvement in the process of coordination and control over the procurement. With that in mind, and with due account for the actual situation in Moldova we believe it make sense to institute 2 or 3 local subdivisions (Northern, Central and Southern) of the Procurement Agency so as to exercise Agency's attributions at the local level.

1.4 Suggestions

Based on the outcome of the analysis of situation persisting in the domain of public procurement in the Republic of Moldova as well as on the identified problems we hereby consider feasible make the following suggestions that may serve to enhance efficient defeat of corruption in public procurement, efficient use of public funds and reaching the objectives stipulated under the Law on procurement of goods, works and services to secure state's essential needs:

1. To adopt modifications and amendments to the Law No. 1166-XIII of April 30, 1997, so as:

- to identify specifically who shall be considered the contracting authority and referring to it all the respective provisions which define the contracting authority as the one responsible for carrying out public procurement;

- to gradually decentralize public procurement activities by offering relative independence to the contracting authority in organizing and holding auctions or procurement procedures and entrusting it with the responsibility to observe the law by taking over the respective attributions from the Procurement Agency;

- to attribute to the Procurement Agency the statute of an independent body within the Government allowing it to gradually cross over from the body entrusted to organize auctions or procurement procedures to such having as its main function general supervision over the implementation of legislation referred to procurement, rationalization and standardization of procurement procedures and practices, control over of the legislation referred to procurement, training responsible persons in procurement issues, setting up database and record keeping in the domain of public procurement, cooperation on public procurement issues with the Ministry of Finance, public institutions, law enforcement and supervisory bodies;

- to make provisions allowing to contest decisions made by the contracting authorities and not by the Procurement Agency, and hence suppliers (entrepreneurs) claims shall be channelled through administrative route to said contracting authority to be solved by the latter (and in parallel to the supreme body, i.e. to the Procurement Agency in its quality of a supervisory and controlling body);

- to define obligations and powers of the Ministry of Finance in what refers to financial supervision and control over the public procurement carried out by the contracting authority;

- to stipulate as additional method of public procurement: procurement through negotiation;

- to envisage under the law the issue of the conflict of interests when awarding public procurement contract and when examining/solving disputes;

- to stipulate the quantum of public procurement from a single source as well as the mechanism of procurement in case this quantum is exceeded;

- to envisage adoption of a list of interdiction („black" list) included in which shall be the suppliers (entrepreneurs) who have violated requirements on displaying public procurement procedures, especially the ones having prior record of being engaged in corruption, for whom participation in public procurement procedures shall be banned for certain definite or indefinite term depending on the gravity of offence;

- to envisage refuse to carry out payment and/or cancellation of loans for illegally awarded contracts;

- to include a notion of public funds as well as the notion of „extra-budgetary resources (or funds) ", other public funds;

- to define minimum quantum (either in euro or in US dollars) needed to organize public auctions.

2. With the purpose of ensuring due transparency of public procurement and observance of legislation we hereby suggest as follows:

- to stipulate under the law procedure of carrying out internal and external control over the procurement procedures and realization of signed contracts;

- to amend the Code on administrative contraventions and the Criminal Code with certain provisions envisaging administrative and penal responsibility for the infringement of legal requirements in the domain of public procurement;

- to adopt modifications to the Criminal Code envisaging penal responsibility for acts of corruption and adjusting it to the requirements set forth under the international Conventions;

- to amend the Criminal Code with certain regulations that shall envisage responsibility for laundering money of criminal provenience.

3. To demonopolize Moldovan market and to expand list of suppliers especially in what refers to energy resources, gas and water.

4. To institute 2 or 3 local subdivisions of the Procurement Agency and to entrust them with the competencies to exercise Agency's attributions at the local level.

5. To adopt a mechanism of declaring and control over the property owned by public servants as envisaged under the Law of public service and the Law on combating corruption and protectionism.

6. To implement within the public institutions certain program for studying regulatory acts which govern activities displayed in the domain of public procurement as well as qualified personnel training programs for the needs of public procurement (Task forces).

7. To implement within the specialised schooling institutions programs designed for special training in the domain of public procurement with special accent placed onto such affiliated by the Ministry of Home Affairs, faculties of law, and refreshment courses for prosecutors and judges.

8. To make necessary provisions so as to ratify European Council civil and penal Conventions on corruption, as well as such needed to make Republic of Moldova adhere to the Convention of the Organization for Economic Cooperation and Development (OECD) on combating corruption amidst foreign public agents in the international commercial transactions adopted on November 21, 1997 and to the WTO Agreement on government procurement signed in Marrakesh on April 14, 1994.

2. PUBLIC ETHICS VERSUS CORRUPTION

2.1 Introduction

General views on ethical values and standards

Increasingly, corruption is becoming an impediment to the general development of a country, and accordingly, of the whole world.

Governments and companies worldwide have acknowledged that corruption raises costs and risks for good governance, solid economy and the rule of law. Both sectors are working together to combat this phenomenon and to enhance governance, transparency and accountability in public service and global economies.

Thus, corruption, on the one hand, has a negative influence on government activities and public management, and, consequently, on public trust in public service. On the other hand, corruptive practices have a corrosive impact on both market opportunities overseas and the broader business climate. It also deters foreign investment, stifles economic growth and sustainable development, distorts prices, and undermines legal and judicial systems. More specifically, corruption is a problem in government procurement activities, international business transactions and economic development projects.

In the same time, each society at each time in the history had and has certain ethical values and standards that direct their life, being a reflection of their traditions. Their disrespect can level the grounds for serious problems to occur or progress, such as corruption, ineffective laws, economic decline, etc. The social response towards the violation of these values should be prompt. Thus, behavioural standards are used through a society's conduct or attitude. There is no mechanism of

enforcement *stricto senso*, but they play an important role in fighting corruption at preventive, initial or inside level.

Therefore, there should be taken active steps to prevent, detect and sanction corruption. One of these measures should be explicit strategies to fight corruption, such as the prevention of misconduct from occurring in the first place by putting systems in place that ensure the integrity of government operations and programs, the establishment and development of codes of conduct, both for public and private sectors by the relevant participants. The basic components of any effective prevention program are likely to include 6 elements[79]:

- a fair and reasonable code of conduct that establishes uniform standards that public officials will be held accountable for;
- a carefully crafted system of disclosure of financial interests that avoids conflicts and introduces transparency into an official's decision making;
- an imaginative education program that makes government employees aware of their responsibilities;
- a regular monitoring system to assure that the quality of these preventive systems is maintained;
- open channels of communication within government to provide assistance and address deficiencies; and
- an effective procurement system that emphasizes integrity and fairness.

Although the strategies to fight corruption must have several components, it is clear that the final solution must be obtained

[79] Ethics in public service: an idea whose time has come, paper presented at the 8th IACC, Stephen D. Potts, Director of U.S. Office of Government Ethics.

through the construction, by all members of society and especially by public servants, of self-regulatory systems providing incentives for ethical behaviour avoiding corrupt activities. Moreover, the strategies to fight corruption have to focus on preventive measures, rather than control and sanction, especially on building ethical standards and values for public and private sectors. Strong preventive systems have the great benefit of avoiding corruption before it occurs. Codes of behaviour not only set high standards for public officials, but also reduce the need to invoke the more drastic measures of prosecution, administrative discipline and punishment.

In practice, both prevention and prosecution are necessary in order to keep the threat of corruption in check. Without the presence of an effective enforcement system, preventive measures such as codes of conduct may become little more than pious statements. On the other hand, enforcement systems may be overwhelmed if there are no effective preventive measures in place to reduce the burden on investigators and prosecutors.

The international and national efforts to curb corruption came to the inevitable conclusion that the elaboration of codes of conduct or codes of ethics for public and private sectors is an effective and efficient preventive measure against corruption.

Corruption involves participants from both public and private sectors and, therefore, codes of conduct as measures for preventing corruption are essential in public life, as well in corporate activity. Below, there are some data on anti-corruption measures, including implementing ethical standards and codes of conduct, in private sector:

Table 1: Issues covered in corporate codes of conduct (%)

Employee prohibited to offer items of value to government officials	74
Guidelines concerning gifts and entertainment, travel expenses	89
The above codes also apply to third-parties operating in the name of the company	45
No answer or not known	4

Note: Based on a sample of 297 corporate codes of conduct.

Table 2: Share of companies prohibiting employees to offer items of value to government officials as part of their corporate code of conduct, by country (%)

Australia	65
Canada	78
Europe	56
Japan	66
South Africa	50
US	82

Note: Based on a sample of 350 companies.

Table 3: Share of companies with a system in place to check compliance with their corporate code of conduct regularly, by country (%)

Australia	71
Canada	61
Europe	45
Japan	48
South Africa	33
US	74

Note: Based on a sample of 350 companies.

Table 4: Anti-corruption measures in companies (%)

	European companies	US companies
Company codes that forbid bribes to obtain business	85	92
Company codes that forbid "grease payment"	62	76
Anti-corruption training programmes	23	46
Annual declarations by senior executives that they have abided by anti-corruption codes	34	74
Hotline for reporting corruption	24	56
Formal agreements with agents that they will abide by anti-corruption codes	32	62

Source: Global Corruption Report 2001, Transparency International

Ethics is the discipline dealing with what is morally good and bad, right and wrong, and with moral duty and obligation. It is also a set of moral principles or values, a theory or system of moral values (e.g. the present-day materialistic ethic), or the principles of conduct governing an individual or a group (e.g. professional ethics). Ethics is a guiding moral philosophy.

Ethics should not be confused with etiquette, which is a system of rules and conventions that regulate social and professional behaviour. In any social unit there are accepted rules of behaviour upheld and enforced by legal codes. There are also norms of behaviour mandated by custom and enforced by group pressure. An offender faces no formal trial or sentence for breach of etiquette. The penalty lies in the disapproval of other members of the group. Regardless of its level of material culture, any highly stratified society will possess an etiquette in which every person knows the behaviour expected from him toward others and from others toward himself. Ethics is a set of moral principles.

Synonyms to ethical are moral, virtuous, righteous, noble and all mean conforming to a standard of what is right and good. Moral is defined as relating to principles of right and wrong in behaviour (ethical, moral judgments). Moral implies conformity to established sanctioned codes or accepted notions of right and wrong, the basic *moral* values of a community. Ethical may suggest the involvement of more difficult or subtle questions of rightness, fairness, or equity, committed to the highest *ethical* principles. Moral –concerned with accepted rules and standards of human behaviour.

The term code refers to a system of principles or rules e.g. moral code, or prevailing standard of moral behaviour. Conduct represents a mode or standard of personal behaviour especially as based on moral principles. Codes of conduct are statements of rules.

The notions of code of conduct, code of ethics and code of practice are often used interchangeably. However each basic code type has a different intend and purpose. Codes of conduct are statements of rules. Codes of ethics are statements of values and principles associated with the purpose of the organisation. Codes of practice are interpretations and illustrations of corporate values and principles. Also, there are statements of behavioural standards, service standards (e.g. service charters), and statements of values.

Mike Nelson differentiates certain types of codes of conduct.[80] At this point, it is important to consider the issue of the nature of the proposed code of conduct and how it is intended to be applied. There are three types of codes, each with its own distinctive emphasis. The first is the ethical code, where guiding principles for conduct are laid down within a moral or philosophical framework. Examples of such principles include: "We will value and respect all employees", "We will always put The Public Interest first", etc.

The second type of code is the behavioural code, where particular classes of behaviours are either prohibited or enjoined, such as: "Bullying and intimidation will not be tolerated", "Selection and promotion of staff will be on merit alone".

The third type of code is the code of practice, which lays down, often in considerable detail the operating practices and standards required by the organisation, such as: "Supplier invoices will be paid within 30 days of receipt", "Customers

[80] Mike Nelson, “The challenge of implementing codes of conduct in local government authorities”, paper presented at the 9th International Anti-Corruption Conference.

complaints will be acknowledged within 3 days and a full response made within 21 days".

In developing a code of conduct, one should find that the ideas and suggestions advanced by staff, customers and other stakeholders will encompass all three of the emphases above, ranging from philosophical principles or moral injunctions to very detailed prescriptions for operational activity. This can be very frustrating if there is no over-all framework for the values and ethics of the organisation.

Moreover, there should be established a framework for organisational ethics. The following framework has been found to be robust, in the sense of transportable into many organisational settings, and useful in practice, to sort the multitude of suggestions made during consultative processes:

1. a values statement at the corporate level alongside the vision and mission of the organisation, which provides the guiding principles for the conduct of business and relationships, and which incorporates the values of the ethical code type outlined above.
2. a code of conduct which draws out the implications of the values statement and provides examples of the application of the guiding principles. The code of conduct functions as something like a set of middle axioms, which bridge the gap between principle and practice.
3. sets of ground rules, developed and applied in the operating units of the organisation, that are very specific about the behaviours and standards required to give effect to the provisions of the code of conduct and the values statement on a day by day basis in that particular part of the organisation. These ground rules are shaped as much by the specific ethical challenges

faced by the staff in the particular context of their operating unit, as by the more generalised code of conduct.

There are working inter-relationships between these three levels. However, in the process of development of the code of conduct, one should need to make provision for shaping and locating the many suggestions so that they fit into an agreed framework for the nurturing and sustenance of the ethical culture of the organisation.

Thus, when adopting an effective process for the development of the code of conduct, one should consider the establishment of the debate and dialogue in drawing out the ethical needs and aspirations of the organisation.

In public life, the antithesis of pursuing private interest is the development of the ethics of administration. As the converse of corruption in public life, this development concentrates on the individual conduct and legal status of every civil servant, and on the institutional establishment of organisational structures. The growth of the ethics of administration, focused on public issues, is the central point that should stimulate all organisational and functional reform in Central and Eastern Europe.[81]

Unlike ethics rules that dictate expected behaviour in great detail, codes of conduct are basic documents written in easily understood language that set forth broad goals and objectives for public officials to achieve. Only occasionally the expected proper conduct of public officials is provided for in a country's constitution.

[81] The Ethical Codes of Polish Public Officials, Prof. Dr. habil. Barbara Kudrycka, Discussion Papers, No. 8, Local Government and Public Service Reform Initiative, Open Society Institute, page 1.

Although codes of conduct are not sufficient to stem misconduct or to curb corruption, they articulate the trust that exists between public officials and private sector. Their aim is to outline the overall principles of proper conduct. Therefore, given their general nature, codes of conduct must be accompanied by detailed and specific "ethics rules" in order to be effective. These rules provide the details necessary to fulfil the goals set forth by codes of conduct.

Nevertheless, there is definitely a need for a clear, explicit and detailed code of ethics governing the manner in which public officials perform their duties. Above all, such a code ensures that public servants have a clear idea of the demands made upon them by their employers pursuant to the various laws dealing with the civil service, and that the latter do not interpret such duties in an arbitrary and authoritarian manner. Codes of ethics for public officials expand the meaning of duties contained in the law on civil service and other related legislation. By describing what is deemed to be appropriate ethical conduct in accordance with rules of good custom, ethical codes also clarify with greater precision the various functions involved in the execution of duties set forth in the law on civil service and other legislative acts. Since the duties contained in the last mentioned have both ethical and legal aspects, this greater degree of precision reinforces the legal significance of their proper execution.

The introducing of codes of ethics for public servants is also supported by the following arguments[82]:

- the need to counteract corruption, abuse of public office, bias and other unethical or illegal conduct;
- to make public officials mindful of the rules of appropriate conduct in the realisation of their legal duties;

[82] *Ibidem*, page 15.

- to protect the position of public official who performs his duties properly, conscientiously and honestly;
- to protect the rights of the citizen who claims that a public official has acted improperly;
- to create conditions conducive to the realisation of administrative work and the pursuit of administrative policy, in accordance with European standards;
- to improve the quality of administrative solutions and other administrative activity from the viewpoint of public needs expressed by various interest groups;
- to create a foundation for the development of a managerial style in administration;
- to ensure greater prospects for an open and more rational realisation of administrative activity;
- to supplement various forms of control over the work of public officials with self-discipline, that is, by instilling extensive legal and ethical self-awareness and professional sensitivity;
- to build the public's trust in administrators in general, on the basis of personal observations regarding the conduct of individual public servants.

Codes of conduct should establish standards of behaviour consistent with organisational and ethical principles applicable in most contexts, such those of justice, impartiality, independence, integrity, loyalty towards the organisation and towards the public interest, diligence, propriety of personal conduct, transparency, accountability, responsible use of the organisation's resources and, where appropriate, standards of conduct towards the public. They should also enumerate the penalties for non-compliance by affected members or

employees. Codes have also to be implemented for the purpose of establishing these standards. In the same time, codes of conduct should not only proscribe undesirable behaviour, but should also highlight avoidance of situations that can cause the perception of impropriety or behaviour inconsistent with the code.

Thus, the code of conduct should both contain rules governing ethical behaviour and establish a system that ensures implementation of the code. The code must therefore[83]:

- translate the underlying guiding ethical and organisational principles into concrete behavioural rules;
- promote and provide for monitoring compliance with those rules; and
- provide clear sanctions for violation of those rules.

Codes of conduct should translate the guiding organisational and ethical principles of the respective organisations into concrete and clear behavioural rules. As a first logical step, before even starting to prepare a first draft of a code of conduct, the responsible body must identify the ethical principles that are most relevant for a particular organisation, professional group, etc.

The need to establish clear behavioural rules is increasingly recognised by both the public and private sectors. It should also be realised that the required standards differ not only among the various professional groups, but also according to the level of responsibility linked to the concrete functions being performed by the respective organisation or professional group.

[83] Global Programme against Corruption, Anti-Corruption Tool Kit, CICP-15, version 2, revised; August 2001, page 36.

Hence, there should be established codes of conduct for each such professional group, especially for members of Parliament.

Several arguments support regulating the duties of the deputies by means of a separate code of ethics, in addition to existing regulations which deal with their practical functions[84]:

1. parliamentary codes of ethics in OECD countries serve to reinforce the ethical infrastructure of public life. While not all member states regard them as binding, as in France, for example, codes of ethics are enforced in many others; for example, in the USA, the UK, Australia, New Zealand, Portugal and Norway.

2. the parliamentarian's specific functions create particular demands: participation in the legislative process and the resolution of problems involving the rights and liberties of others required that he conduct himself as a moral authority, and "remain beyond all suspicion". As moral authority requires both legal and ethical activity, deputy accountability – in addition to its legal aspects – should also include the effective execution of political responsibilities to one's party, as well as to the electors and society in general.

3. universal ethical principles declared in a code of ethics for deputies should be rooted in the European Convention on Civic Rights and Liberties. Defining universal ethical rules of conduct in the code in a form acceptable to representatives of various parties, orientations and religions unites them around a common understanding of proper, i.e., ethical behaviour, and subsequently permits stronger public

[84] The Ethical Codes of Polish Public Officials, Prof. Dr. habit. Barbara Kudrycka, Discussion Papers, No. 8, Local Government and Public Service Reform Initiative, Open society Institute, page 9.

censure, regardless of one's party affiliation, convictions and network of relationships with colleagues and others.

4. several ethical principles regarding appropriate conduct cannot be expressed directly in the language of legal norms. It is sometimes possible, however, to describe conduct which transgresses the limits permissible in given circumstances only by resorting to ethical intuition. Frequently, it is not the actual conduct itself, but the circumstances, time and place which render the conduct unethical. In different situations, for example, a strong verbal attack on one's political opponent may be regarded either as highly desirable political criticism, or as an inadmissible derision. Designating an act of legislation regulating ethical standards as an ethical code endows it with a particularly extra-legal quality.

5. the ethical principles formulated in the code of ethics for deputies, which should refer to intuitive comprehension and the interpretation thereof accepted by the appropriate deputies' ethics committee/office, will provide a common orientation to the formulated ethical assessments of the conduct and political culture of the parliament. This is particularly necessary in the case of parliaments with a young democratic tradition. Nonetheless, it is equally important that the ethics committee/office does not interpret ethical principles in the legislative authority for the achievement of short-term, particularly political goals, or for the imposition of certain religious convictions and views upon others. This can be guaranteed only if the committee/office has ultimate authority and by a political and personal culture of its members which develops a trend of interpretation acceptable to the majority.

6. the standards presented in the code perform several functions which affect the ethical sensitivity and political culture both inside and outside parliament. Primarily, the ethical principles are a guide for councilmen in self-governing communities, counties and others, assisting them in the preparation of their own rules of ethical conduct.

7. the rules contained in the code constitute an ethical guide for the legislator drafting concurrent legal regulations aimed at, for example effectively eliminating the conflict between public and private interest, defining the procedures for cooperation between lobby groups and public officials, eradicating various forms of nepotism in, or abuse of, public office.

Moreover, International Institute for Democracy, a clearinghouse for information on democracy and human rights world-wide which encourage cooperation between governmental, non-governmental and inter-parliamentary organisations, as well as between national parliaments, adopted in May 2001 a report on ethical codes for parliamentarians. This report is an overview of the general and financial status of parliamentarians in different European countries. Nevertheless, UK's code of conduct for members of parliament, prepared pursuant to the resolution of the House of 19th July 1995, should be borne in mind as reference material.

Code of conduct for public sector as a preventive measure against corruption

The issue of ethics in the public service and the need to foster and sustain high levels of public ethics is increasingly concerning citizens, the media, as well as politicians and policy-makers. As was already emphasised, ethical conduct in the public service contributes to the quality of democratic governance and economic and social progress by enhancing

transparency and the performance of public institutions. To preserve people's trust in the democratic system and to maintain effective democratic governance and a healthy economic development, it is primary to strengthen public confidence in government and public institutions through ethical management and code of conduct.

It is a common knowledge in many countries, especially in developing countries, that public servants have been filling their pockets at the public's expense. There are scandals with serious moral implications, revealed almost daily, and in developed countries no less than the developing. This calls for immediate measures, including the monitoring of assets of senior public officials.

Preventing misconduct is thus as complex as the phenomenon of misconduct itself. Among the integrated mechanisms needed for success are sound ethics management systems. An ethics based approach in the fight against corruption is essentially preventive, and so a much more profitable route than one which relies on the big stick of enforcement and prosecution.[85]

It is equally important that ethical codes are concluded with regard to the conditions of the society they are designed to serve.

In order to be effective, codes of conduct should contain clear rules regarding conflict of interest, the acceptance of gifts and favours, the principle of confidentiality and the conduct of political activities. In order to be instantly applicable, codes of conduct should not be based upon ethical or moral taboos, but on hard and fast behavioural prohibitions, or – better still – "codes of practice".

[85] TI Source Book 2000 "Confronting Corruption: the Elements of a National Integrity System", Jeremy Pope, Transparency International, page 176.

Furthermore, codes of conduct should contain rules regarding the consequences of their violation. To merely state that certain behaviour is prohibited without also clearly identifying the penalty for non-compliance is generally ineffective. In order to ensure compliance with a code of conduct, it is not enough to disseminate the code and have the organisation's members or employees read and sign it. An integrated implementation strategy must be planned that balances "soft" and "hard" measures to ensure that the organisation's members will act in accordance with the code. Codes should therefore contain rules that encourages and monitor compliance by all employees, members and/or public officials with clear sanctioning penalties enumerated in cases of breaching of the code.

Measures to ensure implementation of a code of conduct should be put in place during the development process. One way to ensure that a majority of employees comply with the code is to involve as many of the organisation's members as is possible in the preparation of the code.

Exemplary behaviour and conduct should be rewarded and managers should provide moral leadership at all times. Employees should receive regular training on issues of integrity and on what each employee can do to ensure compliance by their colleagues in the work place. Peer pressure and peer reviews should also be encouraged.

Disciplinary sanctions should be envisaged as well as a system ensuring that criminal action is initiated when appropriate. A body should be organised, or an existing body should be provided with the mandate and tools to oversee the behaviour of the organisation's members and to discipline those who don not abide by the code of conduct.

A telephone hot-line should be made available to receive advice and suggestions, even anonymously, concerning views on proper conduct.

A complaints system should be established enabling service users to complaint, either through a "hot-line" or by other means, to a credible and independent complains office. The incoming complaints should be entered into a computerised management system that allows for the analysis and monitoring of the complaints, tracks the allegations reported, action taken, outcome of any investigation and resulting disciplinary and court proceedings.

Any member of the organisation who becomes aware of allegations of unethical, improper, criminal or unprofessional conduct by officials should be obliged to immediately take adequate steps to report this to the appropriate body. The practice of whistle blowing should be institutionalised, and adequate protection for whistle-blowers should be guaranteed.

Nevertheless, the main risk of codes of conduct is that they are often not effectively implemented or enforced because[86]:

- they do not provide clear indications about the proscribed or encouraged behaviour;
- stakeholders were not involved in their design;
- they are sponsored by senior management who also provide the role model;
- the persons they address simply do not know them;
- the public to be served by the civil servants do not know them; or
- their application is not monitored.

As codes of conduct for public officials should improve the professional and ethical conduct of those it addresses and

[86] Global Programme against Corruption, Anti-Corruption Tool Kit, CICP-15, version 2, revised; August 2001, page 45.

enhance the guiding ethical principles of the public service, such as loyalty towards the public interest, they should also ensure that public officials perform their duties and functions efficiently, effectively and with integrity.

Public officials should do all in their power to ensure their impartiality and independence and avoid all situations that could result in a conflict of interest or be perceived as such. Public officials should always seek to ensure that public resources for which they are responsible are administered in the most cost-effective manner so as to maximize their use. They should be scrupulous in their use of public property, services and facilities, and should make every effort to prevent misuse by other persons.

In order to ensure the compliance with the behavioural principles and thus strengthen the confidence of the general public in the public services, public officials holding managerial or policy-making positions should disclose to their employers all personal property, assets and liabilities upon entering the public service. They should also repeat the declaration of assets on a regular basis. Public officials should uphold their oath of secrecy and should maintain the confidentiality of information committed to their secrecy in accordance with their duties.

Due to particular features and responsibilities of certain categories of public officials there should be established ethical principles and behavioural rules especially for those groups, such as civil servants, police officers, members of Parliament, members of the Government, judiciary, tax and customs administration, etc.

Codes of conduct in the public sector, as well as in the private sector and in the professions, are playing an increasing part in the development of national integrity systems and anti-corruption programmes. They also afford the way in which to

develop preventive strategies. Codes of conduct can cover, for example, ministers, parliamentarians, the whole of the public service, individual departments or agencies, and a particular profession within the public service. Obviously, if officials act properly and with understanding from the outset, any problems will be minimised.

However, public sector codes tend to be drafted at the top, by senior public officials or managers, and then passed down to more junior employees. Seldom are the employees at all levels actively involved in the preparation of a code. This results in failure of the code to reflect adequately the situations and aspirations of employees at all levels, and also in a complete absence of ownership. In some respects, the way a code is prepared is just as important as the code itself.

It is also underlying that codes aspire to more, at least in part, rather than be simply long lists of prohibited actions. This is to give it a positive character, rather than the somewhat forbidding appearance of a criminal statute.

Written codes of conduct should also deal with actual, potential and perceived conflicts of interests, including nepotism and cronyism.

The finalising of a code is regarded by many as the end of the process. However, to be effective, codes should be publicised throughout an organisation and its external stakeholders (including the general public), so that everyone is aware of its contents. More than this, there should be regular training, so that groups of officials come together from time to time to talk through dilemmas drawn from real life.

The interpretation of the code, too, is important. It should protect the staff who complies with it. For this reason, an effective code will generally have designated a source of advice and guidance for staff that have difficulty in

determining what their position is. Even if the advice the official is given turns out to be misconceived, where full disclosure of relevant facts has been made and where the advice has been followed, he or she should be regarded as blameless.[87]

Not at least, there should be developed clear provisions and appropriate systems on the implementation and enforcement of codes of conduct.

Common trends show that the following steps are needed to build a consistent system of supportive mechanisms, namely the ethics infrastructure: [88]

- communicate and inculcate core values and ethical standards for public servants in order to provide clear guidance and advice to help solve ethical dilemmas;

[87] *Ibidem*, page 193: Ethics (indicators as to the effectiveness of an ethics policy in support of a national integrity system):

- Is the approach to promoting ethics characterized by participation so that a back-and-forth discussion takes place on professional ethics, with give-and-take between those most affected?
- Are public service ethics depoliticized, in the sense that the raising of ethical standards is something to which all shades of legitimate political opinion can subscribe and in which they can participate meaningfully?
- Are there codes of conduct in the public sector?
- If so, are they built on values from the bottom up, not just from the top down? Are they aspirational in character?
- Do regular ethics training sessions take place for public servants at all levels? Do these include role playing and the discussion of real-life situations (as opposed to simply being printed hand-out and/or lectures)?

[88] OECD Public Management Policy Brief No.7 "Building Public Trust: Ethics Measures in OECD Countries", September 2000. *See also*, OECD PUMA Policy Brief "Managing Government Ethics", February 1997.

- promote ethical standards by preventing situations prone to conflict of interest and rewarding high standards of conduct through career development;
- monitor compliance and report, detect and discipline wrongdoing.

As was mentioned more than one time, next to codes of conduct for public servants there should be a legislative basis and a sound ethics management that sets out standards of behaviour, monitors compliance with these standards and ensures the taking of actions against violation of standards, as well as training measures and advice centres.

2.2 International framework of public sector ethics

Overview

International society, including international and regional organisations, recognises the importance and necessity of ethical codes in the fight against corruption. The following are some international concerns on the matter of ethics in public sector:

Guiding Principles for Fighting Corruption and Safeguarding integrity among Justice and Security Officials, adopted at the Global Forum on Fighting Corruption provide for the establishment of ethical and administrative codes of conduct that proscribe conflicts of interest, ensure the poorer use of public resources, and promote the highest levels of professionalism and integrity.[89] Effective practices should include:

[89] Guiding Principles for Fighting Corruption and Safeguarding integrity among Justice and Security Officials (point 3), adopted at the Global Forum on Fighting Corruption: Safeguarding Integrity among Justice and Security Officials, February 24-26, 1999, Washington, D.C.

- prohibitions or restrictions governing officials participating in official matters in which they have a substantial direct or indirect financial interest;
- prohibitions or restrictions against officials participating in matters in which persons or entities with whom they are negotiating for employment have a financial interest;
- limitations on activities of former officials in representing private or personal interests before their former governmental agency or department, such as prohibiting the involvement of such officials in cases for which former officials were personally responsible, representing private interests by their improper use of influence upon their former governmental agency or department, or using confidential knowledge or information gained during their previous employment as an official in the public sector;
- prohibitions and limitations on the receipt of gifts or other advantages;
- prohibitions on improper personal use of government property and resource.

At the regional level, the Council of Europe's Guiding Principles for the Fight against Corruption[90] provide that member states should take effective measures for the prevention of corruption and, in this connection, to raise public awareness and promoting ethical behaviour (principle 1). Principle 10 urges to ensure that the rules relating to the rights and duties of public officials take into account the requirements

[90] The twenty Guiding Principles for the Fight against Corruption, Committee of Ministers resolution (97) 24, 6 November 1997, Council of Europe.

of the fight against corruption and provide for appropriate and effective disciplinary measures, as well as to promote further specification of the behaviour expected from public officials by appropriate means, such as codes of conduct. These principles, particularly principle 15, support the encouragement of adoption, by elected representatives, of codes of conduct and promotion of rules for the financing of political parties and election campaigns which deter corruption.

Also, the recommendations of the Regional Conference of Central and East European Countries on Fighting Corruption[91] mention the following:

- private sector measures: to promote ethical standards in business through the development of codes of conduct, education, training and seminars;
- on public sector (executive) measures: "open up government" to the public by establishing and disseminating service standards;
- on law enforcement measures and legislative measures: recommend securing the integrity of the judiciary, legislative, through the enforcement of code of conduct;
- finally, regarding independent (civil society) measures: recommend build/maintain an independent, professional and free media with a "nation building role" by enforce integrity through introduction and monitoring of code of conduct.

Considering the conclusions of the conference, the participant states underlined the necessity of adopting a common set of measures in order to fight corruption, as the core of an action

[91] Regional Conference of Central and East European Countries on Fighting Corruption "The Judiciary, Law enforcement and Society in the Fight against Corruption", 30-31 March, 2000, Bucharest, Romania

plan, intended to ensure the achievement of the set goals, among which is drafting simple and distinct provisions regarding the status of justice representatives, law enforcement representatives and public servants, their tasks as well as taking measures necessary to reduce corruption opportunities by: elaboration and adoption of deontological codes that should guide their activities (point 3).

The Principles to Combat Corruption in African Countries, adopted by Global Coalition for Africa on 23 February 1999 state that governments should eliminate conflicts of interest by adopting and enforcing effective national laws, guidelines, ethical regulations or codes of conduct for public officials, which include rules on conflict of interest and requirements for the regular disclosure of financial interests, assets, liabilities, gifts and other transactions (principle 5). Also, governments should establish and enforce self-regulating codes of conduct for different professions, including those in the private sector (principle 10). The governments are called to promote standards for corporate governance and the protection of shareholder rights and to restore and maintain the independence of the judiciary and ensure adherence to high standards of integrity, honesty and commitment in the dispensation of justice through, among other things, adopting a judicial code of conduct (principles 11 and 17).

The Lima Declaration against Corruption[92] contains the statement that all participants believe the fight involves the defence and strengthening of the ethical values in all societies. Among the actions at international and regional levels, government, international and regional agencies and citizens are called to mobilise their efforts and energies to join in the achieving the following actions: e.g. the work of the United

[92] The 8th International Anti-Corruption Conference, Lima, Peru, 7-11 September, 1997.

Nations on action against corruption must be supported. States must implement the United Nations Declaration against Corruption and Bribery and the International Code of Conduct for Public Officials (point 7). Actions at national and local levels include also that national professional associations, in particular of lawyers, accountants, doctors and engineers, must examine the adequacy and effectiveness of their codes of professional conduct and of the means of disciplining those members who facilitate corruption (point 34), that codes of conduct should be introduces in many spheres of life (including cabinet, parliament, the judiciary and throughout government ministries), and governments should examine arrangements whereby the ethics and integrity of their administrations can be assured (point 38).

Furthermore, the Durban Commitment to effective Action against Corruption[93] proclaims that the participants (government, business, civil society and international organisations) will explore the development of business standards which foster and promote integrity and equip the private sector with a tool which can demonstrate, in independently verifiable ways, their individual commitments to integrity in their business practices (private sector integrity). It also says that as a successful campaign against corruption demands the full participation of all sections of society, including most importantly civil society and, with it, the business community, they will work to raise the standards of ethical conduct within the NGO community, in the private sector and throughout the public service and our societies (ethics in society). During the Conference, there were organised many workshops which addressed practical steps to be taken against corruption in the fields as varied as money-

[93] The 9th International Anti-Corruption Conference, Durban, South Africa, 10-15 October, 1999.

laundering, public procurement, public education, business and public sector ethics and public awareness raising through the performing arts. There was also mentioned that the number of codes of conduct and Citizen's Charters continues to grow.

Regulation of public officials' behaviour

The United Nations' International Code of Conduct for Public Officials is recommended to Member States as a tool to guide their efforts against corruption. The Code provides for general rules on conflict of interest and disqualification, disclosure of assets, acceptance of gifts or other favours, confidential information and political activity.[94] It states also the principles of efficiency, effectiveness and integrity, as well as attentiveness, fairness, impartiality and non-discrimination, due preferential treatment.

According to this code of conduct, public officials shall not use their official authority for the improper advancement of their own or their family's personal or financial interest that is incompatible with their office, functions and duties or the discharge thereof. Public officials, to the extent required by their position, shall, in accordance with laws or administrative policies, declare business, commercial and financial interests or activities undertaken for financial gain that may raise a possible conflict of interest. Public officials shall comply with measures established by law or by administrative policies in order that after leaving their official positions they will not take improper advantage of their previous office.

Public officials shall, in accordance with their position and as permitted or required by law and administrative policies, comply with requirements to declare or to disclose personal

[94] The International Code of Conduct for Public Officials, General Assembly resolution 51/59 on Action against Corruption, 12 December 1996, United Nations.

assets and liabilities, as well as, if possible, those of their spouses and/or dependants.

The above cited code of conduct also states that public officials shall not solicit or receive, directly or indirectly, any gift or other favour that may influence the exercise of their functions, the performance of their duties or their judgement.

Matters of a confidential nature in the possession of public officials shall be kept confidential unless national legislation, the performance of duty or the needs of justice strictly require otherwise. Such restrictions shall also apply after separation from service.

In the end, the code provide that political or other activity of public officials outside the scope of their office shall, in accordance with laws and administrative policies, not be such as to impair public confidence in the impartial performance of their functions and duties.

The Recommendation No. R(2000)10 of the Committee of Ministers of the Council of Europe on codes of conduct for public officials[95] sets forth the conviction that raising public awareness and promoting ethical values are valuable means to prevent corruption, and that the governments of member states should promote, subject to national law and the principles of public administration, the adoption of national codes of conduct for public officials based on the model code of conduct for public officials annexed to this Recommendation. The Group of States against Corruption (GRECO) is instructed to monitor the implementation of this Recommendation.

[95] Recommendation No. R(2000)10 of the Committee of Ministers to member States on codes of conduct for public officials, Council of Europe, 11 May 2000.

The purpose of the Model Code of Conduct for Public Officials[96] is to specify the standards of integrity and conduct to be observed by public officials, to help them meet those standards and to inform the public of the conduct it is entitled to expect of public officials. The Code applies to all public officials, as persons employed by a public authority, including persons employed by private organisations performing public services. The provisions of the Code do not apply to publicly elected representatives, members of the government and holders of judicial office.

There is also recommended to member states that on the coming into effect of the Code, the public administration has a duty to inform public officials about its provisions. The Code shall form part of the provisions governing the employment of public officials from the moment they certify that they have been informed about it. Every public official has the duty to take all necessary action to comply with the provisions of this Code.

The code provides general ethical principles for public officials, such as integrity, impartiality, accountability and effectiveness, as well as standards on reporting, conflict of interest, disclosure of interests, incompatible external interests, political or public activity, protection of private life of the public officials, gifts, vulnerability to be influenced by other person, abuse of public office, information hold by public authorities, public and official resources, integrity control, accountability of high level officials, termination of public office, relations with former public officials, respect of code and sanctions.

[96] See also, Recommendation No. R(2000)6 of the Committee of Ministers of the Council of Europe on status of public officials in Europe.

The Model Code provides that the public official who believes he or she is being required to act in a way which is unlawful, improper or unethical, which involves maladministration, or which is otherwise inconsistent with the Code, should report the matter in accordance with the law. The public official should, in accordance with the law, report to the competent authorities if he or she becomes aware of breaches of the Code by other public officials. The public official who has reported any of the above in accordance with the law and believes that the response does not meet his or her concern may report the matter in writing to the relevant head of the public service. Where a matter cannot be resolved by the procedures and appeals set out in the legislation on the public service on a basis acceptable to the public official concerned, the public official should carry out the lawful instructions he or she has been given. The public official should 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. The investigation of the reported facts shall be carried out by the competent authorities. The public administration should ensure that no prejudice is caused to a public official who reports any of the above on reasonable grounds and in good faith.

The Code says that conflict of interest arises from a situation in which the public official has a private interest which is such as to influence, or appear to influence, the impartial and objective performance of his or her official duties. The public official's private interest includes any advantage to himself or herself, to his or her family, close relatives, friends and persons or organisations with whom he or she has or has had business or political relations. It includes also any liability, whether financial or civil, relating thereto. Since the public official is

usually the only person who knows whether he or she is in that situation, the public official has a personal responsibility to:

- be alert to any actual or potential conflict of interest;
- take steps to avoid such conflict;
- disclose to his or her supervisor any such conflict as soon as he or she becomes aware of it;
- comply with any final decision to withdraw from the situation or to divest himself or herself of the advantage causing the conflict.

Whenever required to do so, the public official should declare whether or not he or she has a conflict of interest. Any conflict of interest declared by a candidate to the public service or to a new post in the public service should be resolved before appointment.

As for the declaration of interests, the public official who occupies a position in which his or her personal or private interests are likely to be affected by his or her official duties should, as lawfully required, declare upon appointment, at regular intervals thereafter and whenever any changes occur the nature and extent of those interests.

Besides this, the public official should not engage in any activity or transaction or acquire any position or function, whether paid or unpaid, that is incompatible with or detracts from the proper performance of his or her duties as a public official. Where it is not clear whether an activity is compatible, he or she should seek advice from his or her superior. Subject to the provisions of the law, the public official should be required to notify and seek the approval of his or her public service employer to carry out certain activities, whether paid or unpaid, or to accept certain positions or functions outside his or her public service employment. The public official should

comply with any lawful requirement to declare membership of, or association with, organisations that could detract from his or her position or proper performance of his or her duties as a public official.

The Code also regulates the political or public activity of public servants. Subject to respect for fundamental and constitutional rights, the public official should take care that none of his or her political activities or involvement on political or public debates impairs the confidence of the public and his or her employers in his or her ability to perform his or her duties impartially and loyally. In the exercise of his or her duties, the public official should not allow himself or herself to be used for partisan political purposes. The public official should comply with any restrictions on political activity lawfully imposed on certain categories of public officials by reason of their position or the nature of their duties.

All necessary steps should be taken to ensure that the public official's privacy is appropriately respected; accordingly, declarations provided for in this Code are to be kept confidential unless otherwise provided for by law.

Also, the public official should not demand or accept gifts, favours, hospitality or any other benefit for himself or his or her family, close relatives and friends, or persons or organisations with whom he or she has or has had business or political relations which may influence or appear to influence the impartiality with which he or she carries out his or her duties or may be or appear to be a reward relating to his or her duties. This does not include conventional hospitality or minor gifts. Where the public official is in doubt whether he or she can accept a gift or hospitality, he or she should seek the advice of his or her superior.

If the public servant is offered an undue advantage he or she should take the following steps to protect himself or herself:

- refuse the undue advantage; there is no need to accept it for use as evidence;
- try to identify the person who made the offer;
- avoid lengthy contacts, but knowing the reason for the offer could be useful in evidence;
- if the gift cannot be refused or returned to the sender, it should be preserved, but handled as little as possible;
- obtain witnesses if possible, such as colleagues working nearby;
- prepare as soon as possible a written record of the attempt, preferably in an official notebook;
- report the attempt as soon as possible to his or her supervisor or directly to the appropriate law enforcement authority;
- continue to work normally, particularly on the matter in relation to which the undue advantage was offered.

The public official should not allow himself or herself to be put, or appear to be put, in a position of obligation to return a favour to any person or body. Nor should his or her conduct in his or her official capacity or in his or her private life make him or her susceptible to the improper influence of others.

The public servant should not offer or give any advantage in any way connected with his or her position as a public official, unless lawfully authorised to do so. The public official should not seek to influence for private purposes any person or body, including other public officials, by using his or her official position or by offering them personal advantages.

Having regard to the framework provided by domestic law for access to information held by public authorities, a public official should only disclose information in accordance with

the rules and requirements applying to the authority by which he or she is employed. The public official should take appropriate steps to protect the security and confidentiality of information for which he or she is responsible or of which he or she becomes aware. The public official should not seek access to information which it is inappropriate for him or her to have. The public official should not make improper use of information which he or she may acquire in the course of, or arising from, his or her employment. Equally the public official has a duty not to withhold official information that should properly be released and a duty not to provide information which he or she knows or has reasonable ground to believe is false or misleading.

In the exercise of his or her discretionary powers, the public official should ensure that on the one hand the staff, and on the other hand the public property, facilities, services and financial resources with which he or she is entrusted are managed and used effectively, efficiently and economically. They should not be used for private purposes except when permission is lawfully given.

The public official who has responsibilities for recruitment, promotion or posting should ensure that appropriate checks on the integrity of the candidate are carried out as lawfully required. If the result of any such check makes him or her uncertain as to how to proceed, he or she should seek appropriate advice.

The public official who supervises or manages other public officials should do so in accordance with the policies and purposes of the public authority for which he or she works. He or she should be answerable for acts or omissions by his or her staff which are not consistent with those policies and purposes if he or she has not taken those reasonable steps required from a person in his or her position to prevent such acts or

omissions. The public official who supervises or manages other public officials should take reasonable steps to prevent corruption by his or her staff in relation to his or her office. These steps may include emphasising and enforcing rules and regulations, providing appropriate education or training, being alert to signs of financial or other difficulties of his or her staff, and providing by his or her personal conduct an example of propriety and integrity.

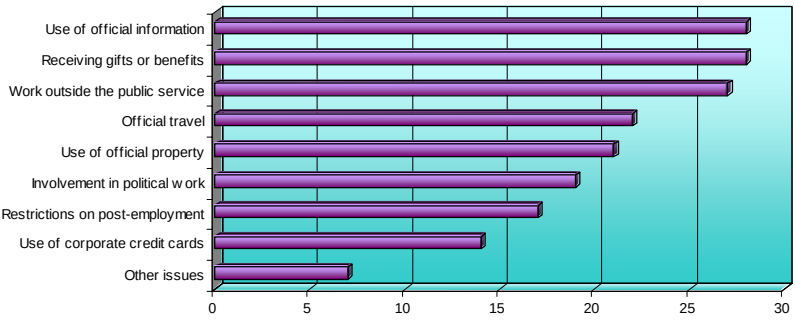
The Code also covers the situation of leaving the public service. Thus, the public official should not take improper advantage of his or her public office to obtain the opportunity of employment outside the public service. The public official should not allow the prospect of other employment to create for him an actual, potential or apparent conflict of interest. He should immediately disclose to his supervisor any concrete offer of employment that could create a conflict of interest. He or she should also disclose to his or her superior his or her acceptance of any offer of employment. In accordance with the law, for an appropriate period of time, the former public official should not act for any person or body in respect of any matter on which he acted for, or advised, the public service and which would result in a particular benefit to that person or body. The former public official should not use or disclose confidential information acquired by him as a public official unless lawfully authorised to do so. The public official should comply with any lawful rules that apply to him or her regarding the acceptance of appointments on leaving the public service.

Dealing with former public officials, the public official should not give preferential treatment or privileged access to the public service to them.

Finally, the Code provides it observance and sanctions regulations. The Code is issued under the authority of the minister or of the head of the public service. The public official

has a duty to conduct himself or herself in accordance with the Code and therefore to keep him informed of its provisions and any amendments. He should seek advice from an appropriate source when he is unsure of how to proceed. Subject to Article 2, paragraph 2, the provisions of this Code form part of the terms of employment of the public official. Breach of them may result in disciplinary action. The public official who negotiates terms of employment should include in them a provision to the effect that the Code is to be observed and forms part of such terms. The public official who supervises or manages other public officials has the responsibility to see that they observe this Code and to take or propose appropriate disciplinary action for breaches of it. The public administration will regularly review the provisions of the Code.

Figure 1: Areas of concern where OECD countries provide standards for public servants



Source: Global Corruption Report 2001, Transparency International

Increased concern about corruption and the decline of confidence in public administration has prompted many governments to review their approaches to ethical conduct. To assist these processes, a set of principles has been developed by the OECD to help countries review the institutions, systems

and mechanisms they have for promoting public service ethics.[97]

OECD recommends that member countries to take action to ensure well-functioning institutions and systems to promote ethical conduct in the public service. The principles identify the functions of guidance, management or control against which public ethics management systems may be checked. These principles distil the experience of OECD countries, and reflect shared views of sound ethics management. The principles are intended to be an instrument for countries to adapt to national conditions. They are not sufficient in themselves – they should be seen as a way of integrating ethics management with the broader public management environment.

The principles are as follows:

1. ethical standards for public service should be clear. 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;
2. ethical standards should be reflected in the legal framework. 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

[97] Improving Ethical Conduct in the Public Service: Principles for Managing Ethics in the Public Service, OECD Council Recommendation, 23 April 1998; PUMA website http://www.oecd.org.org/puma/gvrnance/ethics/index.htm.

public service and should provide the framework for guidance, investigation, disciplinary action and prosecution;

3. ethical guidance should be available to public servants. Professional socialisation should contribute to the development of the necessary judgement 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 tension and problems. Guidance and internal consultation mechanisms should be made available to help public servants apply basic ethical standards in the workplace;

4. public servants should know their rights and obligations when exposing wrongdoing. 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;

5. political commitment to ethics should reinforce the ethical conduct of public servants. 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 resource for ethics-related activities throughout government and by avoiding the exploitation of ethics rules and laws for political purposes;

6. the decision-making process should be transparent and open to scrutiny. 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;

7. there should be clear guidelines for interaction between the public and private sectors. 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;

8. managers should demonstrate and promote ethical conduct. 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;

9. management policies, procedures and practices should promote ethical conduct. 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;

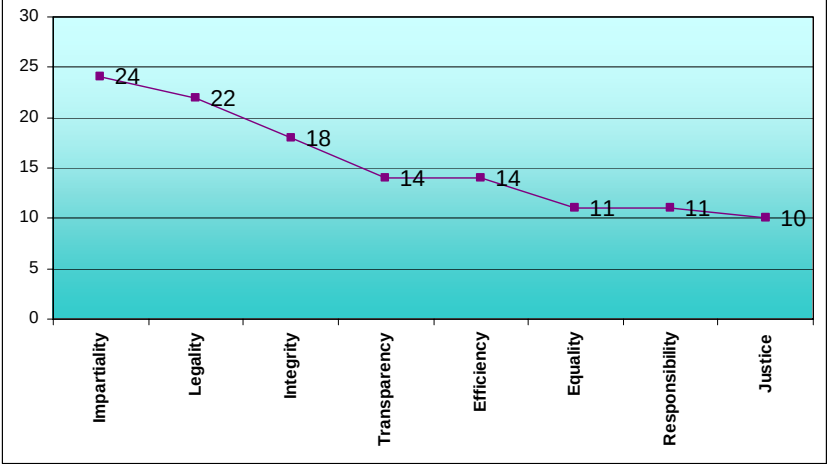
10. public service conditions and management of human resources should promote ethical conduct. Public service employment conditions, such as career prospects, personal development, adequate remuneration and human resource management policies should create an environment conducive to ethical behaviour. Using basic principles, such as merit, consistently in the daily process of recruitment and promotion helps operationalize integrity in the public service;

11. adequate accountability mechanisms should be in place within the public service. Public servants should be accountable for their actions to their superiors and, more broadly, to the public. Accountability should focus on compliance with rules and ethical principles, as well as on achievement of results. Accountability mechanisms can be internal to an agency as well as

government-wide, or can be provided by civil society. Mechanisms promoting accountability can be designed to promote adequate controls while allowing for appropriately flexible management;

12. appropriate procedures and sanctions should exist to deal with misconduct. Mechanisms for the detection and independent investigation of wrongdoing such as corruption are a necessary part of an ethics infrastructure. It is necessary to have reliable procedures and resources for monitoring, reporting and investigating breaches of public service rules, as well as commensurate administrative or disciplinary sanctions to discourage misconduct. Managers should exercise appropriate judgement in using these mechanisms when

Figure 2: The eight most frequently stated core public service values in OECD countries (number of countries stating each value)



actions need to be taken.

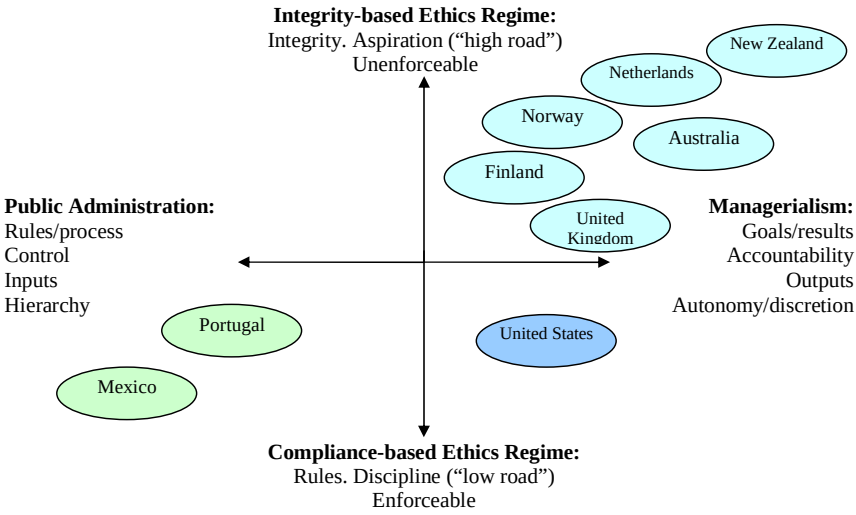
Source: Building Public Trust: Ethics Measures in OECD Countries, OECD Public Management Policy Brief No. 7, September 2000

In the same context, as an integral part of its mission, the OECD assists governments in building and strengthening effective, efficient and transparent government structures through its Public Management Programme (PUMA). In its concern on ethics and corruption, PUMA has defined the concept of an "ethics infrastructure" to explain how these tools work and interact. It has eight key elements: [98]

- political commitment (politicians should say ethics are important, set an example, and support good conduct with adequate resources);
- an effective legal framework (laws and regulations which set standards of behaviour and enforce them);
- efficient accountability mechanisms (administrative procedures, audits, agency performance evaluations, consultation and oversight mechanisms);
- workable codes of conduct (statement of value, roles, responsibilities, obligations, restrictions);
- professional socialisation mechanisms (education and training);
- supportive public service conditions (fair and equitable treatment, appropriate pay and security);
- an ethics co-coordinating body;
- an active civic society (including a probing media) to act as watchdog over government activities.

[98] Managing Government Ethics, Public Management Service, PUMA Policy Brief, February 1997.

Figure 3: Countries by overall management and ethics regime



2.3 Codes of conduct for public sector: foreign experience

National governments also have raised the issue of prevention of corruption through ethical management and codes of conduct. Many countries, besides their legal framework regulating professional conduct of public officials, have developed codes of conduct for public sector, in general, or for certain groups of public officials, including members of Parliament.

Codes of ethics are assigned greatest importance in countries like United States and British Commonwealth member states, where the politic body is organised for the general good, where a codified administrative procedure is lacking, and where the duties of public servants are regulated by numerous laws with varying rank and force, creating a labyrinth of regulations and

judicial precedents through which public officials face the difficult task of navigating.

In other countries, the general principles governing the appropriateness of public official conduct are contained primarily in legislation defining the legal status of public officials, or in case law.

However, an increasing number of public offices in Western Europe – for instance, in France, Germany, Norway and the Netherlands – are developing codes governing the professional activities of public officials. [99]

In Italy a new Code of Conduct for Government Employees came into force in April 2001. The new code reinforces the principles of impartiality, efficiency, responsibility and confidentiality of administrative information, diligence, faithfulness, good performance, independence, public interest, obedience to the law and collaboration, etc. This code regulates behavioural issues like acceptance of gifts and other benefits, membership in associations and other organisations, transparency in financial interests, abstention requirement, collateral activities, conduct in social life, conduct in service, relations with the public, contracts and obligations in connection with evaluation of results.

The provisions of the code do not apply to military personnel, state police and prison police, magistrates and members of the State Legal Advisory Office. They shall apply in all cases in which laws or regulations don not apply or in any event for matters not differently determined by laws or regulations.

[99] Poland civil service act, Finland law on the state civil service, Norway law on public administration, the Netherlands general civil service regulation and law on the officials of central and local administrations, Mexico federal law on the various tasks of the public service.

Moreover, the code allows for the possibility of supplementing and specifying it by codes adopted by individual departments.

Thus, the document provides that the employee shall not request, either for himself or for others, not shall he accept, even on the occasion of festivities, gifts or other benefits, save items for use and of modest value, from persons who have derived or who could derive an advantage from decisions or activities of the office. The employee shall not request, either for himself of for others, nor shall he accept gifts or other benefits from a subordinate or relatives of a subordinate up to the fourth degree. The employee shall not offer gifts or other benefits to a superior or to a superior's relatives up to the fourth degree, or cohabitants, save items for use and of modest value.

In compliance with the laws in effect on freedom of association, the employee shall notify the head of his office of his membership in associations and organisations, including those not of a confidential nature, whose interests are affected in the performance of the office's activities, save when they are political or trade union organisations. The employee shall not oblige other employees to join associations or organisations, nor shall he induce them to do so by promising career advantages.

Further, the code requires that the employee shall inform the head of his office in writing of all relations of collaboration remunerated in any fashion that he has had in the last five years, specifying: a) whether he or relatives up to the fourth degree or cohabitants still have financial relations with the person with whom he has had said relation of collaboration; b) whether such relations were or are entertained with persons that have an interest in activities or decisions of the office, circumscribed to the task entrusted to him. A manager, before taking office, shall notify the department of his/her

shareholdings and other financial interests that could place him in a situation of conflict of interest with the public function that he/she performs. He shall state whether he has blood relatives up to the fourth degree or relatives by marriage up to the second degree or cohabitants who are engaged in political, professional or economic activities that put them into frequent contact with the office that he will direct or who are involved in the decisions or activities of the office. Upon reasoned request of the manager for general affairs and personnel, he shall supply additional information on his/her assets and tax situation.

The employee shall abstain from taking part in decisions or activities that may involve his own interests or: those of his/her relatives up to the fourth degree or cohabitants; those of individuals or organisations with whom or with which he or his spouse has a legal action pending or a severe conflict or an outstanding credit or debt; those of individuals or organisations of whom or of which he is guardian, trustee, administrator, procurator or agent; those of entities, associations including those not officially recognised, committees, companies or establishments of which he is administrator, manager or director. The employee shall abstain in all other cases in which there are serious grounds for affecting his interests. The head of the office shall decide on the abstention.

The employee shall not accept from persons other than the administration remuneration or other benefits for services that he is required to perform in the course of his official duties. The employee shall not accept relations of collaboration with individuals or organisations that have or that have had within the past two years an economic interest in decisions or activities involving the office. The employee shall not request his superiors to confer upon him/her remunerated positions

Moreover, the Code states that in performing his/her work duties, the employee shall ensure equal treatment of the citizens who come into contact with the administration for which he works. To this end, he shall neither refuse a service to one person that is ordinarily accorded to others nor accord a service to one person that is ordinarily refused to others. The employee shall comply with proper procedure in performing the administrative activity under his power, in particular rejecting any illegitimate pressure, even if exercised by his superiors.

The employee shall not take advantage of his position within the administration to obtain benefits that are not legitimately his. In private relations, and in particular in those with public officers in the performance of their duties, he shall not at his own initiative mention such position or let it be understood when this could harm the image of the administration.

The employee, except in cases of justified reason, shall not postpone or entrust to other employees the performance of activities or the taking of decisions that are his responsibility. Without prejudice to contractual provisions, the employee shall limit the absences from his place of work to those that are strictly necessary. The employee shall not use for private purposes materials or equipment at his disposal for official reason. Save in cases of urgency, he shall not use office telephones for personal needs. The employee who has a vehicle provided by the administration at his disposal shall use it for the performance of his official duties and shall not ordinarily transport persons extraneous to the administration. The employee shall not accept for personal use nor shall he personally retain or use goods that are the property of the acquirer, in relation to the purchase of goods or services for official reasons.

As for the employee in direct contact with the public, the code demand to pay adequate attention to the questions of each citizen and to furnish the explanations requested of him/her concerning his/her own conduct and that of other employees of the office. In handling cases he shall observe their chronological order and shall not refuse to perform actions that it is his duty to perform by citing generic motivations such as the amount of work to be done or lack of time. He shall honour appointments with citizens and shall respond promptly to their complaints. Without prejudice to his right to express opinions and disseminate information in the defence of trade union and rights of citizen, the employee shall refrain from making public declarations harmful to the image of the administration. The employee shall keep his office head informed of his relations with press organs. The employee shall not undertake commitments or make promises concerning decisions or actions of his own or of other persons inherent in the office, if this could engender or confirm mistrust in the administration or in its independence and impartiality. In the drafting of written texts and all other communications the employee shall use clear and comprehensible language. The employee who performs his work activity in an administration that supplies a service to the public shall take due care to observe the standards of quality and quantity set by the administration in its service charters. He shall take due care to guarantee continuity of service, to allow citizens to choose between different suppliers and to provide them with information on the way which the service is provided and on levels of quality.

In signing contracts on behalf of the administration, the employee shall not avail himself of mediation or other services of third parties, nor shall he give or promise any benefit on accountant of intermediation or in order to expedite or for having expedited the conclusion or the execution of the contract. The employee shall not conclude on behalf of the

administration contracts for public works, supplies, services, financing or insurance with firms with which he has signed contracts privately in the previous two years. In the event that the administration concludes contracts for public works, supplies, service, financing or insurance with firms with which an employee has signed contracts privately in the previous two years, the employee shall abstain from taking part in the decisions and the activities connected with the execution of the contract. The employee who signs contracts privately with firms with which he has concluded, in the previous two years, contracts for public works, supplies, service, financing or insurance on behalf of the administration shall so inform his office head in writing. If the office head finds him in the circumstances referred to above, he shall so inform, in writing, the manager for general affairs and personnel.

Finally, the mentioned document command the office head and the employee to provide the internal control office with all the information necessary to a full evaluation of the results achieved by the office where he works. The information shall be provided with special regard to the following purposes: modalities of performance of the office's activities; quality of services performed; equal treatment of different categories of citizens and clients; ease of access to the offices, especially for the disabled; simplification and rapidity of procedures; compliance with deadlines for the conclusion of procedures; prompt response to complaints, objections and reports.

The U.S. Office of Government Ethics, established by the Ethics in Government Act of 1978, provides overall leadership and policy direction for the ethics program in the Executive Branch. The law of 1978 for the first time established a system of public financial disclosure for senior officials in all three branches of the Federal Government, a system that is a cornerstone of the ethics program today. The 1978 Act also contained provisions that put in place a procedure for the

appointment of an independent prosecutor whenever there is an allegation of misconduct at the highest levels of government. And also in 1978, another law established statutory Inspectors General in the major departments and agencies to provide for an independent investigating office within agencies to deal with misconduct, mismanagement, fraud, waste and abuse.

In 1989, the U.S. Congress enacted the Ethics Reform Act. The law expanded coverage of the post-employment conflict of interest law so that it applied to Members of Congress and top Congressional staff. This law also expressly authorized all three branches of government to implement a system of confidential financial disclosure. The legislative and the judicial branches of the Federal Government in the United States have their own ethics programs. In the Congress, each house is responsible for administering its own ethics program. In the Senate, this responsibility resides in the Select Committee on Ethics. In the House of Representatives, it is the responsibility of the Committee on Official Standards of Conduct. Moreover, both the Senate and the House amended their respective rules to establish tighter restrictions on the acceptance of gifts. The Congress also passed the Lobbying Disclosure Act of 1995, the first complete overhaul of the lobbying law in nearly 50 years. In the federal judiciary, the Judicial Conference of the United States is responsible for the administration of the financial disclosure system for federal judges and their staffs. At the level of State government in the United States there are 45 State ethics commissions or committees. These State agencies have a wide range of responsibilities. In addition to administering standards of conduct and financial disclosure, many state agencies also deal with campaign finance and lobbying disclosure. At the local level, at least 12 cities have their own ethics commissions.

The Office of Government Ethics exercises leadership in the executive branch to prevent conflicts of interest on the part of

Government employees, and to resolve those conflicts of interest that do occur. In partnership with executive branch agencies and departments, it fosters high ethical standards for employees and strengthens the public's confidence that the Government's business is conducted with impartiality and integrity. The U.S. Office of Government Ethics sets ethics policy and provides leadership by:

- issuing a comprehensive code of conduct;
- overseeing financial disclosure systems;
- establishing ethics training requirements;
- providing ethics advice and counselling;
- conducting regular reviews of agency ethics programs, etc.

In other words, these preventive measures are intended to ensure that the vast majority of executive branch employees observe high standards of conduct and also are intended to provide assurance to the pubic that government employees are meeting these standards and thereby maintain public trust in government.

In 1989 the President's Commission on Federal Ethics Law Reform recommended that the present system of individual agency ethics regulations be replaced with a single regulation applicable to all employees of the Executive Branch. Acting upon that recommendation, President Bush, on April 12, 1989, signed Executive Order setting forth 14 basic principles of ethical conduct for Executive Branch personnel and directing the U.S. Office of Government Ethics to establish a single, clear and comprehensive set of Executive Branch standards of ethical conduct. Thus, the standards of ethical conduct for employees of the Executive Branch are as follows.

The subpart on general provisions establishes the framework for the rest of the regulation. It includes definitions, provides authority for supplementation of the regulation when necessary by individual agencies and encourages employees to seek advice from agency ethics officials. It also restate the 14 principles of ethical conduct and instructs employees to apply them when considering situations not specifically addressed by the regulation and, for situations that involve appearances of conflicts, provides that the circumstances will be judged from the perspective of a reasonable person with knowledge of the relevant facts.

The subpart relating to gifts from outside sources prohibits employees from soliciting or accepting gifts from prohibited sources or gifts given because of their official position. The term "prohibited source" includes anyone seeking business with or official action by an employee's agency and anyone substantially affected by the performance of an employee's official duties. For example, a company bidding for an agency contract or a person seeking an agency grant would be a prohibited source of gifts to employees of that agency. The term "gift" is defined to include nearly anything of monetary value. However, it does not include items that clearly are not gifts, such as publicly available discounts and commercial loans and it does not include certain inconsequential items, such as coffee, donuts, greeting cards and certificates. There are several exceptions to the prohibitions against gifts from outside sources. For example, with some limitations, employees may accept unsolicited gifts with a market value of $20 or less per occasion, aggregating no more than $50 in a calendar year from any single source, gifts motivated by a family relationship or personal friendship, free attendance at certain widely-attended gatherings, such as conferences and receptions, when the cost of attendance is borne by the sponsor of the event and food, refreshments and entertainment at

certain meetings or events while on duty in a foreign country. The subpart also contains guidance on returning or paying for gifts that cannot be accepted.

As for the gifts between employees, the employees are prohibited from giving or soliciting for a gift to another employee who is an official superior, or accepting a gift from a lower-paid employee, unless the two employees are personal friends who are not in a superior-subordinate relationship. The following are among the exceptions to these prohibitions: (1) on an occasional basis, employees may give and accept items aggregating $10 or less per occasion, food and refreshments shared in the office, or personal hospitality at a residence. This exception can be used for birthdays and those holidays when gifts are traditionally exchanged; (2) on infrequent occasions of personal significance, such as marriage, and on occasions that terminate the superior-subordinate relationship, such as retirement, employees may give and accept gifts appropriate to the occasion and they may make or solicit voluntary contributions of normal amounts for group gifts.

The subpart on conflicting financial interests contains two provisions designed to deal with financial interests that conflict with employees' official duties. The fist provision entitled "Disqualifying financial interests" prohibits an employee from participating in an official government capacity in a matter in which he has a financial interest or which his spouse, minor child, employer or any one of several other specified persons has a financial interest. For example, an agency purchasing agent could not place an agency order for computer software with a company owned by his wife. The provision includes alternatives to non-participation, which may involve selling or giving up the conflicting interest or obtaining a statutory waiver that will permit the employee to continue to perform specific official duties. The second provision, entitled "Prohibited financial interests", contains authority by which

agencies may prohibit employees from acquiring or retaining certain financial interests. Employees required to sell financial interests may be eligible to defer the tax consequences of that divestiture.

With regard to impartiality in performing official duties, there may be circumstances other than those covered by previous provisions in which employees should not perform official duties in order to avoid an appearance of loss of impartiality. This provision contains two disqualification provisions addressing those appearance issues. The fists provision, entitled "Personal and business relationships", states that employees should obtain specific authorisation before participating in certain government matters where their impartiality is likely to be questioned. The matters specifically covered by this standard include those: (1) involving specific parties, such as contracts, grants or investigations, that are likely to affect the financial interests of members of employees' householders, or (2) in which persons with whom employees have specific relationships are parties or represent parties. This would include, for example, matters involving employers of spouses or minor children, or anyone with whom employees have or seek a business or financial relationship.

There are procedures by which employees may be authorised to participate in such matters when it serves the employing agency's interests. The process should be used to address any matter in which an employee's impartiality is likely to be questioned. The second provision, entitled "Extraordinary payments from former employers", restricts employees' participation in certain matters involving former employers. If a former employer gave an employee an "extraordinary payment" in excess of $10,000 prior to entering Federal service, it bars the employee from participating for two years in matters in which that former employer is or represents a party. A $25,000 payment voted on an ad-hoc basis by a board of

directors would be an "extraordinary payment". A routine severance payment made under an established employee benefit plan would not.

The subpart on seeking other employment prohibits employees from participating in their official capacities in particular matters that have a direct and predictable effect on the financial interests of persons with whom they are "seeking employment" or with whom they have an arrangement concerning future employment. The term "seeking employment" encompasses actual employment negotiations as well as more preliminary efforts to obtain employment, such as sending an unsolicited resume. It does not include: (1) sending an unsolicited resume, for example, to someone only affected by the employee's work on general rulemaking, or (2) requesting a job application or rejecting an unsolicited employment overture. An employee generally continues to be "seeking employment" until he or the prospective employer rejects the possibility of employment and all discussions end. However, an employee is no longer "seeking employment" with the recipient of an unsolicited resume after two months have passed with no response.

Moreover, the subpart on misuse of position contains four provisions designed to ensure that employees do not misuse their official positions. These include: (1) a prohibition against employees using public office for their own private gain or for the private gain of friends, relatives or persons with whom they are affiliated in a non-government capacity, or for the endorsement of any product, service or enterprise, (2) a prohibition against engaging in financial transactions using non-public information, or allowing the improper use of non-public information to further private interests, (3) an affirmative duty to protect and conserve Government property and to use Government property only for authorised purposes, and (4) a prohibition against using official time other than in an honest effort to perform official duties and a prohibition

against encouraging or requesting a subordinate to use official time to perform unauthorised activities.

Also, there are provisions governing employees' involvement in outside activities, including outside employment. These provisions are in addition to the provisions set forth in other subparts of the regulation. The provisions in subpart H include: (1) synopses of statutes and a constitutional provision that may limit certain outside activities, (2) a prohibition against engaging in outside activities that conflict with employees' official duties, (3) authority by which individual agencies may require employees to obtain approval before engaging in outside activities, (4) limitations on outside earned income applicable to certain Presidential appointees and certain non-career employees, (5) a prohibition against serving as an expert witness, other than on behalf of the United States, in certain proceedings in which the United States is a party or has a direct and substantial interest, (6) a prohibition against receiving compensation for teaching, speaking or writing related to their official duties, which is in addition to the honorarium prohibition imposed by statute, (7) limitations on fundraising in a personal capacity, and (8) a requirement that employees satisfy their just financial obligations.

Ultimately, the provisions on related statutory authorities make references to other statutes which relate to employee conduct.

In Japan, the legislative authority adopted in 1999 the National Public Service Ethics Law, which has the objective to ensure people's trust for public service, deterring activities that create suspect or distrust against the fairness of performance of duties by introducing necessary measures to contribute to retaining ethics related to the duties of national public service officials, acknowledging that national public service officials are servants of the whole people and their duties are to fulfil public service entrusted by the public.

This law provides for the ethics principles that have to be followed by all public employees, as well as stipulates the legal basis for establishing the National Public Service Officials Ethics Code, with the possibility that heads of each ministry and agency may develop their own ethics instructions applied to the employees in the ministries or the agencies with the consent of the National Public Service Ethics Board. Further, the law states that senior officials shall report to their heads of ministries and agencies on receipt of a gift and on exchange of stocks and incomes.

An important provision of the law is the establishment of enforcement and monitoring mechanism for ethics issues, such as the National Public Service Ethics Board and ethics supervisory officers appointed in each ministry and agency. It also stipulates that there shall be taken appropriate measures for retention of ethics among employees in the public corporations, as well as among the public servants in local governments on the basis of the measures provided in this law. Nevertheless, professors working for national universities and the employees in government corporations such as the postal service, national forestry service, printing and mints are exempt from some provisions of this law, such as the National Public Service Ethics Board's own investigation and disciplinary actions.

The National Public Service Officials Ethics Code, elaborated upon the law mentioned above, sets forth the standards for ethical behaviour, the provisions on prohibited actions and their exceptions (mainly, when there is a private relationship), prohibited actions done with persons who are not interest parties, as well as regulation on speech and other activities, consultation with ethics supervisory officer.

Thus, according to this Ethics Code, the employee shall not receive a gift of money, goods or real estate (excluding a

farewell gift, a celebration gift, a monetary offering to the departed soul and a flower gift at the funeral) from an interest party; get a loan from an interest party (excluding a loan from a financial institution with payment of normal interest); rent free goods or real estate from or at the expense of an interest party; receive free provision of service from or at the expense of an interest party; receive stocks that are not held public from an interest party with or without payment of the price; accept hospitality of an interest party; dine with an interest party; participate in any inappropriate game, or golf with an interest party; or travel with an interest party (excluding official travel).

This code excludes from the prohibited actions such actions as: accepting a gift from an interest party which is distributed widely as advertisement goods or as a souvenir; accepting a souvenir at a party attended by many people; using goods at the office of an interest party on an official visit; riding in a car provided by an interest party on an official visit to the office of the interest party (as far as the use of the car is regarded as reasonable in consideration of the public transportation around the office and other factors); accepting a provision of refreshment at an official meeting from an interest party; at a party attended by many people, accepting refreshment from an interest party, and/or eating with an interest party; at an official meeting, accepting a provision of modest food and drink from an interest party, and consuming modest food and drink with an interest party; and dining with an interest party if an employee pays his own expenses. An employee must get the approval of the Ethics Supervisory Officer if he dines with an interest party at night (excluding modest dining at an official meeting or negotiation).

The code also stipulates that when an employee purchases goods or real estate from an interest party at a price extremely cheaper than the market price, or rents goods or real estate, or accepts a provision of service from an interest party at

extremely cheaper costs than the market price, the difference between the real price or cost and the market cost is regarded as a gift.

On the other hand, Korea took another path. In its Anti-Corruption Programs, Korea elaborated a policy program on the reform of attitudes and ethics of public servants and improvement in their salaries and benefits. Thus, in order to establish and implement codes of conduct for public servants, the Government of Korea set up the following basic direction:

- based on the anti-corruption laws, the codes of conduct will be established by a presidential degree;
- it postulates that violators be given administrative sanctions;
- it applies to each and every public servant including local government officials and school teachers.

Therein, the Government promoted for the proper attitudes of public servants. Thus, a public servant should fulfil his/her duty with the utmost care and skill, should not use government resources and facilities for private purposes, should live in a economical manner, avoiding luxurious and inordinate life style, and must avoid conflicts of interest at all times in performing his/her duty.

According to this policy program, there should be adopted strict codes of conduct to prevent collusive relations with private sector parties. Particularly, a public servant is prohibited from giving and taking money as an appreciation or farewell gift from other public servants as well as from private citizens, and a public servant should not receive a gift whose value exceeds more than 50,000 Won (US$ 40). The total value of gifts over the course of a year cannot exceed 200,000 Won (US$ 150). A public servant should not receive any gift from his/her subordinates, should not receive congratulatory/con-

dolence money which exceeds more than 30,000 Won (US$ 25) (officials on the level of assistant minister or higher are prohibited from receiving any money for congratulatory or condolence purpose). Moreover, a public servant should not invite anyone to his/her personal congratulatory/condolence event other than relatives and close friends.

The Government of Korea recognised the need for fair and just working practices. For this reason, a public servant should neither joint nor give financial support to the political parties and supporters' association for the members of the National Assembly. A public servant should not engage in grafting, arranging and begging for private and personal purposes, and should neither accept a presidency of a private association nor receive financial support from such a group.

With a view to foster better attitudes and ethics for public servants, the Government urged to provide anti-corruption education both for the officials of the central and the regional/local government and for the employees of public entities. It also calls to make it obligatory for every public servants training centre to include anti-corruption courses in the curriculum and to make it mandatory for candidates for government posts to swear a solemn pledge to observe the codes of conduct for public servants before they take office.

Finally, the Korean Government called for the improvement of salaries and benefits for public servants, particularly to increase salaries for public servants systematically so that they can match those of private industries within 5 years and that the salary increase scheme should focus first on medium to low level officials.[100]

[100] Korea's Anti-Corruption Programs, October 1999, The Office of the Prime Minister, Republic of Korea, page 18.

East and Central European countries also focus their concern on the issue of ethics and codes of conduct for public service. Thus, the Republic of Lithuania adopted code of ethics for lawyers, state tax inspectorate code of ethics, code of ethics for customs, state control code of ethics and Special Investigations Service code of ethics. Another example is the code of deputies' ethics established by a bill passed by the legislature of the Republic of Poland on July 17, 1998, which provides that upon the taking of the oath, a deputy to the legislature, in his public service, acknowledges the existing legal order as binding, and agrees to abide by generally accepted ethical principles and a commonly shared concern for the general wellbeing of the country. Further, this code requires that a deputy should conduct himself in a manner consistent with the dignity of his office and, in particular, by observing the following principles: impartiality, openness, conscientiousness, a regard for the good name of the legislature, accountability. The Bulgarian civil servants code of conduct sets up basic principles and provision relating to relations between civil servants, on the one hand, and the citizens, colleagues, on the other hand. It also prescribes the standards of professional conduct, as well as of personal conduct. Nevertheless, in former socialist republics, ethical standards for public officials are stipulated in laws regarding the status of certain public authorities.

In the Republic of South Africa, Public Service Commission adopted a code of conduct for public servants in order to give practical effect to the relevant constitutional provisions relating to the Public Service. All employees are expected to comply with this code of conduct. The code should act as a guideline to employees as to what is expected of them from an ethical point of view, both in their individual conduct and in their relationship with others. Compliance with the code can be expected to enhance professionalism and help to ensure

confidence in the public service. The code provide guidelines to employees with regard to their relationship with the legislature, political and executive office-bearers, other employees and the public and to indicate the spirit in which employees should perform their duties, what should be done to avoid conflicts of interest and what is expected of them in term of their personal conduct in public and private life. But, as in the majority of cases cited above, there are no clear mechanisms for implementing or enforcing the codes of conduct.

Concluding this part, it should also be mentioned the steps taken in Argentina with regard to government ethics. The Government of Argentina created in 1997 the National Office of Public Ethics of the executive branch. Two years later, through Decree Law, was approved a code of ethics for public office, which sets out general principles (ethical values) and special principles (obligations). The code also provides conduct rules with regard to benefits from outside sources (prohibited benefits), functional prohibitions, conflict of interest, nepotism, multiple positions, waiting period, and estate and financial disclosure reports.

The National Office of Public Ethics has the mission of taking actions on public officials of the national executive branch in the enforcement of the code of ethics for public office. It also develops adequate tools to prevent non-ethical situations and provides training and personal assistance. Therefore, the Office counts with the following structure: direction of control and follow up of patrimonial and financial situation of public officials; direction of control of conflicts of interest; direction of prevention, ethical education, training and promotion.

Taking into consideration the fact that there are many varied tasks and services performed within the state administration, the most suitable pattern to follow would be to establish a

legally based national code of conduct for public servants with its own enforcement mechanisms, which would serve as foundation for adopting codes of conduct for public officials dealing with particular state activities or professions, and binding only upon certain groups of public servants. It is important that codes correspond to specific areas of professional administration, such as the requirements of police, army, health service, education, social care, etc. Such codes do not have to duplicate the duties of public officials as contained in laws.

Codes of conduct should, however, supplement general legal obligations with administrative and ethical rules appropriate for a given profession. Professional codes should, for instance, be created by self-governing associations, composed of clearly defined professional groups which also work in the sphere of public administration, for example, secretaries of local government offices, city managers, the health service, school administrators, accountants, computer scientists, architects, social care employees, land surveyors, etc.

The possibility of disclosing unethical conduct or of demonstrating effective prosecution of such is much more important than the codes of conduct *per se*. Therefore, to prevent corruption successfully, the adoption of codes of conduct should be accompanied with the establishment of appropriate enforcement mechanisms.

2.4 Public service ethical standards in Moldova: present situation and recommendations

Corruption, “the misuse of public office for private gain”, is a complex phenomenon and represents a serious threat to the rule of law, democracy, human rights, equity and social justice and it hinders economic development and endangers the stability of democratic institutions and the moral foundations of society.

Public administration plays an essential role in the democratic society and it must have at its disposal suitable personnel to carry out properly the tasks which are assigned to it. Public servants are the key element of a public administration, they have specific duties and obligations, and they should have the necessary qualifications and an appropriate legal and material environment in order to carry out their tasks effectively.

Therefore, raising public awareness and promoting ethical values are important means to prevent corruption. Even international organisations and forums recommend that national governments should promote, subject to national law and the principles of public administration, the adoption of national codes of conduct for public officials.

Codes of conduct are flexible instruments for a clear anticorruption mission, aimed to communicate public/private values and expected standards in short, concise and understandable way to the public as well as to public servants. These codes are an adaptable tool and have a form that can range from legal to agency document and could cover the whole public service, sector or individual organisations. There are, however, common concerns regarding coherence (to ensure consistency of applied standards across the entire service and to consider specificities), mutual understanding (to involve staff in the preparation and the implementation, public comment) and linking to human resources management (from communication to performance management). But, generally speaking, codes of conduct, when appropriately established and implemented, can serve their goals, particularly, to prevent corruptive practices of public servants.

Generally, codes of ethics, especially for public officials, are not used as an effective and efficient tool to fight corruption in the Republic of Moldova. The way chosen by Moldova to

regulate the professional behaviour of public servants is the one by laws and regulations.

The Code of Professional Ethics of judges in Moldova sets up only general behavioural standards regarding the conduct of judges when performing official duties and their conduct outside official duties, as well as the assurance of their independence. Nevertheless, the ethical principles and the underlying regulation of professional conduct, employment requirements and sanctions are set forth in the legislation (e.g. Law on status of judiciary, the Law on disciplinary Committee and disciplinary responsibility of judges, Law on economic courts, Law on the system of military courts, the Code of Criminal Procedure and the Code of Civil Procedure, Law on administrative procedure, the Criminal Code and the Code of Administrative Offences). In this regard, the Law on access to information and the Law on informatics of the Republic of Moldova regulate the public servants' behaviour and obligations in order to ensure and realise the constitutional right of access to official information, including personal information, as well as to create, manage, use and maintain the informatics systems, to assure the freedom and protection of data in informatics systems and the access to information and informatics services.

Notaries, in the light of providing public services, have a Deontological Code, which prescribes basic principles and guiding standards of conduct with other notaries, their organisational structures, public bodies and legal entities. The article on moral responsibility of notaries, besides the effects of moral responsibility, refers to the Law on notary as regards disciplinary sanctions.

For other public offices, including customs and tax administration, national security bodies, police officers, local representatives, etc., as well as Bar Associations, the laws are

main guiding material for their professional conduct. If there are specific documents of internal use, these acts are incomplete, inefficient or inapplicable to the fullest extent.

As was mentioned above, public officials lack a code of conduct in Moldova. They comply with and act within the legal framework, particularly the Law on public service and the regulation of each ministry or department. In case of violation, the appropriate sanctions are provided for in the Labour Code (e.g. disciplinary measures), the Code on Administrative Contraventions or the Criminal Code (e.g. for criminal offences).

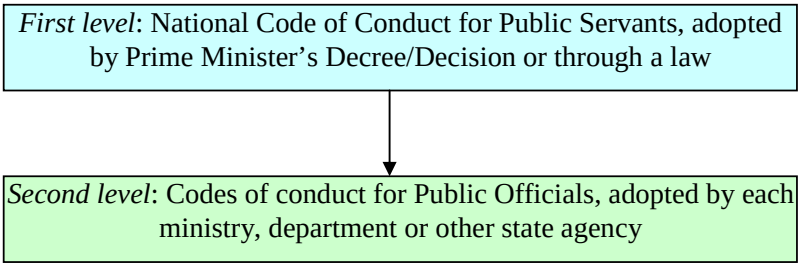
The Parliamentarians have to respect the Law on the status of deputy in the Parliament and the Statute of the Parliament of the Republic of Moldova, as well as ethical and moral rules. The cases of violation of ethics by deputies, according to the Law on status of deputy in the Parliament, are examined by the legal commission for appointments and immunities of the Parliament of the Republic of Moldova, without developing the procedure and mechanisms of penalising these violations. So far, this commission did not make use of its legal right to examine cases of ethics' violation. Moreover, they have a code of conduct which seems to be just an internal, declarative document without whatsoever binding power and consequently without enforcement mechanisms.

In conclusion, the public sector in Moldova urgently needs a nationwide code of conduct for public servants, as a complementing document to the legal framework. The existence of corruptive practices among public servants in the Republic of Moldova is more and more frequently confirmed by specific examples.

The optimal structuring of an public sector ethics management should focus on establishing a general code of conduct for all public servants (at national level), which will govern their

professional behaviour. Moreover, this code should serve as corner stone for adopting ethical codes by the heads of different state authorities with distinctive mission, functions and responsibilities, such as parliament, certain ministries and departments, tax and customs administration, police and national security officers, judiciary, etc.

Figure 4: The proposed scheme for adopting a code of conduct for public servants in Moldova



The key elements of a code of conduct for public servants should be:

- Personal responsibility and involvement of all employees (such principles as: efficiency, effectiveness, selflessness, integrity, objectivity, accountability, openness, reliability, honesty, leadership, impartiality, competence, professionalism, political neutrality, etc.);
- Unconditional compliance with the law;
- Improving public relations (including rules and procedures);
- Improving selection, recruitment, training, nomination and development of career and responsibility criteria;
- Resolving the issue of accepting gifts, rewards, treats and discounts;

- Preventing conflict of interest;
- Political activity (including political party participation and financing);
- Confidentiality and the use of official information;
- Access to information held by public authorities;
- Use of the property and services of the public office;
- Private purchases of state property by employees (e.g. contracts, bidding);
- Financial disclosure and declaration of interests;
- Employment restrictions;
- The work environment;
- Control and oversight;
- Social control;
- Strengthening credibility and trust of the society;
- Penalty issues and enforcement.

This national code of conduct for public servants should be adopted either as a separate chapter of a law on public service ethics, on the legal basis of such a law or through a prime minister's decree or decision. The main provisions of the code should be the ethical standards and principles for public servants, as well as the sanctions for their violation, with reference to the appropriate laws or regulations, such as the Criminal Code, the Labour Code, the Code of Administrative Contraventions, etc.

The legal foundation for adopting a code of conduct for public officials should also set up the implementing and monitoring infrastructure, particularly a national Office/Counsellor of Public Ethics and public ethics officers in each state authority.

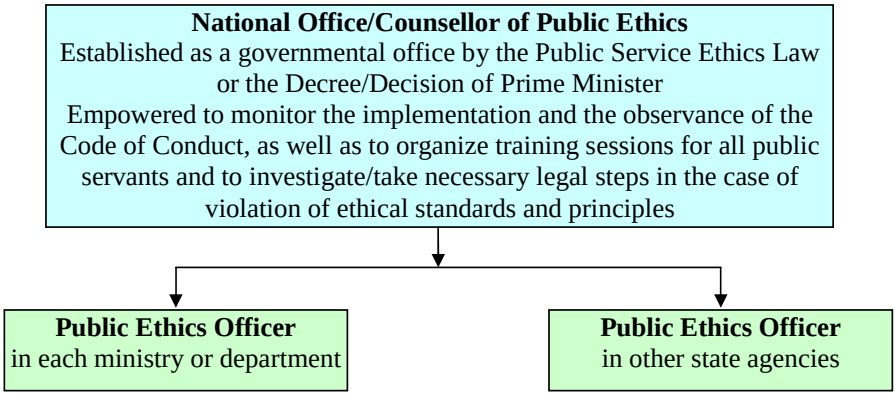
Public ethics officer, who could be an employee of personnel department, should give necessary guidance and advice for public servants in the ministries or agencies regarding ethics matters and should establish management systems for retention of ethics in accordance with the directions set by the Office of Public Ethics. The Office/Counsellor of Public Ethics, responsible for the affairs concerning retention of ethics among public servants, should be established within the government structure. Its main duties and responsibilities should be:

- Submitting an opinion concerning the establishment or revision of the national code of conduct for public servants to the Government of the Republic of Moldova;
- Developing a standard of disciplinary actions as punishment against public servants violating the law on public service, the code of conduct or other regulations based on the law on public service;
- Conducting research and studies concerning retention of ethics in national public services;
- Planning and coordinating ethics training programmes conducted across ministries and agencies or those conducted within each ministry and agency;
- Giving guidance and suggestion to the heads of ministries and agencies in their effort of establishing and maintaining management systems that encourage public servants to follow the code of conduct.

The Office/Counsellor should also be entitled (1) to conduct, at its discretion, an independent investigation into alleged violation of the law, (2) to impose, at its discretion, a disciplinary action as punishment against the public servants violating the law on public service, the code of conduct or other regulations based on the law on public service, as well as (3) to request, at its discretion, public officials with appointing

powers to investigate the alleged violation of the law or of the code of conduct and to take necessary actions, or (4) to approve disciplinary actions imposed by those public officials as punishment against the public servants violating the law or the code of conduct.

Figure 5: The infrastructure of public service ethics management



In other words, the comprehensive ethics management should comprise three components:

1. a general "code of conduct" outlining expected behaviour of public servants;
2. formal and specific "ethics rules" detailing requirements necessary to fulfil such a code, including financial disclosure guidelines;
3. a regulatory institution to enforce those rules and advise public servants on conduct issues.

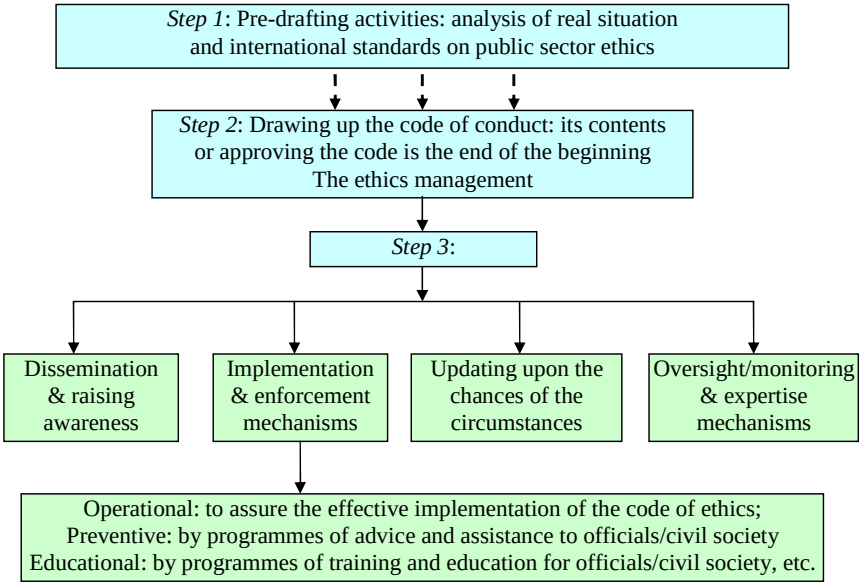
Public servants at all levels must be involved in the drafting of codes of conduct, and training programmes for all must be conducted. Training programmes need to be highly

participatory and involve the discussion of hypothetical situations, and perhaps with role playing. Mere lectures or hand-outs are ineffectual.

Thus, codes of conduct establish rules of ethical behaviour and should be available immediately on recruitment of new staff and included into initial training programs. Whereas codes of conduct mainly contain general principles, more guidance and explanations need to be given on how to apply it in practice. In that sense it is preferable (a) to elaborate guidelines including some specific examples and taking into account the specific views e.g. on acceptance of small gifts; (b) to involve public officials actively in elaboration of the code of conduct and its complementing in order to create a feeling of ownership; (c) to publicise both the code of ethics and the guidelines to raise and sharpen awareness of public servants and the public, to display in each public office the most important principles of the code of conduct.

The codes of conduct themselves must be publicised so as to reach the relevant members of the public. For instance, codes of conduct should proscribe conflicts of interest, ensure the proper use of public resources, and promote the highest levels of professionalism and integrity, etc.

Figure 6: The codes of conduct as preventive anticorruption measure



Codes of conduct can have the effect of making highly visible commitments to the public, and constitute a challenge to state authority to deliver what it promises. This means that the commitments in the codes of conduct should be realistic.

Finally, codes of ethics must not be used as decorations, but used as agents of change in the Republic of Moldova. Codes of ethics are useful, but only when they are properly implemented by public officials.

2.5 Annexe: Code of Conduct for public servants of the Republic of Moldova (model)

General provisions

Article 1

1. This Code applies to all public servants.
2. For the purpose of this Code "public servant" means a person employed by a public authority.
3. The provisions of this Code may also be applied to persons employed by private organisations performing public services.

Article 2

1. On the coming into effect of this Code, the public administration has a duty to inform public servants about its provisions.
2. This Code shall form part of the provisions governing the employment of public servants from the moment they certify that they have been informed about it. The public servant shall certify also that he/she is familiar with the provisions of the Law on public service of the Republic of Moldova.
3. Every public servant has the duty to take all necessary action to comply with the legislation on public service and the provisions of this Code.

Article 3

The purpose of this Code is to specify the standards of integrity and conduct to be observed by public servants, to help them meet those standards and to inform the public of the conduct it is entitled to expect of public servants.

Article 4

The provisions that follow apply in all cases, including those in which laws and regulations do not apply. Without prejudice to the principles set forth in Articles 5-15, the provisions of

Articles 16 and sequent can be supplemented and specified by the codes of conduct adopted by each ministry, department or state agency pursuant to law.

Fundamental principles

Article 5

1. The public servant shall carry out his duties in accordance with the law, with the public trust placed in him, and with those lawful instructions and ethical standards which relate to his functions.
2. The public servant shall act in a politically neutral manner and shall not attempt to frustrate the lawful policies, decisions or actions of the public authorities.

Article 6

1. The public servant has the duty to serve loyally the lawfully constituted national or local authority. The public servant shall conform in his conduct to the constitutional duty to serve exclusively the Nation with discipline and honour and to respect the principles of selflessness, integrity, objectivity, accountability, openness, leadership, good performance, transparency and democracy of the administration.
2. The public servant is expected to be honest, impartial and efficient and to perform his duties to the best of his ability with skill, fairness and understanding, having regard only for the public interest and the relevant circumstances of the case. He shall assume the responsibility related to his duties.
3. The public servant shall be courteous both in his relations with the citizens he serves, as well as in his relations with his superiors, colleagues and subordinate staff.

Article 7

1. In the performance of his duties, the public servant shall not act arbitrarily to the detriment of any person, group or

body and shall have due regard for the rights, duties and proper interests of all others.
2. In decision making the public servant shall act lawfully and exercise his discretionary powers impartially, taking into account only relevant matters.
3. The public servant is accountable to his immediate hierarchical superior unless otherwise prescribed by law.

Article 8
The public servant shall limit the requirements placed on citizens and firms to the indispensable minimum and shall apply every possible measure for the simplification of administrative activity, in any event facilitating citizens' performance of the activities permitted to them or in any case not in violation of the laws in force.

Article 9
1. The public servant shall not allow his/her private interest to conflict with his public position. It is his responsibility to avoid such conflicts of interest, whether real, potential or apparent.
2. The public servant shall never take undue advantage of his position for his private interest.
3. The public servant shall exercise due care in the use and custody of the goods at hi disposal for official purposes and shall not use for private ends the information available to him for official purposes.

Article 10
The public servant has a duty always to conduct himself in a way that the public's confidence and trust in the integrity, impartiality and effectiveness of the public service are preserved and enhanced.

Article 11
In carrying out his duties, the public servant shall observe the division of competences between the central and local

authorities. Within the limits of his/her powers, he shall facilitate the performance of functions and duties by the authority with the nearest jurisdiction and functionally closest to the citizens concerned.

Article 12

Having due regard for the right of access to official information, the public servant has a duty to treat appropriately, with all necessary confidentiality, all information and documents acquired by him in the course of, or as a result of, his employment. He shall facilitate citizens' access to the information to which they are entitled, and insofar as it is not prohibited he shall supply all information necessary to evaluating the decisions of the administration and the conduct of its public servants.

General rules and standards

Article 13– Reporting

1. The public servant who believes he is being required to act in a way which is unlawful, improper or unethical, which involves maladministration, or which is otherwise inconsistent with this Code, shall report the matter in accordance with the law, to the competent authorities.
2. The public servant shall, in accordance with the law, report to the competent authorities if he becomes aware of breaches of this Code by other public servants.
3. The public servant who has reported any of the above in accordance with the law and believes that the response does not meet his concern may report the matter in writing to the relevant head of the public service.
4. Where a matter cannot be resolved by the procedures and appeals set out in the legislation on the public service on a basis acceptable to the public servant concerned, the public servant shall carry out the lawful instructions he has been given.

5. The public servant shall report to the competent authorities any evidence, allegation or suspicion of unlawful or criminal activity relating to the public service coming to his knowledge in the course of, or arising from, his employment. The investigation of the reported facts shall be carried out by the competent authorities.
6. The public administration shall ensure that no prejudice is caused to a public servant who reports any of the above on reasonable grounds and in good faith.

Article 14 – Conflict of interest

1. Conflict of interest arises from a situation in which the public servant has a private interest which is such as to influence, or appear to influence, the impartial and objective performance of his/her official duties.
2. The public servant's private interest includes any advantage to himself, to his family, close relatives, friends and persons or organisations with whom he has or has had business or political relations. It includes also any liability, whether financial or civil, relating thereto.
3. Since the public servant is usually the only person who knows whether he is in that situation, the public servant has a personal responsibility to:
   – be alert to any actual or potential conflict of interest;
   – take steps to avoid such conflict;
   – disclose to his supervisor any such conflict as soon as he becomes aware of it;
   – comply with any final decision to withdraw from the situation or to divest himself of the advantage causing the conflict.
4. Whenever required to do so, the public servant shall declare whether or not he has a conflict of interest.
5. Any conflict of interest declared by a candidate to the public service or to a new post in the public service shall be resolved before appointment.

Article 15 – Declaration of interests

The public servant who occupies a position in which his personal or private interests are likely to be affected by his official duties shall, as lawfully required, declare upon appointment, at regular intervals thereafter and whenever any changes occur the nature and extent of those interests.

Article 16 – Incompatible outside interests

1. The public servant shall not engage in any activity or transaction or acquire any position or function, whether paid or unpaid, that is incompatible with or detracts from the proper performance of his duties as a public servant. Where it is not clear whether an activity is compatible, he/she should seek advice from his superior.
2. Subject to the provisions of the law, the public servant shall be required to notify and seek the approval of his public service employer to carry out certain activities, whether paid or unpaid, or to accept certain positions or functions outside his public service employment.
3. In compliance with the laws in effect on freedom of association, the public servant shall comply with any lawful requirement to declare membership of, or association with, organisations that could detract from his position or proper performance of his/her duties as a public official, save when they are political or trade union organisations. The public servant shall not oblige other public servants to join associations or organisations, nor shall he induce them to do so by promising career advantages.

Article 17 – Disclosure of assets

The public servant shall, in accordance with his position and as permitted or required by law and other regulations, comply with requirement to declare or to disclose personal assets and liabilities, as well as, if possible, those of his/her spouse and/or dependants.

Article 18 – Political or public activity

1. Subject to respect for fundamental and constitutional rights, the public servant shall take care that none of his political activities or involvement on political or public debates impairs the confidence of the public and his employers in his ability to perform his duties impartially and loyally.
2. In the exercise of his duties, the public servant shall not allow himself to be used for partisan political purposes.
3. The public servant shall comply with any restrictions on political activity lawfully imposed on certain categories of public servants by reason of their position or the nature of their duties.

Article 19 – Collateral activities

1. The public servant shall not accept from persons other than the administration remuneration or other benefits for services that he is required to perform in the course of his/her official duties.
2. The public servant shall not accept relations of collaboration with individuals or organisations that have or that have had within the past years an economic interest in decisions or activities involving the office.
3. The public servant shall not request his/her superiors to confer upon him remunerated positions.

Article 20 – Protection of the public servant's privacy

All necessary steps shall be taken to ensure that the public servant's privacy is appropriately respected; accordingly, declarations provided for in this Code are to be kept confidential unless otherwise provided for by law.

Article 21 – Impartiality

1. In performing his work duties, the public servant shall ensure equal treatment of the citizens who come into contact with the administration for which he works. To this end, he shall neither refuse a service to one person that is

ordinarily accorded to others nor accord a service to one person that is ordinarily refused to others.

2. The public servant shall comply with proper procedure in performing the administrative activity under his power, in particular rejecting any illegitimate pressure, even if exercised by his superiors.

Article 22 – Gifts

1. The public servant shall not demand or accept, directly or indirectly, gifts, favours, hospitality or any other benefit for himself or his family, close relatives and friends, or persons or organisations with whom he has or has had business or political relations which may influence or appear to influence the impartiality with which he carries out his duties or may be or appear to be a reward relating to his duties. This does not include conventional hospitality or minor gifts.
2. The public servant shall not demand, either for himself or for others, nor shall he accept gifts or other benefits from a subordinate or relatives and friends of a subordinate. The public servant shall not offer gifts or other benefits to a superior or to a superior's relatives and friends, save items for use and of modest value.
3. Where the public servant is in doubt whether he can accept a gift or hospitality, he shall seek the advice of his superior or of public ethics officer.

Article 23 – Reaction to improper offers

If the public servant is offered an undue advantage he shall take the following steps to protect himself:

- refuse the undue advantage; there is no need to accept it for use as evidence;
- try to identify the person who made the offer;
- avoid lengthy contacts, but knowing the reason for the offer could be useful in evidence;

- if the gift cannot be refused or returned to the sender, it should be preserved, but handled as little as possible;
- obtain witnesses if possible, such as colleagues working nearby;
- prepare as soon as possible a written record of the attempt, preferably in an official notebook;
- report the attempt as soon as possible to his supervisor or directly to the appropriate law enforcement authority;
- continue to work normally, particularly on the matter in relation to which the undue advantage was offered.

Article 24 – Susceptibility to influence by others

The public servant shall not allow himself to be put, or appear to be put, in a position of obligation to return a favour to any person or body. Nor shall his conduct in his official capacity or in his private life make him susceptible to the improper influence of others.

Article 25 – Misuse of official position (conduct in social life)

1. The public servant shall not offer or give any advantage in any way connected with his position as a public servant, unless lawfully authorised to do so.
2. The public servant shall not seek to influence for private purposes any person or body, including other public servants, by using his official position or by offering them personal advantages.

Article 26 – Information held by public authorities

1. Having regard to the framework provided by domestic law for access to information held by public authorities, a public servant shall only disclose information in accordance with the rules and requirements applying to the authority by which he is employed.
2. The public servant shall take appropriate steps to protect the security and confidentiality of information for which he is responsible or of which he/she becomes aware.

3. The public servant shall not seek access to information which it is inappropriate for him to have. The public servant shall not make improper use of information which he may acquire in the course of, or arising from, his employment.
4. Equally the public servant has a duty not to withhold official information that should properly be released and a duty not to provide information which he knows or has reasonable ground to believe is false or misleading.

Article 27 – Public and official resources

1. In the exercise of his discretionary powers, the public servant shall ensure that on the one hand the staff, and on the other hand the public property, facilities, services and financial resources with which he is entrusted are managed and used effectively, efficiently and economically. They shall not be used for private purposes except when permission is lawfully given.
2. The public servant, save in cases of justified reason, shall postpone or entrust to other employees the performance of activities or the taking of decisions that are his/her responsibility.
3. Without prejudice to contractual provisions, the public servant shall limit the absences from his place of work to those that are strictly necessary.
4. Save in cases of urgency, the public servant shall not use office telephones for personal needs. The public servant who has a vehicle provided by the administration at his disposal shall use it for the performance of his official duties and shall not ordinarily transport persons extraneous to the administration. He shall not accept for personal use or shall he personally retain or use goods that are the property of the acquirer, in relation to the purchase of goods or services for official reasons.

Article 28 – Relations with the public

1. The public servant in direct contact with the public shall pay adequate attention to the questions of each citizen and shall furnish the explanations requested of him concerning his own conduct and that of other public servants of the office. In handling cases he shall observe their chronological order and shall not refuse to perform actions that it is his duty to perform by citing generic motivations such as the amount of work to be done or lack of time. He shall honour appointments with citizens and shall respond promptly to their complaints.
2. Without prejudice to his right to express opinions and disseminate information in the defence of trade unions and rights of citizens, the public servant shall refrain from making public declarations harmful to the image of the administration. The public servant shall keep his office head informed of his relations with press organs.
3. The public servant shall not undertake commitments or make promises concerning decisions or actions of his own or of other persons inherent in the office, if this could engender or confirm mistrust in the administration or in its independence and impartiality.
4. In the drafting of written texts and in all other communications the public servant shall use clear and comprehensive language.
5. The public servant who performs his work activity in an administration that supplies a service to the public shall take due care to observe the standards of quality and quantity set by the administration in its service charters. He shall take due care to guarantee continuity of service, to allow citizens to choose between different suppliers and to provide them with information on the way in which the service is provided and on levels of quality.

Article 29 – Contracts

1. In signing contracts on behalf of the administration, the public servant shall not avail himself of mediation or other services of third parties, nor shall he give or promise any benefit on account of intermediation or in order to expedite or for having expedited the conclusion or the execution of the contract.
2. The public servant shall not conclude on behalf of the administration contracts for public works, supplies, service, financing or insurance with firms with which he has signed contracts privately in the previous years. In the event that the administration concludes contracts for public works, supplies, service, financing or insurance with firms with which a public servant has sighed contracts privately in the previous years, the public servant shall abstain from taking part in the decisions and the activities connected with the execution of the contract.
3. The public servant who signs contracts privately with firms with which he has concluded, in the previous years, contracts for public works, supplies, service, financing or insurance on behalf of the administration shall so inform his/her office head in writing.
4. If the office head finds himself in the circumstances referred to in paragraph 2 and 3, he shall so inform, in writing, the manager for general affairs and personnel.

Article 30 – Integrity checking

1. The public servant who has responsibilities for recruitment, promotion or posting shall ensure that appropriate checks on the integrity of the candidate are carried out as lawfully required.
2. If the result of any such check makes him/her uncertain as to how to proceed, he shall seek appropriate advice.

Article 31 – Supervisory accountability

1. The public servant who supervises or manages other public servants shall do so in accordance with the policies and purposes of the public authority for which he works. He should be answerable for acts or omissions by his staff which are not consistent with those policies and purposes if he/she has not taken those reasonable steps required from a person in his position to prevent such acts or omissions.
2. The public servant who supervises or manages other public servants shall take reasonable steps to prevent corruption by his staff in relation to his office. These steps may include emphasising and enforcing rules and regulations, providing appropriate education or training, being alert to signs of financial or other difficulties of his staff, and providing by his personal conduct an example of propriety and integrity.

Article 32 – Obligations in connection with evaluation of results

The office head and the pubic servant shall provide the control authorities (at internal and external levels) with all information necessary to a full evaluation of the results achieved by the office where he works. The information shall be provided with special regard to the following purposes: modalities of performance of the office's activity; quality of services performed; equal treatment of different categories of citizens and clients; ease of access to the offices, especially for the disabled; simplification and rapidity of procedures; compliance with deadlines for the conclusion of procedures; prompt response to complaints, objections and reports.

Article 33 – Leaving the public service

1. The public servant shall not take improper advantage of his public office to obtain the opportunity of employment outside the public service.

2. The public servant shall not allow the prospect of other employment to create for him an actual, potential or apparent conflict of interest. He shall immediately disclose to his/her supervisor any concrete offer of employment that could create a conflict of interest. He shall also disclose to his superior his acceptance of any offer of employment.
3. The public servant shall comply with measures established by law or other regulations in order that after leaving his official position, he will not take improper advantage of his or her previous office.
4. In accordance with the law, for an appropriate period of time, the former public servant shall not act for any person or body in respect of any matter on which he acted for, or advised, the public service and which would result in a particular benefit to that person or body.
5. The former public servant shall not use or disclose confidential information acquired by him as a public servant unless lawfully authorised to do so.
6. The public servant shall comply with any lawful rules that apply to him regarding the acceptance of appointments on leaving the public service.

Article 34 – Dealing with former public servants
The public servant shall not give preferential treatment or privileged access to the public service to former public servants.

Article 35 – Regulation on speech and other activities
When the public servant makes a speech, attends a discussion, holds a briefing, instructs at a training course, writes, edits, or appears on radio or television with receiving reward, he shall get prior approval of the public ethics officer.

Article 36 – Consultation with public ethics officer
When the public servant is not sure whether the counterpart with whom he acts falls into the provision of this Code, or

whether the action that he is going to do is prohibited or hot, he shall consult with the public ethics officer.

Article 37 – Observance of this Code and sanctions

1. This Code is issued under the authority of the prime minister / the head of the public service. The public servant has a duty to conduct himself in accordance with this Code and therefore to keep him informed of its provisions and any amendments. He shall seek advice from an appropriate source when he is unsure of how to proceed.
2. Subject to Article 2, paragraph 2, the provisions of this Code form part of the terms of employment of the public servant. Breach of them may result in disciplinary action.
3. The public servant who negotiates terms of employment shall include in them a provision to the effect that this Code is to be observed and forms part of such terms.
4. The public servant who supervises or manages other public servants has the responsibility to see that they observe this Code and to take or propose appropriate disciplinary action for breaches of it.
5. The office of prime minister / the public administration will regularly review the provisions of this Code, as well as its implementation.

Article 38 Responsibility of public servants

In performing his/her duties, the public servant will be held personally accountable (disciplinary, administrative, criminal responsibility) for the violation of this Code:

1. If the public servant violated the labour discipline, according to the labour code the following disciplinary sanctions are applicable:
    (a) reproof;
    (b) reprimand;
    (c) severe reprimand;
    (d) dismissal.

2. if the public servant committed an administrative contravention, with regard to the code of administrative contraventions the following administrative sanctions are applicable:
    (a) warning;
    (b) fine;
    (c) impressments, paying its equivalent value, of the item that was the tool for committing the or the immediate objective of the administrative contravention;
    (d) confiscation of the item that was the tool for committing the administrative contravention or the immediate objective of the administrative contravention;
    (e) deprivation of the special right accorded to the concerned citizen;
    (f) administrative arrest.
3. if the public servant, violating the provisions of this Code committed a crime, according the criminal code the following main penalties are imposed upon him/her:
    (a) derivation of freedom;
    (b) deprivation of the right to hold a certain post or to exercise a certain activity;
    (c) fine;
    (d) discharge from office;
    (e) public reprimand.

Besides the main (principal, primary) penalties, the following complementary (additional) penalties can be imposed upon the public servant:

(a) confiscation of property;
(b) deprivation of the military or special right.

The deprivation of the right to hold certain positions or to exercise certain activities, the discharge from office and the

fine can be imposed both as principal and complementary penalties.