



**Eastern Partnership-Council of Europe Facility Project on
“Good Governance and Fight against Corruption”**

Activity 1.4: “Risk Assessment: Typologies of underlying causes of corruption”

**Regional Study:
“Risk assessment: Typologies of underlying causes of corruption”**

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1 INTRODUCTION

Knowing that a country has a corruption problem is a signal for action, but does not tell us what to do. Even if one knew where the corruption occurs, through which forms, in what sectors, as well as by what frequency and scale, one would still not know how to actually fight it. For any systematic, targeted, and strategic counteraction, one needs to know the **underlying causes** for the corruption problem within sectors and institutions.

This is why **risk assessment** plays a central role in anti-corruption work. It analyses step-by-step the institutional causes leading to corrupt patterns: legislative shortcomings, organisational malfunctions, faulty procedures, lack of capacity, wrong incentives, etc. Once such analysis is done, it is possible to decide on a strategy with concrete actions addressing all identified corruption risks.

Risk assessment has been a key activity in almost 15 years of anti-corruption work by the **Council of Europe**. It has been part of the monitoring exercise in 49 countries of the Group of States against Corruption (GRECO) since 2000. It has also been an important component of various national and regional, multi-annual, multi-million technical assistance projects by the Economic Crime Cooperation Unit.

The vital importance of risk assessment for anti-corruption reforms is the reason for this regional Activity 1.4 – “Risk Assessment: Typologies of underlying causes of corruption” being also a component of this Eastern Partnership Project. The aim of this Activity is to analyse corruption risks, and to identify weaknesses of the integrity systems in a specific sector of each **country**. The sectors selected for the Eastern Partnership countries are:

Armenia:	Financial Supervision of Public Officials (Asset declarations)
Azerbaijan:	Ethics in civil service
Belarus:	Ethics of public officials
Georgia:	Prosecution service
Moldova:	Local governments
Ukraine:	Financial Supervision of Public Officials (Asset declarations)

The sectors selected in coordination with each country will allow for an ideal **cross-country comparison** in the region: two sectors (asset declarations and ethics in public service) are reviewed in two different countries each. Apart from this comparative aspect, asset declarations and ethics in civil service are topics of relevance for the whole region. In addition, local governments are reviewed as a sector in the Republic of Moldova, but will also be reviewed under a Pilot Activity in Georgia (Activity 3.4). Furthermore, corruption in the prosecution service (Georgia) is a challenge for probably all countries in the region; this country study will thus allow for the results to be applied regionally.

Obviously, risk assessments are not exercises for academic purposes, but for generating concrete recommendations that are followed by respective actions. The Project thus paid close attention to paring the assessments and recommendations with **follow-up activities**:

- The core recommendation in Armenia concerned establishing a verification mechanism for asset declarations. The country risk assessment was thus followed by a **workshop** on verifying declarations and a practitioner’s **manual** on verification methodology.

- Recommendations for Ukraine concerned several shortcomings in the legislation on asset declarations. They are currently being addressed by **legislative amendments**, which the Council of Europe reviewed prior to their submission to Parliament. In addition, the manual on verification methodology drafted for Armenia, will also be applicable and useful to Ukraine, as well as to the whole Eastern Partnership region and beyond.
- To complement the country risk assessment for Azerbaijan, the Project organised two one-day interactive **trainings** of trainers on ethics in public service. In order to achieve maximum impact with little means, the Project used training **materials** developed by another EU/CoE Joint Project (Ethics for the Prevention of Corruption in Turkey – TYEC) and translated the core parts of this training material into Azerbaijani language. Similarly, a four-day training on corruption prevention in Belarus will include ethics in civil service and thus complement the respective risk assessment.
- The Project combined the assessment of corruption-risks at the local level (Republic of Moldova) with drafting **strategies** for the two respective local governments. Furthermore, based on the two policies, a “Model Integrity Plan for Moldovan local governments” was drafted as an appendix to the current National Decentralization Strategy allowing other local authorities to adopt and implement it in their districts. A similar combination of activities is planned for Georgia.

The close link between risk assessment and designing anti-corruption **strategies** is the reason, why this Activity had been closely combined with Activities 1.1-1.3 on anti-corruption policies. The Handbook on “Designing and Implementing Anti-corruption Policies”, developed during these Project Activities and published in April 2013, already provides a comprehensive method of assessing corruption risks as a basis for designing strategies.

The approach of Activity 1.4 is twofold. It combines work on the general methodology with practical assessments in each country:

- Regional **Workshop** (19 June 2012): methods of corruption risk assessment
- Country visits for preparing country risk assessment:
 - o Azerbaijan (23-25 April 2012)
 - o Republic of Moldova (17-30 August 2012, 21 and 24 September 2012)
 - o Ukraine (25-27 September 2012)
 - o Armenia (21-23 November 2012)
- Regional **Conference** (11 April 2013): cross-regional exchange on the country studies
- Country visits (continued):
 - o Belarus (September 2013)
 - o Georgia (July 2013 – tbc)
- Final **Conference** (December 2013 – tbc): final cross-regional exchange

The country assessments for Belarus and Georgia had to be scheduled for the time after the regional Conference in order to better meet the needs of each country. This will make the Final Conference the ideal opportunity for reviewing both country studies, as well as updating the status of implementation of **recommendations** from the other four country risk assessments. This Regional Study was updated in July 2014 by the country assessments for Belarus and Georgia.

2 METHODOLOGY

A corruption risk could be defined as a factor, which facilitates corruption including criminal acts (such as bribery, trading in influence, abuse of function, etc.), violating conflict of interest provisions, nepotism, and improper party financing. The exercise of assessing corruption risks has been given various labels, such as “risk analysis”, “integrity assessment”, “corruption diagnosis”, “integrity system mapping“, “integrity scans”, etc. Whatever the label, these exercises all try to answer the following question: What are the weaknesses in a system that might facilitate corruption? What measures can be proposed to avoid corruption?

There are several handbooks comprehensively listing corruption risks and relevant governance measures, and covering more or less all aspects of society (not only law enforcement but also access to information, public awareness of rights, complaints mechanisms, budget integrity, procurement systems, audit and control, etc.).

Most of these sources are based on the belief/assumption that certain legal and institutional arrangements help to prevent or control corruption. In other words: If corruption is prevalent in a country, the absence of comprehensive countermeasures is seen as a major cause.

However, mere checklists of such countermeasures are no replacement for a proper risk assessment procedure. So the question remains: How is risk assessment done in practice? And how can the assessment be tailored to each country?

This Project Activity provided the following two guidance papers to above questions:

- Assessing the strength of governance measures (Chapter 3.2 of the Handbook on “Designing and Implementing Anti-corruption Policies”, Council of Europe Publishing, March 2013;¹ output of Project Activities 1.1-1.3);
- Corruption Risk Assessment Methodology Guide, Council of Europe Technical Paper for PACA Project, December 2010,² adapted for the Regional Workshop on Risk Assessment, 19 June 2012.

This Chapter 2 documents the above two guidance materials (2.1 and 2.2) and shows their application to the country studies of this risk assessment activity.

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¹ www.coe.int/eap-corruption.

² www.coe.int/paca.

2.1 Step-by-step: Assessing the strength of governance measures

The following is a slightly adapted summary of Chapter 3.2 “Assessing the strength of governance measures” from the Handbook on “Designing and Implementing Anti-corruption Policies”, Council of Europe Publishing, March 2013³:

Step 1: What types of information are needed?

Statistical information

- Information on legislation, institutional framework, capacity and public awareness;

Analytical information

- Perception or opinions about the cause of corruption, i. e. the lack of certain governance measures, expectations (by public officials, citizens, experts, domestic/foreign business, NGOs, etc.);
- Motives provided for by parties involved in corruption.

Step 2: How is information gathered?

Desk Review

This is the first step in order to look at what is already available, such as previous reports or assessments on the state of counter measures by academics, NGOs, international organisations, media, etc.

In order to know if certain good governance measures have been adopted, usually the first and most reliable source of information will be official documents – legislative enactments and policy planning documents. These are highly valid and reliable sources although they do not necessarily show how much political commitment is there to back up the documents.

If there have been earlier strategies that have expired, one needs to look at what tasks have not been fully implemented and if they still need to be addressed by the subsequent strategies.

International organisations and NGOs regularly assess the institutional integrity in a wide range of countries. These already existing integrity assessments are often used as data in desk reviews.

Compliance with international conventions:

- GRECO monitoring reports (Council of Europe Conventions and Recommendations);
- Country reports on the implementation of the OECD Anti-Bribery Convention;
- UNCAC Review Mechanism;

Integrity analysis:

- The Global Integrity Report;
- OECD Anti-Corruption Network monitoring reports;

³ www.coe.int/eap-corruption.

- National Integrity Systems assessments by Transparency International.

UNCAC-self-assessment checklist⁴ (in English and Russian)

National reports / methods – examples:

- Armenia: Institutional Sources of Corruption in the Case of Armenia 2009 (USAID)
- Azerbaijan: Micro System Studies (Council of Europe)
- Georgia: An Assessment of Georgia's National Integrity System 2008 (Open Society Institute)
- Republic of Moldova: Government Decision No. 906 on Methodology for Assessing the Risk of Corruption in Public Institutions
- Ukraine: National Integrity System Assessment 2011 (TI); Surveys on Corruption Risks in the Administration and the Criminal Justice System 2009; Justice System 2006 (Council of Europe)

Surveys

Questions about possible governance measures include especially the following:

- Which governance measures do citizens make use of and which not? Why (e.g. lack of awareness, lack of trust)?
- How are additional governance measures perceived?
Georgia, p. 36: Among the 10 reform measures above, which one would you prefer above others? (Stricter controls and penalties for public employees, better training for public employees are the two most favoured).
- Causes for corruption (mirror question to future governance measures), e.g. too much personal contact in service administrations;
- Expectations (e.g. how the public wants public servants to behave).

In addition, interviews, and discussions by focus groups are possible tools for gathering information.

For example, (written) interviews, focus groups and case studies are part of the Moldovan “Methodology of Corruption Risk Assessment in Public Institutions”, Government Decision no. 906 of 28 July 2008.⁵

External assessment and self-assessment

Assessing the extent of corruption or identifying possible governance measures can be done by an external party, such as an expert or a body like GRECO. EaP countries had corruption measured and counter measures assessed by outside experts. The Council of Europe, among others, has provided the framework for external assessment in the following

⁴ www.unodc.org/unodc/en/treaties/CAC/self-assessment.html.

⁵ See Council of Europe Project against Corruption, Money-Laundering and Financing of Terrorism in the Republic of Moldova (MOLICO), English translation of the draft “Methodology of corruption risk assessment in public institutions”, www.coe.int/t/dghl/cooperation/economiccrime/moneylaundering/projects/molico/AC/Output1.6/912%20MOLICO%20Nat%20%20Legisl%20methodology%20of%20corruption%20risk%20assessment.pdf.

cases (either as in-depth assessment of institutions, or with a broader perspective through surveys):

- Azerbaijan: Micro System Studies (Council of Europe)
- Georgia: An assessment of Georgia's National Integrity System 2008 (Open Society Institute); Public Officials Survey 2009 and General Public Survey 2009 (Council of Europe/Netherlands)
- Republic of Moldova: Evolution of the Perception Regarding Corruption Phenomenon in the Republic of Moldova 2005 – 2009 (Council of Europe)
- Ukraine: Surveys on Corruption Risks in the Administration and the Criminal Justice System 2009; Justice System 2006 (Council of Europe)

External assessments avoid self-protection, have impartial outside third party view, and use dedicated expertise.

However, self-assessment exercises have become increasingly popular. For example, in Slovenia self risk assessments are systematically carried out in all public bodies and local communities.⁶ In the Republic of Moldova, as part of the Council of Europe MOLICO-Project, self-assessment of central institutions was introduced in 2008: “Methodology of Corruption Risk Assessment in Public Institutions”, Government Decision no. 906 of 28 July 2008.⁷ By the end of 2011, all 24 central institutions had completed self-assessment. The procedure depended to some extent on external assistance for training the institutions involved in the method of self-assessment.

The UN has also introduced a self-assessment checklist for compliance with the UNCAC (in English and Russian)⁸. There exist also self-assessment tools for certain sectors, such as the “Integrity Self-Assessment Process – A Diagnostic Tool for National Defence Establishments” (2009)⁹ by NATO and Transparency International.

Self-assessments ensure ownership, profit from local experience, and are cost efficient. Self-assessment can be effective if the leadership of the institution is sincerely committed to use the tool for and if there is high-level coordination among the public institutions.¹⁰

Step 3: How is information analysed?

The following three questions are used for analysing information on governance measures.

I. Who provided the data?

- How much do the respondents know about reform measures? Respondents will often only recommend the option they know best and might be completely unaware of other possibilities and their pros and cons. For example, there is a strong preference among lay people for repressive solutions;

⁶ Drago Kos, “Integrity Plan as a Form of a Consistent Integrity Framework”, Presentation at OECD Global Forum on Public Governance, May 2009, www.oecd.org/dataoecd/42/8/43263490.pdf.

⁷ See MOLICO “Methodology of corruption risk assessment in public institutions” (footnote 5).

⁸ www.unodc.org/unodc/en/treaties/CAC/self-assessment.html.

⁹ www.nato.int/nato_static/assets/pdf/pdf_2010_05/20100603_EAPC_PFP-joint_EAPC-0004-Encl1.pdf.

¹⁰ U4 Report 1:2007, “Anti-corruption policy making in practice: What can be learned for implementing Article 5 of UNCAC?”, p. 42, www.cmi.no/publications/file/2914-anti-corruption-policy-making-in-practice.pdf.

- How much was copied from other sources?

The data of the Freedom House Nations in Transit Survey 2011 for Kosovo is in some parts “only” a compilation of the EU Progress Report on Kosovo 2010: “The European Commission 2010 Progress Report also noted that the Office of the Auditor General needs more financial independence, as the government continues to influence it through budgetary control. [...] The EC’s 2010 report on Kosovo criticised the government for continuing to delay significant public administration reform [...].”

II. In answer to what question was the data provided?

- Leading questions make a big difference in the answer, but are somewhat unavoidable: “Do you think it could help reduce the risk of getting bribe demands, or present requests, from administration officials if one did not have to contact them personally but could instead mail one’s papers or submit them to a one-stop shop?”

III. What data is missing?

- Does the data cover all corruption risks and possible governance measures?
- Which segments of society are not covered?
- Is data available on the general respect for laws and rigour in their implementation in the country? This tells us roughly how much credit to give for the mere fact that a certain law exists;
- Is data available on the transparency of institutions and procedures? This gives us an idea of how sure we can be about something being or not being implemented, e.g. if there is an anti-corruption body, can we see whether it is doing any good.

2.2 Corruption Risk Assessment Methodology

The following “Corruption Risk Assessment Methodology Guide” is a Council of Europe Technical Paper for PACA: Project against Corruption in Albania, December 2010,¹¹ prepared by Quentin Reed, with inputs from from Mark Philp, both Council of Europe experts. It was adapted by the Eastern Partnership Project for the Regional Workshop on Risk Assessment in Strasbourg on 19 June 2012. Like the Handbook on “Designing and Implementing Anti-corruption Policies”, developed by the Eastern Partnership Project and published in April 2013, it contains a chapter on assessing the incidence of corruption (below Chapter 1). However, this Project Activity 1.4 focused only on identifying corruption risks, as the anti-corruption relevance of the chosen sectors had been already determined.

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INTRODUCTION/EXECUTIVE SUMMARY

This paper proposes a general guide to the methodological issues underlying risk assessments in public sector institutions (such as a ministry), and on how to design a risk assessment. The guide may also be used for the conduct of risk assessments on wider targets, such as a sector (for example healthcare), as it can be used in the assessment of specific institutions within that sector. For the purposes of this paper, a corruption risk assessment is understood as an exercise undertaken to identify factors associated with or contributing to or facilitating corruption in a particular institutions. Such assessments may be used as a basis for the design and implementation of policies to address such factors.

The methodology is designed to provide guidance on the following:

1. How to assess the incidence and seriousness of corruption in a given institution.

¹¹ www.coe.int/paca.

2. How to identify the factors that cause, or create risks of corruption occurring in the institution, in order to inform the design of policies to address those factors

The methodology presented draws on a range of existing work in the field, both in the area of measuring/assessing levels of corruption and identifying factors that increase the risk of corruption. The guide may be used by line ministries or other institutions as a self-assessment tool, or by a central or coordinating authority as an external assessment tool.

1 ASSESSING THE INCIDENCE AND SERIOUSNESS OF CORRUPTION

A risk assessment should usually make an assessment of the actual incidence of corruption in the institution under scrutiny. Such an assessment complements the screening of corruption risks and can make a clear contribution to the risk assessment in two ways:

- By identifying actual problems of corruption, it can provide a basis for identifying the factors that cause such corruption.
- Identifying such factors helps us to assess the seriousness of any risks of further and future corruption, and to assess the extent to which such risks actually result in corruption in practice.

To assess the incidence of corruption in an institution, the following issues need to be clarified or taken into account.

1.1 What is meant by ‘corruption’

Corruption is a generic term that is the subject of endless definitional debate. This is not ‘idle academic debate’ but arises because the term corruption is both:

- Descriptive. That is, it is used to identify actions or practices based on a set of existing criteria – for example existing law such as bribery provisions.
- Evaluative. What we regard as corruption is also based on our underlying assumptions of how a sound political process or public administration should function.

This is important because a purely descriptive approach – for example stipulating that corruption simply constitutes the breaking of rules against bribery and similar offences - fails to accommodate political systems where the rules themselves are designed to protect certain forms of corrupt enrichment or influence. In the context of conducting a corruption risk assessment, we may need to identify certain practices within an institution as legal but corrupt, or indeed to identify as corrupt the very fact that they are legal!

Notwithstanding these difficulties, corruption is manifested through a wide range of specific practices, and there is usually broad agreement on the illicit nature of most such practices. Where there is disagreement/debate about the acceptability of a practice this should be articulated.

For the purposes of a risk assessment, this paper advises strongly that the assessments should not focus directly on corruption but, instead, to

- focus on specific practices within an institution that compromise that institution’s capacity to perform its public service function in an impartial and accountable manner.

These practices might be direct examples of corruption, for example bribery or trading in influence. They might also however include other practices such as unfair or unequal treatment, failure to follow particular requirements of law or other legal norms/procedures, etc. So the concern would not just be over core cases of corruption, but also more broadly with activities in which, with or without corrupt intentions:

- Individuals with a public service role act in ways that serve their own interests rather than those of the public. Examples of this might be where officials engage in bureaucratic obstructionism (with or without any corrupt intent), or otherwise perform their role in such a way that ‘turn means into ends’.
- Individuals respond to pressures that ensure that the institution in various ways fails to perform its functions in a manner that appropriately serves its public service role. Such pressures would include not only corrupt incentives, but just as importantly for example political pressure. Such actions might also include decisions by officials that help to secure their own future interests without any clear exchange of favours taking place – for example granting benefits to a particular company with an implicit understanding that the favour will be returned at some future time.

With this broader remit, it becomes important, where possible, to use less ‘moral’ terminology and to avoid the word ‘corruption’, especially where evidence is sought through face-to-face assessments (surveys, interviews). For example, questions designed to yield information on bribery in the health sector might be better phrased as questions about ‘considerations’ or ‘gifts’ provided to doctors rather than ‘bribes’. In this particular example, questions would also have to be designed to distinguish between gifts of genuine appreciation, gifts that are compulsory, cases where the provision of the service is conditional on or influenced in various ways by the gift (such as reducing waiting times), and so on.

Above all, the methods used should not only – or at least not always – be aimed only at trying to assess the incidence of the practices selected. It is also recommended that they are designed to create in those involved a greater awareness of the character of the public service ethos and the inappropriateness of conduct that does not serve the public interest. Direct questions on corruption are unlikely to elicit open responses; and they establish an adversarial spirit between the investigator and the subject. In other words, the aim should be not only to obtain information, but also - through the very process and manner in which information is obtained - to develop an ethos that employees in the public service are able to espouse and endorse, which comes to guide their assessment of how they should act and their understanding of their professional responsibilities and of what it is appropriate for others to expect of them.

1.2 Methods for assessment

A variety of methods exist that attempt to assess the incidence and loci of corruption. The main ones are the following:

1.2.1 Direct observation

In general, the very nature of corruption means that it can rarely be observed directly for research purposes. However, in at least three cases corruption may be directly observed:

- The obvious example is criminal proceedings (prosecutions and convictions). This method is likely to be the least revealing due to the inherent difficulties of observing corruption directly, and the difficulties of interpreting the phenomena observed (for example, whether a low number of convictions means low levels of corruption or poorly functioning law enforcement). While such data is clearly of relevance, its relevance as an indicator of corruption is limited.
- There may be cases where research can be conducted through ‘direct experience’, for example sending a participant in the risk assessment to apply for a passport, establish a business etc. While potentially yielding useful information, such exercises are clearly controversial (involving ‘entrapment’),. Moreover, such methods may compromise its targets (where they do not solicit payments) – many who do not take bribes may nonetheless be reluctant to expose those who offer them, but to treat the failure to report

such offers as itself criminal behaviour does seem to be a case of entrapment, or at least not entirely fair.

- There are instances where practices that subvert the capacity of an organisation to fulfil its public service responsibilities are legal, for example where bribery is not adequately criminalised, where appointments procedures contain no restrictions to prevent nepotism or similar practices, where election campaign finance is very poorly regulated, and so on. This may result in some instances of corruption being conducted openly. Moreover, any formal set of criteria for corruption (e.g. provisions of the criminal law or other prohibitions) will fall short of identifying in full the expectation of probity. There is a difference between what the rules say, and what the spirit of the rules require, and in so far as we are concerned in the most general sense with a culture of corruption, the spirit of the rules is a crucial component.

In short, direct observation can only play a small part in assessing the incidence of corruption.

1.2.2 Proxies

Another way of obtaining indications of corruption is through observation of phenomena that are assumed to be proxies or near-proxies of corruption – for example comparing the difference between customs revenue on imported items and domestic sales figures for the same items; or observing the length of time taken to secure certain decisions or rights (such as a license or permit).

Whether to pursue a proxy method must be decided on a case-by-case basis. However, the key point here is not to confuse proxies (i.e. variables that are assumed to be direct indicators of corruption itself) with causal conditions (that may give rise to corruption). The most obvious example of a confusion between the two is the 'Klitgaard formula', according to which

CORRUPTION = MONOPOLY + DISCRETION – ACCOUNTABILITY

In other words, the amount of corruption will be determined by the extent of monopoly and discretion in the provision of a particular public service, combined with the level of accountability of those responsible for provision. In other words, the less competition and more discretion providers enjoy, the more corrupt they will be, while the more accountable they are the less corrupt they will be.

While this formula has been very influential, its limitations as a proxy definition of corruption are fundamental.¹² The formula implies that corruption, monopoly, discretion and accountability can be measured and that there is literally a mathematical equation between them. This is clearly not true: some institutions must have a monopoly of a particular activity in order to function (the police is an example), all officials need a degree of discretion to perform their job well, and accountability is a complicated notion that may not be an unqualified good under all circumstances (consider the direct political accountability of judges; or the answerability of police investigators to the government they are meant to be investigating, and so on.).

The Klitgaard model – and other similar approaches - should be taken as one attempt to identify factors that may facilitate corruption, not as a means for identifying corruption itself. The factors that it identifies – monopoly, discretion and accountability – may be linked to corruption under certain circumstances, but they will not have the effects assumed by the model in all

¹² See for example Philp M., 'Corruption Definition and Measurement', in Sampford C., Shacklock A., Connors C. and Galtung F. (eds.), *Measuring Corruption*, Ashgate Publishing, 2006, pp. 52-53.

circumstances.¹³ To think that there is a strict causal relationship between any one factor and the occurrence of corruption is to fail to recognise that causal factors are mediated through the intentional actions of particular agents, and are, in all but the most extreme cases, a matter of choice and decision, rather than one of causal necessity. In other words, for example, an official who works in a situation where he enjoys a monopoly of the provision of a particular service (for example issuing certain documents needed by citizens) and has wide discretion about whether to provide them or not, would appear to enjoy considerable opportunities to engage in corruption. Whether s/he does engage in corruption, however, will depend on a whole range of other factors, including whether the purpose of issuing such documents (and therefore the objective for which discretion should be exercised) is clear, his/her own personal integrity, as well as less measurable but equally important factors such as institutional culture.

1.2.3 Surveys

Surveys of users of public services, of the officials that provide them, or of the public in general are one widely-used method of seeking information on corruption. Surveys vary in the following ways:

- Surveys may focus on either:
 - Perceptions of corruption, usually meaning people's stated beliefs about the incidence of corruption
 - Experience of corruption – people's statements concerning their own experience of the experience of persons or entities that are closely related to them (family, companies in the same sector, etc).
 - Attitudes towards corruption – people's statements about what practices they regard as corrupt, and/or how negatively or positively they evaluate certain types of corrupt practices.
- Surveys vary from mass surveys designed to obtain statistical data (large sample, simple questions) to smaller targeted user surveys designed to secure qualitative/descriptive evidence on the other (smaller sample, more detailed questions, focus groups etc).

Many surveys are mass surveys of corruption perceptions or experience, with a sample sufficiently large to ensure statistically accurate results, meaning that the questionnaire responses are representative of the views of the population or target group (e.g. patients, students). It is important to note that statistical accuracy in this sense does not imply that the survey results are accurate in any other sense, and especially in the following senses:

- If (as seems widely to be the case) people answer questions about their perceptions of the incidence of corruption on the basis of factors other than their actual perception (for example, if answers effectively express people's dissatisfaction with living standards combined with blaming this on the political elite), the survey will to that extent show perceptions not of corruption but of something else.
- To the extent that perceptions of corruption are not correlated with actual corruption, surveys may not be used to make assessments of the incidence of corruption. Moreover, a good deal of evidence suggests that there is substantial gap between people's actual experience of corruption and the level of corruption they say exists.
- To the extent that responses to questions on experience of corruption are inaccurate (for example due to fear of prosecution, reprisals or shame), surveys of experience also cannot be used to make accurate assessments of the incidence of corruption.

¹³ The example of the United States Supreme Court appears to be a clear counterexample, for example - where a monopoly of decision-making, wide discretion and little if any formal accountability do not appear to result in corruption.

In addition, conducting mass surveys at an acceptable quality level can be prohibitively expensive. Unless questionnaire design is highly sophisticated, the survey is administered with highly trained interviewers, and the interpretation of the results is conducted by independent respected experts, the benefits gained through mass surveys may be small. On the basis of the Council of Europe's work on corruption surveys in other countries, the recommendation of PACA is that surveys conducted at a reasonable cost should be designed as smaller-scale exercises targeting specific groups of users or providers of public services, with questions and means of posing them (for example focus groups) that allow more in-depth information to be gained. While such exercises will provide information that is less 'statistically accurate', the PACA position is that this kind of 'accuracy' is less valuable than obtaining detailed information on the functioning of institutions under scrutiny. Moreover, as the general recommendation of this briefing document is for risk assessment work to be institutionally specific, the targeted focus group approach appears more appropriate.

1.2.4 Interviews

A key source of information for any risk assessment is the conduct of targeted interviews with relevant persons: users, officials, experts and/or other members of the public. In practice, interviews are often the most important method for securing information on corrupt practices or other malfeasance. However, it is of very high importance to follow certain rules when pursuing this approach:

- In general, selection of interviewees should strive to avoid selection bias. However, it is unavoidable that selection will sometimes be 'biased', for example by targeting complainants to particular institutions. This may imply that the information gathered will indicate more extensive problems than in fact exist. In these circumstances, it is important for the interpretation of the information obtained to take into account such bias, to avoid unjustified generalisation, and to seek access to those who experience no difficulties with the institution.
- Likewise, interview questionnaires should be designed in such a way that they will not elicit systematically biased responses, for example through 'leading questions' that implicitly suggest there is corruption whether this is the case or not ('putting words into the mouths of the interviewed'). Moreover, the standards of evidence need to be symmetrical between complainants and those accused, rather than assuming that there is 'no smoke without fire!'
- Questionnaires should strike a balance between focusing specifically on issues identified by the risk assessment team, and providing interviewees with the opportunity to speak outside of certain constraints. Having said that, complaints and concerns that arise in the more open-ended parts of the interview need subsequently to be investigated with a similar degree of rigour as those identified by the risk assessment team, lest casual remarks are given disproportionate weight.

1.3 What is meant by 'the incidence and seriousness of corruption'

A key weakness of attempts to measure corruption (such as the Transparency International Corruption Perceptions Index) is that they implicitly assume that all cases of corruption are equally damaging. This is clearly not the case – an institution may suffer from very few cases of corruption, but if these are at the highest level and affect key decisions the impact may be as serious as or more serious than where there are widespread incidence of minor petty corruption.

More generally, uni-dimensional efforts to assess corruption levels do not provide much useful information for those wishing to design policies to tackle corruption. Anti-corruption activity – namely, the development of policies to tackle corruption problems - needs to be focussed. To determine what needs to be focused on, we need to know what types of cases occur, who are the targets and who are the victims. Whichever method is used to try and assess corruption in a

selected institution, it is of crucial importance for any risk assessment to distinguish between a number of different aspects of the 'incidence and seriousness' of corruption, and to make an assessment of each of them:

- The frequency of corrupt exchanges or acts, i.e. how common corrupt exchange are, what proportion of users have engaged in them, whether particular decisions can always be bought or whether they can only be bought occasionally etc. In other words, how far and in what ways corrupt practices distort the provision of the particular service or the implantation of particular policies.
- The 'size' of corrupt exchanges or acts: for example the average size of bribes or of gifts solicited, and to what extent the provision of services is conditional on the bribe/gift being provided. Do people not receive the service unless they bribe, or is this a payment to speed the process?
- The 'breadth' of corruption within an institution, in particular the proportion of officials involved, and the incidence of corruption at the different levels of the organisation.
- The 'depth' of corruption within an institution, i.e. the importance of the processes which are corrupted. For example, being able to pay MPs to ask certain questions in Parliament is less serious than being able to pay MPs to write and pass a law.
- The nature of corrupt exchanges:
 - Corruption may take the simple form of cash bribes, but may also encompass a wide range of other direct and indirect advantages, involving networks of relationships and exchanges (such as ownership rights) that are more entrenched.
 - Whether corruption is voluntary on the one hand, or is embedded in a wider context of intimidation or coercion on the other. An example of the latter is where officials are instructed from above to collect bribes and risk their jobs or opportunities for promotion if they refuse or fail to do so. Even more serious is the presence of a culture of intimidation in which officials pre-emptively behave corruptly in order to prevent sanctions being taken against them, without any explicit instruction to take bribes even being given. Such practices are deeply corrosive and unfortunately very difficult to identify.
 - Whether the primary initiative for corruption is external to the organisation or internal – in particular whether the impetus for corrupt exchanges or acts comes from citizens/users or associated interests, or from the officials themselves.
 - The extent to which corruption reflects individual acts of opportunism (by users and/or officials) vs patterns of behaviour entrenched in the culture of the institution.

Clearly, the answers to the above issues/questions in the institution under scrutiny are of key importance if well-targeted policies are to be designed.

2 IDENTIFYING CORRUPTION RISK FACTORS

The second possible component of a risk assessment is to try and identify the contributory and facilitating factors underlying corruption in the particular institution under assessment. An assessment of risk factors may be conducted with or without an assessment of the incidence of corruption.

Risk assessments may range between the following two extremes:

- identifying on the basis of a general methodology/questionnaire 'risk factors' that are assumed to increase the risk of corruption;

- focusing on the identified preconditions for corruption in a particular institution under scrutiny.

A well-designed risk assessment will in fact do both of these things. Conducting an assessment based on the 'blind' application of a set of external criteria risks missing or failing to focus sufficiently on issues that are of particular importance in the institution being assessed and neglects the crucial role of the institutions informal culture in mediating between organisational objectives and individual motives. At the same time, it is important to balance the focus on the institution 'from within' with an attempt to identify some external standards of assessment, if we are to avoid the assessment process from 'going native' For example, in the case of some police functions (for example dealing with certain small-scale offences) the existence of discretion may be justified for a range of reasons (every case is different), and these 'internal factors' must be taken into account. However, in the case of other police functions (such as the handling of complaints or notifications of suspected criminal acts), the existence of excessive discretion or monopoly may be rightly identified as a corruption risk in certain circumstances, and an assessment 'from within' might not readily identify these as a problem.

2.1 Institutional risk questionnaire

The identification of risk factors should be pursued through an analysis/screening of characteristics/aspects of the institution. For this, an institutional risk questionnaire should be used. The basis for such a questionnaire may be found in Annex 1. The questionnaire is divided into the following sections:

- Organisational role
- Budget
- Human resources management
- Procedures and decision-making processes
- Record-keeping
- Transparency
- Access to Information
- Ethics and integrity framework
- Accountability mechanisms
- Internal notification of ethics breaches
- Complaints mechanisms
- Disciplinary procedures and sanctions
- Vulnerable areas
- Anti-corruption policies, codes of conduct, and ethical regulation

2.2 Identifying causes of corruption in a specific context

On the assumption that a questionnaire is used to attempt to identify corruption risks, different components of the questionnaire will have varying degrees of relevance for different organisations. A corruption risk assessment needs to take this into account on a case-by-case basis. For example,:

- Section B (Budget) may be of key anti-corruption relevance for institutions such as a transport ministry, where the size and complexity of procurements (especially for infrastructure projects) are likely to be important factors encouraging corruption.

- Section C (Human Resources Management) may be the key section of relevance for sectors such as healthcare or education in which human resources are both huge and central to the quality of service provision.
- Section D (Procedures and decision-making process) is likely to be key in areas such as licensing where application processes are the key location of corruption.

In general, a number of different aspects of the questionnaire used will be relevant for any institution.

2.3 Checklists for deeper analysis

On the basis of the issues identified through the use of the risk questionnaire, a checklist of issues on which to focus in more depth should be formulated. For example, on the basis of the examples provided above, if the questionnaire identifies problems in the planning cycle then a more detailed analysis of the planning cycle should be a next step in the risk assessment, and so on. In determining the content and the style of the questionnaire it is important to determine whether the questionnaire is to function as an externally applied institutional audit or whether the objective of the design is to develop a tool for internal self-examination. Different elements of the risk assessment process may fall into one or other of these two aspects of assessment. For example, the use of interviews is much more likely in the case of an external assessment, though it may also be used internally.

2.4 Sources of information

In order to generate the answers to a risk assessment questionnaire, it will be necessary to collect information from a range of sources. The following are the main sources:

- Documentary
 - Existing reports and studies (including surveys) on the areas under assessment
 - Relevant legal norms, statutes, internal rules and guidelines
 - Relevant procedures and processes
- Interviews
 - Relevant officials of the institution concerned, plus, potentially, some group interviews and discussions
 - Officials from other institutions as appropriate, e.g. external audit, Ombudsman
 - Users of the relevant public service/clients of the institution
 - Other organisations – for example NGOs specialising in areas relevant to the activities of the institution

3 CONDUCTING RISK ASSESSMENTS

3.1 Who should conduct risk assessments: internal vs external assessment

In principle, institutional risk assessments may be conducted by any entity with the necessary expertise. Line ministries and other public institutions may complete the risk assessment questionnaire. In addition, a broader external assessment of selected institutions may be conducted – either by a central authority, audit body or similar, or alternatively (and ideally in parallel) by an external (non-state) organisation such as an NGO or research institution.

3.2 Risk assessment schedule

The schedule for conducting a full external risk assessment should be as follows:

- Define the precise objective of assessment, in particular whether the incidence of corruption is to be assessed
- Select methods of data collection
- Review existing reports on the institutions/sectors being covered
- Request documentation from the relevant institutions, review and collect relevant and selected literature and documents, including relevant laws and regulations and statutes
- Identify issues in risk questionnaire likely to be of particular relevance to the institution under scrutiny
- develop interview questions for the completion of the risk questionnaire
- complete the questionnaire

4 USING THE RESULTS: CORRUPTION RISKS vs ISLANDS OF INTEGRITY

Once a risk assessment has been completed, the results may be used to identify steps that need to be taken to address the risks and problems identified by the assessment. However, and we wish to underline this point as strongly as possible, risk assessments may also identify institutions or processes/units within institutions that work effectively and with integrity. These might be termed 'islands of integrity'. Where such islands are identified, the analysis should identify why it is that they function in such a way. The lessons drawn – which are based on an objective analysis yet draw deeply on the functioning of an institution in the local context – may then be used as one source of inspiration when formulating policies to improve the situation in other institutions that do not function as well.

5 ANNEX 1: SAMPLE INSTITUTIONAL RISK QUESTIONNAIRE

Introduction

The following questionnaire is proposed as a means for conducting a basic corruption risk assessment or good governance risk assessment. The questionnaire, should be completed either on a self-assessment basis (by the line ministry of institution itself) or externally (for example by DIACA).

A. Organisational role

1. What are the core functions of the organisation (e.g. ministry, sub-unit within ministry)?
2. Does the organisation have a 'mission statement' or similar description of its function/role? Are staff aware of these? Do staff consider them accurate and appropriate?
3. Do the major sub-units of the organisation have 'mission statements' or a clear definition of their function/role? Are staff aware of these? Do staff consider them accurate and appropriate?
4. Do all staff of the organisation have a clear job description/terms of reference and are staff aware of this?

B. Budget

5. What is the size of the organisation's budget?

6. What is the rough breakdown of spending between salaries, investment, purchases of goods and services and other types of spending?
7. What is the average size of a purchase/investment made by the organisation: are there a significant number of very large purchases/investments in an average year (or last year)?
8. What percentage of purchases/investment made by the organisation are put out to open tender?
9. How technically complex are the spending decisions made by the organisation? Who takes the more complex decisions and on what basis?
10. Are spending decisions on major items highly centralised (e.g. requiring the signature of one senior official) or highly decentralised?
11. Are spending decisions on minor items highly centralised (e.g. requiring the signature of one senior official) or highly decentralised?
12. Does the organization receive income from the public, or designated clients (taxation, customs levies, payments for services or rents etc.) What is the process for recording, banking and auditing these payments? In what form are such payments received?

C. Human resources management

13. How many staff does the organisation employ?
14. How many of these are employed centrally (e.g. in a ministry), and how many indirectly (e.g. public servants such as teachers)?
15. What percentage of the following categories (or equivalent categories) of your staff have the status of civil servant, what proportion are currently within the one-year probation period, and what percentage are employed on short-term contracts?:
 - a. Secretary-General
 - b. Directors of departments or directors general
 - c. Directors of directorates or sector/office chiefs
 - d. Specialists
16. Is there any monitoring and statistics to show the rate of staff turnover within the organisation. If so, what is the turnover regarded by the organisation as high, low, or about right?
17. Are there any internal recruitment guidelines in addition to the provisions of the Law on Status of a Civil Servant?
18. In what percentage of recruitments is the selection decision of the relevant superior contrary to the recommendation of the ad hoc recruitment committee, i.e. selects a candidate that was not one of those recommended?
19. Do recruitment procedures for staff in positions that might be regarded as high-risk from a corruption point of view include criteria to attempt to ensure the integrity of those appointed?
20. Are applicants for staff positions questioned/screened to ensure they do not engage in external activities or hold external interests that may conflict with or impair the proper performance of their official duties?
21. Do staff have a clear understanding of what situations constitute conflicts of interest?
22. Do new staff go through any induction process such as initial training?
23. If so, does such training cover integrity issues? Is this repeated perhaps in more specific ways on promotion or when staff move to new roles?
24. Do staff regard their training as adequate to manage the situations that they face?

25. Who is designated as the person to whom staff should turn for advice. In cases of uncertainty would they seek advice from other colleagues on an informal basis before turning to their line manager, or seek advice elsewhere?
26. Do staff feel that their salaries are adequate, just sufficient or insufficient to ensure a reasonable standard of living?
27. To what extent do staff feel valued by (i) the organisation, ii) their direct superior, in their role?

D. Procedures and decision-making processes

28. Does the organisation do any of the following?
 - a. Issue or provide items such as licenses, permits, permissions, certificates, passports or other documents to citizens or entities.
 - b. Allocate any financial or other benefits to citizens (for example social security benefits).
 - c. Allocate any financial or other benefits to legal entities (for example subsidies).
 - d. Receive payments from members of the public (such as fees, taxes, etc).
29. Where it does so, are there clear procedures and clear criteria for the provision of such items and/or receipt of payments?
30. Where can these procedures and criteria be found?
31. Where officials have to exercise discretion in the exercise of decisions on such items, are their clear guidelines on how they should exercise that discretion (e.g. that it should serve a particular objective)?
32. If the organisation does not make a decision on items that are the subject of an application period (e.g. for a license or permission) within the deadline defined, is the issue automatically resolved to the benefit of the citizen/entity?
33. Is the procedure for provision of such items organised in such as to minimise the number of contacts citizens need to have with the organisation or other organisations (one-stop shop).
34. Are there multiple locations at which such items may be secured (e.g. different branches of the same institution, post office, etc) or does one office have a monopoly?

E. Record-keeping

35. Does the organisation have clear rules for the management of records and files?
36. Are individual decisions of the organisation recorded and filed according to clear rules and for a clearly defined and binding minimum period?
37. Who has access to these files, who is authorised to amend them or review them?
38. What degree of freedom of information exists with respect to the institution's files and documentation, both in terms of which decisions/files/documents are made public automatically (and how), and which ones are available on request? To what extent is such access guaranteed in practice?

F. Transparency

39. Does the organisation have a formal policy or rules on the automatic dissemination of information? Does this include automatic provision on the website of the following?:
 - a. Organisational structure of Ministry and contact persons
 - b. Ministry policies and policy documents
 - c. Laws and sub-legal acts

- d. Draft laws and regulations
- e. Procedures of relevance to citizens and legal entities, such as for applications for items mentioned in Section D.

G. Access to information

- 40. Is there a law on access to information or equivalent legal regulation?
- 41. Does the organisation have an official clearly designated to process and respond to requests for information filed under the law?
- 42. How many requests were filed last year?
- 43. How many requests were refused or are currently in dispute?

H. Ethics and integrity framework

- 44. Does the organisation have its own specific code of conduct or code of ethics?
- 45. Are staff informed about the existence of the Code when assuming their position?
- 46. How often do staff receive training on ethics?
- 47. Are staff familiar with the Code? What steps are taken to ensure this?
- 48. Are there, either in such a code, or in guidelines or other regulations or staff rules, provisions that instruct staff how to proceed in situations where they find themselves subject to a conflict of interests?

I. Accountability mechanisms

- 49. Do staff members have clearly-defined work procedures and routines for reporting to superiors – either on a periodic basis (e.g. weekly staff meeting) and on particular decisions or activities?
- 50. Is there an internal inspection or control department?
- 51. Approximately how many inspections/controls did the department carry out last year?
- 52. Is there an internal audit department?
- 53. What were the most important findings of the department last year?
- 54. How often is the organisation assessed by an external inspectorate or control body?
- 55. How often is the organisation audited by an external audit body?
- 56. Were there any important findings on the organisation by such external bodies last year (or at the last assessment)?

J. Internal notification of ethics breaches

- 57. Is there a formal procedure by which staff members may notify a designated official or unit of the organisation of suspected breaches of integrity or contravention of the code of conduct within the organisation?
- 58. Where the designated official is also the official that is the subject of the complaint, is there an alternative channel by which staff may file complaints – e.g. to an external organisation or to a higher superior?
- 59. Are staff informed through training of these procedures and the official/unit to whom they should file complaints?
- 60. Are there any mechanisms in place to protect those who file such notifications from retaliation?
- 61. How many cases of such notifications by staff have there been in the last 12 months, and what was the outcome of these notifications for both sides involved (the official notifying, and the subject of the notification)?

K. Complaints mechanisms

62. Are there clear procedures by which citizens may file complaints against actions of our organisation or its officials?
63. Where can these procedures be found?
64. Are decisions on complaints taken by the same person or unit in the organisation at which the complaint was directed?
65. How many complaints did the organisation receive last year?
66. How many complaints were upheld as well-founded?

L. Disciplinary procedures and sanctions

67. How many disciplinary proceedings were conducted against staff of your organisation last year in connection with breaches of ethics rules?
68. How many of these proceedings resulted in sanctions being applied?
69. What was the breakdown in sanctions applied (number of cases for each type of sanction)?

M. Vulnerable areas

70. Can you identify which areas of your organisation or its activities are most vulnerable to misconduct?
71. Has a risk analysis been conducted on your organisation to identify areas vulnerable to misconduct?
72. Does your organisation's Anti-corruption Action Plan contain specific measures to tackle these vulnerabilities?

N. Anti-corruption policies

73. Who in your organisation has formal and specific responsibility for development, implementation, monitoring and coordination of anti-corruption policy?
74. Is this responsibility stated in that staff member's job description (see Question 4)?
75. Is there a working group within the organisation tasked with formulation, coordination, monitoring and reporting on anti-corruption policy?
76. How often does the working group meet?

6 ANNEX 2: EXAMPLES OF ISSUE CHECKLISTS FOR RISK ANALYSES CONDUCTED BY COUNCIL OF EUROPE PROJECTS

The table shows the checklists of issues selected for coverage in two different Council of Europe projects. The two different education system assessments are an interesting example of differing perspectives on the factors underlying corruption. Example 1 is based more on an analysis of accountability mechanisms and direct vulnerabilities to corruption and other malfeasance. Example 2, an assessment led by former teachers, places overwhelming emphasis on the importance of a system in which the professionalism of teachers is the central priority, the assumption being that this will exclude many forms of corruption a priori.

Education sector (example 1)	Education (example 2)	Healthcare
<ul style="list-style-type: none"> • Finance and budgetary issues <ul style="list-style-type: none"> – Decisions on central budget earmarked funds for education sector – Investment decisions on building or renovating schools – Selling off schools assets – Funds transfers from central level to regions and schools – Management of funds at regional and school level – Budget autonomy at school level – Audit and control – Pilot reforms (World Bank project) • Procurement <ul style="list-style-type: none"> – At central level – At local level 	<p>Assessment of the following areas, with an underpinning concern for the intrinsic place of professional ethics.</p> <ul style="list-style-type: none"> • The Higher education system: <ul style="list-style-type: none"> – Legal basis – Systems of governance, including validation and the accreditation for professional programmes; • The Teacher education system: <ul style="list-style-type: none"> – Its place within education – Its format and organisation and the possibility of it influencing professional demeanours, approaches and behaviours; • The Professional Body system: <ul style="list-style-type: none"> – Its influence in terms of quality assurance and professional accountability through registration mechanisms; 	<ul style="list-style-type: none"> • Finance and budgetary issues <ul style="list-style-type: none"> – Criteria for allocation of funds to healthcare establishments – Application of the criteria in practice – Allocation and transfers of budget funds to healthcare establishments (polyclinics and hospitals) • Investment decisions and procurement <ul style="list-style-type: none"> – Hospital building and other works contracts – Supply contracts • Patient-doctor interaction <ul style="list-style-type: none"> – Patient registration – Payments for treatment (formal or informal) – Referrals of patients by doctors in public health institutions to private practices • Interaction between health staff, health regulator and suppliers

<ul style="list-style-type: none"> - Public works - Supply contracts - Reforms of textbook procurement • Recruitment and personnel policy <ul style="list-style-type: none"> - Status of teachers - Recruitment and appointment processes - Salary levels - Payment of teacher salaries - Integrity of personnel policy in educational institutions • Educational process and policy issues <ul style="list-style-type: none"> - Student admissions to schools - Student transfers between educational institutions - Tests, school/university leaving exams and entrance exams - Informal payments to cover administrative expenses, and embezzlement thereof. • Other regulatory issues <ul style="list-style-type: none"> - Accreditation of private schools and universities - Inspection processes 	<ul style="list-style-type: none"> • The school system: <ul style="list-style-type: none"> - Governance - The position, status and role of teachers; - The Teacher appointment system: 	<ul style="list-style-type: none"> - Criteria for prescribing medicines and corruption therein - Processes/permissions for production, registration, import and/or distribution of medicines - Registration/inclusion of medicines on list of those provided for free • Recruitment and personnel policy <ul style="list-style-type: none"> - Status of healthcare personnel - Criteria for recruitment (number of doctors, procedures for recruitment of individual doctors) - Integrity of personnel policy • Internal ethics framework at Ministry of Health <ul style="list-style-type: none"> - Rules relating to ethics and conflict of interest - Guidelines/rules for monitoring assets/incomes and lifestyles • Other regulatory issues <ul style="list-style-type: none"> - Licensing of private health establishments - Licensing of other healthcare establishments (e.g. pharmacies)
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2.3 Application to country risk assessments

In the country risk assessments, one will see the following tools applied as described under Chapters 3.1 and 3.2:

Questionnaires

Prior to the country visits to Armenia, Azerbaijan and Ukraine, the experts prepared questionnaires for the interviews. The questionnaires were sent to the counterparts before the visits in order to allow for thoroughly preparing information in reply to the questions.

Interviews

The interview-based country risk assessments (Armenia, Azerbaijan and Ukraine) show a list of interviewees in their attachment. All country visits included interviews with key representatives of the state institutions concerned; in addition, interviews with representatives of civil society organisations ensured a broad range of perspectives. The interviews were conducted in a semi-structured form. This method would allow gathering of comprehensive information on the one hand, and addressing unforeseen and new aspects on the other hand.

Discussion groups

The self-assessment for the country risk assessment for the Republic of Moldova was largely based on discussion groups with representatives of the two respective local governments and civil society. The discussion groups narrowed down the specific corruption risks through an analytical discourse of the processes in each of the examined sectors.

Surveys

The interview-based country risk assessments refer to the results of national or international surveys (for example the country risk assessment - Azerbaijan in chapter 5.1.3). The self-assessment based country risk assessment for the Republic of Moldova made use of a tailored mini-survey conducted in the two local governments prior to the discussion groups. The surveys were used to identify the sectors with the most pressing need of reform.

External assessment/self-assessment

The assessments for Armenia, Azerbaijan and Ukraine were rather driven by external experts, both with regard to the process and the content. The assessment in the Republic of Moldova was a process of self-assessment in the respective communities, facilitated by external experts. All four assessments show, however, that the distinction between both forms is somewhat artificial: external assessments are in the end only a compilation of self-assessments by the interviewees, reviewed, complemented and put together by the external experts. The final draft is coordinated with the main stakeholders to assure it represents a realistic picture.

The two future assessments in Belarus and Georgia will largely follow the approach of the three country risk assessments for Armenia, Azerbaijan and Ukraine.

3 TRAINING MATERIAL

Training material for active group work is hardly available in the area of risk assessment. The following exercises and handouts were used for the regional Workshop on Risk Assessment in Strasbourg on 19 June 2012. The materials were prepared by Mark Philp and Quentin Reed, Council of Europe experts. They are also available in Russian language on the Project's website.

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Introductory exercise

1. Choose an institution or sector that is thought to be seriously or significantly affected by corruption in your country and answer the questions in points 2 and 3. Alternatively, you can answer the question referring to an institution in which you have tackled corruption, referring to the methods used, problems identified and policies devised to address them.
2. Which methods would you select to assess levels of corruption in the institution?
3. Suggest/speculate on:
 - a. What are the main forms of corruption in the institution?
 - b. Which persons are the main instigators (initiators) of corruption – is it citizens/companies (i.e. those who offer/provide bribes), public officials (i.e. those who solicit bribes)? Try to describe as precisely as you can or can guess.
 - c. How damaging is the corruption that you describe, in terms of economic impact, distortion of decision-making, political impact etc?
 - d. Are there other poor practices that take place or are common in the institution?
 - e. What do you think are the reasons why the corruption and other poor practices that you describe occur?
 - f. What policies do you think would be effective in reducing/mitigating corruption and the other examples of poor practice?
4. Following from 3.f, what are the main aspects/characteristics of, or mechanisms that an institution like the one you are describing needs to make it work in the public interest?

HANDOUT 1: TYPOLOGY OF TYPES OF CORRUPTION AND POOR OFFICIAL PRACTICE

1. Focus

NOT JUST CORRUPTION, but practices (whether corrupt or not) within an institution that compromise the institution's capacity to perform its public service function in an impartial and accountable manner

2. Corruption

What is corruption?

- Broadly: the use of public office and resources for private ends. Complicated issue but core conception involves:
 - 3 players
 - A. Public official – allocating benefits, costs, rules etc.
 - B. Member(s) of the public – designated beneficiaries of public services, rules etc
 - C. Corrupt influence – those who benefit from A's actions instead of the intended beneficiary B.
 - Corruption can be A-led or C-led
 - A dominates C and excludes B – passive corruption, or extortion
 - C dominates A and excludes B – active corruption, or subversion
 - A dominates both B and C - kleptocracy
 - A expropriates income from B in return for services that are formally free – administrative payments
- Implications for policy: do you strengthen B against A, B against C, B and C against A, A against C, or A against B and C?

Types of corruption:

- Active bribery (providing or offering a bribe)
- Passive bribery (requesting or accepting a bribe)
- Trading in influence (requesting/accepting a bribe in return for influencing a public official)
- 'Throffers' (offering a bribe backed up by threats – close to extortion)
- Nepotism (advancing interests of family members in contradiction with rules or publicly accepted norms, e.g. of recruitment, procurement)
- Cronyism (advancing interests of other types of associate, such as friends, in contradiction with rules or publicly accepted norms)

Complicated aspects:

- The timing of exchanges may vary: compare i) a cash bribe to a traffic policeman with ii) providing a job to a friend on the understanding that the favour will be returned in the future

- Benefits (such as corrupt payments) may accrue not to an individual but to an institution or organisation, e.g. corruption in political party financing
- Corruption may not be the worst form of poor practice affecting an institution

3. Other poor practices

- Embezzlement, misappropriation/diversion of public funds
- Treating citizens/clients unequally
- Treating citizens/clients unfairly
- Obstructionism
- Excessive formalism/proceduralism ('turning means into ends')
- Failure to follow procedures/observe legal requirements
- Laziness
- Incompetence: inefficiency, ineffectiveness...
- Insubordination

4. Note that:

- 2 and 3 will often overlap: e.g. i) unless everyone bribes and all officials accept bribes and in the same way, bribery will result in unequal and unfair treatment, and possibly failure to follow procedures/legal requirements; ii) if embezzlement is achieved as the result of an official's power/authority as a public official, it also constitutes corruption

5. Who do these practices affect and how?

- Who is being damaged or undercut by such practices? Politicians (e.g. because of incompetent officials), officials (e.g. because of cronyism), the electorate (e.g. because of vote-buying), the public (e.g. because of not receiving services they should), future generations (e.g. corruption-facilitated environmental damage)?
- Different combinations of these practices might lead to different outcomes in the following matrix

Exercise

1. Which of the problems listed discussed above do you think are more severe in your country or institution?
2. For one institution, suggest/speculate on:
 - a. What are the main forms of corruption in the institution?
 - b. How frequent are corrupt exchanges or acts (how common, proportion of users that engage in them, can important decisions always be bought or only occasionally etc)?
 - c. What is the typical size of corruption exchanges/acts (e.g. typical size of bribes)?

- d. What is the 'breadth' of corruption within the institution – what proportion of officials are involved, how common is bribery at different levels of the institution?
- e. What is the 'depth' of corruption within the institution – i.e. how important are the processes that are corrupted?

HANDOUT 2: METHODS OF ASSESSING CORRUPTION AND POOR PRACTICES/CONDUCT

1. Methods

Method	Data output	Suitable for	Drawbacks
Direct observation			
Law enforcement statistics	Quantitative	Making an assessment of the effectiveness of law enforcement – when combined with case study evidence	Statistics alone are difficult to interpret
Direct observation of legalised corruption	Quantitative and/or qualitative	Identifying areas where laws and rules have been designed (deliberately or not) to facilitate corruption according to the definition provided	Limited area of use
Participant observation/testing	Quantitative and/or qualitative	Testing the operation of routine bureaucratic procedures in which officials may require bribes	Ethical issues of entrapment – not good for testing C-led corruption
Survey of published media articles	Quantitative and/or qualitative	Gathering information on cases and functioning of institutions, especially where media is active/investigative journalism well-developed	Depends on quality of media
Proxies, e.g.:			
Time taken to obtain a service	Quantitative	Where focus is on a specific definable service sought/required by citizens/clients	Only suitable for a certain range of processes
Indicators of bureaucratic complexity (e.g. number of institutions/officials that must be visited/documents obtained)	Quantitative	Where focus is on a specific definable service sought/required by citizens/clients	Only suitable for a certain range of processes
Method	Data output	Suitable for	Drawbacks

Surveys			
Surveys of perception	Primarily quantitative	If well-designed, useful for measuring/assessing perceptions – both of citizens and officials	Expensive. Not useful for measuring/assessing anything else!
Surveys of experience	Primarily quantitative	If well-designed , can be useful in gauging experience of corruption/poor practices	Expensive. Relatively difficult and complex to conduct well
Surveys of attitudes	Primarily quantitative	If well-designed, useful for measuring/assessing attitudes – both of citizens and officials	Expensive. Not useful for measuring/assessing anything else!
Focus groups	Quantitative and/or qualitative	If well-designed and implemented, can be very useful for obtaining a mix of quantitative and qualitative info on specific practices, as well as perceptions/attitudes	Less useful for generating statistical data; must be conducted well
Interviews			
Interviews with officials	Primarily qualitative	If well-designed. can be very useful for getting the view from the inside	May be difficult to design well and to conduct in 'unfavourable'(e.g. highly corrupt) environments
Interviews with citizens/target groups (e.g. businesspeople)	Primarily qualitative	If well-designed. can be very useful for getting especially qualitative information on very specific practices and problems	?

2. Assessing the NATURE of corruption and poor conduct

In order to obtain information that is of maximum use as a basis from which to derive policies, it is important to ask not only what forms of corruption or poor conduct occur, but also HOW they occur. In particular:

- The 'size' of corrupt exchanges – for example the average size of bribes
- How frequent corruption exchanges are – how common they are, what proportion of users engage in them, whether particular types of decisions can always be bought or whether they can only occasionally be bought.
- Whether the provision of services or decisions is conditional on a bribe (or gift) being provided, or not. For example, in some Central and Eastern European countries people bring gifts to doctors in large numbers when it is not needed and indeed doctors are sometimes embarrassed by it.
- What is the 'breadth' of corruption in an institution – the proportion of officials involved, and the incidence of corruption at different levels of the institution.
- What is the 'depth' of corruption, meaning the importance of the processes which are corrupted. For example, there is a difference between being able to pay MPs only to ask questions in Parliament on the one hand, and paying them to write and vote for a law.
- What kind of benefits are provided by the corruptee (briber). These may range from cash bribes to a range of other direct and indirect advantages, including networks of relationships and exchanges where there is often no obvious 'exchange', but for example a favour provided that is repaid at some point in the future.
- Whether corruption is voluntary – e.g. an official simply being opportunistic and taking advantage of the situation – or whether by contrast it is rooted in a system where officials themselves are intimidated or coerced to participate (either by their own peers/superiors or by external entities).
- Whether the initiative for corruption (e.g. a bribe) comes from inside the institution (e.g. the official demands a bribe), or from outside (e.g. a patient offers money of his/her own accord to jump the queue for an operation, or a company offers large amounts of money to tender commission members).
- Whether corruption involves individual acts of opportunism (by either officials or users/clients) or is a pattern of behaviour embedded in the culture of the institution – or of the society.

Exercise

5. Choose an institution or sector that is thought to be seriously or significantly affected by corruption in your country. Which methods would you select to assess levels of corruption in the institution?

HANDOUT 3: METHODS OF IDENTIFYING/ASSESSING CORRUPTION RISKS

1. What does such an assessment involve?:

- Identification/assessment of factors within an institution that may lead to corruption/poor conduct or increase the risk of corruption/poor conduct occurring
- Such factors will include a wide range of institutional mechanisms and other aspects, including mechanisms as varied as recruitment procedures, mechanisms for allocating and spending budget resources, conflict of interest regulations, codes of conduct/ethics, etc.
- They will include not only mechanisms for 'preventing corruption' or 'fighting corruption' (or poor conduct in general), but also mechanisms for encouraging integrity, professionalism and a public service ethos

1. Methods

a) 'Corruption = Monopoly + Discretion – Accountability'?

The (in)famous Klitgaard formula provides a suggested framework for assessing an institution for its resistance to corruption. The formula claims that the incidence of corruption will be high where public officials wield monopoly power over certain decisions, have extensive discretion in how they make those decisions, and are not held accountable for such decisions; and it claims that the incidence of corruption will be correlated with these three variables.

For reasons set out in the methodology paper provided to you, the Klitgaard formula is seriously flawed. At best, it is one way of stating certain factors that may cause or mitigate corruption. It does not take into account the specific nature of certain institutions: judges and police need monopoly power. It does not factor in the issue of integrity and political culture, or assumes that these are simply determined by the degree of monopoly and discretion officials wield, and the extent to which they are accountable. Two examples may illustrate the limitations of the formula:

- The United States Supreme Court enjoys absolute monopoly power over final court appeal decisions and decisions on the constitutionality of particular laws, makes these decisions at its own discretion, and is accountable to no one.
- For decades, political party financing in Sweden was regulated very loosely, with parties disclosing either no information on their donors, or doing so (later) on a voluntary basis – i.e. with very little formal accountability. Why did this not result in endemic corruption?

b) Institutional questionnaires

An institutional questionnaire is a useful tool for identifying corruption risks (as defined here) by analysing/screening a range of characteristics/aspects of an institution. These may be divided roughly into the following areas

Areas of risk (see questionnaire):

1. Definitions of role and tasks (organisation, sub-units, staff)
2. Budget
3. Human resources management

4. Procedures and decision-making processes
5. Record-keeping
6. Transparency
7. Access to information
8. Ethics and integrity framework
9. Accountability mechanisms
10. Internal notification of ethics breaches (whistleblowing)
11. Complaints mechanisms
12. Disciplinary procedures and sanctions
13. Areas of vulnerability
14. Anti-corruption policies

The questionnaire should be used in a flexible way, and not necessarily completed from beginning to end for every institution. In particular, it is advisable to concentrate on the sections that are likely to be of particular relevance to the institution under scrutiny (see Section 2.2 of the risk assessment methodology paper).

In addition, it is important to remain mindful of the original definition of 'corruption risk' as a factor that **may** increase the likelihood of corruption occurring. The presence of a corruption risk (for example, an apparent lack of oversight) does not automatically mean that corruption will occur, and risks must be assessed case-by-case.

c) Sources of information

- Official materials (e.g. legal and sub-legal framework)
- Available research and written materials (e.g. policy reports of think-tanks)
- Interviews (officials, experts, citizens)

The choice of method depends on the institution/area under scrutiny: cf. assessment of public procurement vs. immovable property registration vs. education system vs. effectiveness of system for investigation/prosecution of economic crime

Exercise

Take the institution you have selected to focus on. Based on the nature of the institution, the tasks it performs and the group/s it serves, suggest an ideal project to assess 'corruption risks', i.e. factors within the institution that may increase the likelihood of corruption occurring, or of other poor conduct of public officials.

HANDOUT 4: THE CORRUPTION AND POLICY MATRIX

1. What does the matrix do

The assessment conducted on corruption and corruption risks should enable us to provide a more detailed account of corruption/illicit influence. This can be used to elaborate corruption and corruption policy matrix. The matrix classifies forms of corruption according to whether they are:

1. Led/initiated by public officials (the bribed) or by third parties (bribers) – i.e. whether they are 'A' or 'C'-led, using the definition of corruption provided earlier.
2. The extent to which corruption stems from individual acts taken as a response to individual incentives, and the extent to which it is rooted in group mores where 'alternative norms and commitments make corruption an accepted component of people's lives'.¹⁴

This suggested approach yields the following type of policy matrix, which outlines possible responses (anti-corruption measures) depending on the answers to the two questions.

¹⁴ M. Philp, "Political Corruption, Democratization and Reform", in S. Kotkin and A. Sajo (eds.), *Political Corruption in Transition: A Sceptic's Handbook*, CEU Press, Budapest/New York, 2002, pp. 69-79.

Matrix: forms of corruption and appropriate responses¹⁵

		Corruption based on	
		Individual incentives	Group mores/culture
Corruption instigated by	Public officials	<p>Box 1</p> <p><u>Type of corruption:</u> passive bribery (demanding bribes/soliciting payments)</p> <p><u>Solutions aimed at officials:</u> transparency (including audit, formal controls, identification of officials responsible for particular decisions), penalties and education.</p> <p><u>Solutions aimed at users/public (potential bribers):</u> multiplying options (e.g. choice of offices to submit applications), access to complaints process</p>	<p>Box 2</p> <p><u>Type of corruption:</u> 'taxation' (systematic solicitation of payments on the basis of established 'tariffs'), extortion</p> <p><u>Solutions aimed at officials:</u> Encourage intra-state conflict between reformers and corrupt officials (e.g. by identifying and publicising 'islands of integrity'), targeted ethics drives, outsourcing recruitment processes, reducing unjustifiable discretion at the interface with users</p> <p><u>Solutions aimed at users/public (potential bribers):</u> Reformers seek public legitimacy, public education, increase public expectations, ensure access of users/public to independent recourse against official decisions</p>
	Bribers	<p>Box 3</p> <p><u>Type of corruption:</u> active bribery, backhanders (kickbacks)</p> <p><u>Solutions aimed at officials:</u> code of ethics, internal accountability & transparency</p> <p><u>Solutions aimed at users/public (potential bribers):</u> clear and distinct rules and penalties</p>	<p>Box 4</p> <p><u>Type of corruption:</u> protection rackets, intimidation/extortion of public officials, expropriation of public office by private groups</p> <p><u>Solutions aimed at officials:</u> state-enforced protection of officials, limiting discretion at interface with potential bribers, insulation of decision-making process</p> <p><u>Solutions aimed at users/public (potential bribers):</u> special police powers, infiltration, aim to weaken and divide group</p>

2. Why is the matrix different?

The matrix has important implications:

- It discourages one-dimensional or 'off-the-shelf' solutions

¹⁵ Source: Reed and Fontana (2009), *Squeezing a Balloon: Tackling the Nexus between Corruption and Organised Crime*, U4 Issue Paper 7/2009. The matrix was adapted and reproduced with permission of the author from M. Philp, "Political Corruption, Democratization and Reform", in S. Kotkin and A. Sajo (eds.), *Political Corruption in Transition: A Sceptic's Handbook*, CEU Press, Budapest/New York, 2002, p. 72.

- It encourages solutions that are tailored to the exact problem that has been identified
- It may yield solutions that are not necessarily in line with conventional assumptions about anti-corruption policies

For example:

- Box 1 basically describes a scenario where public officials instigate corruption (demanding bribes), but such cases are opportunistic, meaning they may or may not be very common depending on the balance of incentives facing officials. Here, one effective measure to tackle corruption may be to increase transparency, including by *making publicly available the identities of the officials responsible for particular decisions*.
- In Box 4 by contrast, corruption is primarily instigated by groups outside the state (for example organized crime groups) and may merge into practices such as extortion. Here, it may by contrast be necessary to *insulate the decision-making process by preventing such groups from knowing where decisions are actually being made* in a particular case.

3. A guide for wise people, not a recipe for fools

The matrix is a simplified version of many real-life situations, and therefore serves as a guide for thinking about the problem, rather than as ‘policy menu’. For example,

- Many forms of corruption will lie somewhere in between ‘A’ and ‘C’-led - for example where the public administration is weak and officials and third parties collude on a more-or-less equal basis.
- Both incentives and institutional culture/mores will play a part in shaping the behaviour of almost all public officials.

More generally, it is vital to:

- Think out of the box
- Think from the viewpoint of those whose behaviour we wish to influence

Last but not least, the questions asked by the matrix – who instigates corrupt behaviour, what are the motivations of those involved, etc – can and should also be used to provide a clearer picture of OTHER forms of poor conduct that are identified in the preceding assessment - for example laziness, obstructionism etc.

4. Integrating the assessment of corruption risks

The assessment of corruption risks, conducted through the use of the Questionnaire, should identify factors within the institution that may cause or increase the risk of corruption occurring. Following the identification of such factors, these factors should themselves be assessed in light of the forms, incidence and seriousness of corruption and poor practices within the institution. In this way, the factors that are in fact important or most important in a particular institution or context can be addressed through targeted policies.

Exercise

1. When designing policies in your country, which of the following models of anti-corruption policy have you been guided mainly by:

- a 'compliance' model, in which officials are assumed to conform to the rules and norms of office because of the risks and costs of getting caught and rewards provided for good behaviour

OR

- an 'integrity' model, in which officials are assumed to conform to the rules and norms of office because they have internalised values and standards (or an 'ethos') of official behaviour

2. Can you think of an example (e.g. an institution) in which the first of these models is a better approach, and one in which the second is better?

HANDOUT 5: DERIVING POLICIES FROM ASSESSMENT OF CORRUPTION AND CORRUPTION RISKS - EXAMPLES

Institution/sector	Forms of corruption/poor practice	Instigation (A/C-led/collusion/other elements)	Incentives (rational opportunism vs. culturally imbedded)	Corruption risks identified	Policy suggestions – PARTICIPANT EXERCISE 2
Healthcare (doctor-patient)	<p>Corruption: Informal payments to doctors</p> <p>Other: ‘Unfriendliness’, failure to sufficiently inform patients</p>	<p>Doctors, facilitated by patient perception of necessity of payment and culture of gift-giving</p>	<p>Incentives for doctors: low remuneration (though not serious); lack of funds for equipment/maintenance; opportunistic (virtually no risk of detection); systematic violation of standards resulting in an element of distorted mores</p> <p>Incentives for patients: perceived necessity of informal payment as safe option; culture of gift-giving</p>	<p>Poor remuneration Under-financing of health service provision</p>	
Healthcare (provider/investor-supplier)	<p>Corruption: procurement of medical equipment and supplies: inflated prices with kickbacks; dummy/false tenders/Dutch auctions;</p>	<p>Collusion of hospital directors and managers, intermediaries, suppliers</p> <p>Whistleblowers subject to coercion/threats</p>	<p>Provider: opportunistic - size of bribes being provided; system habitual with isolated exceptions</p> <p>Investor: large profits from corruption</p> <p>Both: Low risk of getting caught</p>	<p>Poorly elaborated procurement guidance/absence of price benchmarks</p> <p>Lack of competition in supply</p> <p>Poor oversight</p>	

Pre-university education	Corruption: informal payments to teachers by parents; private tutoring by teachers of own pupils	Primarily teachers, also school principals (disguised as a 'standard' payment); pyramid system where principals collect payments or a portion of bribes from teachers, and education departments collect from principals	Parents: to ensure good grades/prevent marking discrimination in school testing; safe/default option even if not clear link to treatment of children		
Institution/sector	Forms of corruption/poor practice	Instigation (A/C-led/collusion/other elements)	Incentives (rational opportunism vs. culturally imbedded)	Corruption risks identified	Policy suggestions – PARTICIPANT EXERCISE 2
Business licensing	Speed payments to multiple authorities to secure necessary documents for license applications Bribes paid to central licensing authority where applications must be submitted	Primarily officials in authorities concerned; some instigated by applicants especially where qualifications for conducting business are in doubt	Officials: large gains spread over many small and therefore low-risk bribes, which are easy to extort	Excessive bureaucracy (unnecessary documents required, licensed required for businesses that should not require, etc Monopoly (gatekeeper position) of central authority	
Tax administration (declaration and processing)	Corruption: bribes paid to clerks in order to facilitate submission of paper declaration; bribes to officials to process declaration favourably	Primarily officials (extortion), though some cases of C-led bribery in return for official making a favourable interpretation of tax code	Officials: opportunistic but routine way of supplementing income; requirement to collect a quota of bribes and transfer a portion to head of local tax office	Tax declarations must be submitted on paper and in person Not enough staff, poorly paid Tax code ambiguous	

	Other: officials/staff rude to citizens		Citizens: bribes are necessary or useful to secure right or favourable legal interpretations		
Tax administration (inspection/enforcement)	Corruption: routine extortion of bribes by inspectors in return for avoiding inspection or otherwise being treated favourably; Other: Political discrimination (e.g. against opposition businesses)	Primarily officials	Officials: opportunistic and routine; 'pyramid' system of corruption where a proportion of every bribe is passed up the hierarchy	Lack of precise inspection procedures Lack of oversight during inspection (inspectors operating alone, lack of means for surveillance etc) Opportunistic interpretations/implementation of tax code rather than implementation according to spirit of code	
PARTICIPANT EXERCISE 1					

Exercise

EITHER

1. Take the institution you have selected to focus on. Using the last row at the bottom of the table above, identify or speculate/suggest:

- i) What are the main factors underpinning corruption:
- ii) Using a blank row/rows in the table above, take one of the forms of corruption or poor conduct in the institution you previously identified.
 - a. Who are its instigators: to what extent is it initiated by officials – and if so at which level, and to what extent is it instigated by third parties seeking privileged access to services/benefits. If it is a combination/collusion, which side tends to play the leading/organisational role, or in what way generally is corruption instigated/organised.

- b. To what extent does corruption occur as 'one-off' acts of opportunism, and to what extent is it rooted in more systemic patterns of institutional behaviour/culture.
- iii) Identify the corruption risks that may be relevant to this form of corruption, i.e. may cause or facilitate it.
- iv) Suggest policies to address these risks

OR

2. Fill in the right hand column of the table with policy suggestions for the various areas

HANDOUT: Four Regulatory Problems

Different levels and sorts of regulation may be appropriate in different circumstances, depending on the ethical environment, degree of risk involved etc. There are a number of examples where regulation designed to prevent or mitigate corruption has not been successful. It is important to be clear about the assumptions on which we base regulations. Consider the following three problems, which may help to explain why regulations do not always have the effect we hoped:

'Who guards the Guardians?' 'You want someone ('B') to watch over someone you don't trust ('A' - in Juvenal's case, one's wife). But why should you trust those whom you use to do this? If those guarded (A) and those guarding (B) have similar motivations, then what A has an incentive to do, which leads you to need B, B also has an incentive to do.'

This classical principal-agent problem raises important problems in designing regulations to mitigate corruption or improve public standards. In particular, there is often a view that where there is a problem in standards then the thing to do is to increase regulation. This is not to say that increased regulation cannot work – but we need to be clear about why and when we expect regulators to have different interests/motivations than those they regulate.

The Founding Fathers fallacy It is common to hear people say: 'People are self-interested and will attempt to turn the political system and public office to their own advantage. Only by adept institutional design, can interests be balanced in a way that ensures that each interest will meet a countervailing interest.'

This assumes an asymmetry in motivation – as if those designing institutions are free from the interests that they assume to be normal among those they govern. In other words, this model assumes that citizens are self-interested and does not expect them to rise above such interests - but it assumes that designers of institutions are paragons of virtue.

'Who will bell the cat?' The story concerns the mice who worked out that their lives would be better if they could hear the farm cat coming, which they could if there was a bell tied around its tail. 'But who will bell the cat?' The point of this story is that in some situations there is an obvious outcome that lots of people want to secure, but achieving it relies on one or a few people taking extraordinary risks. A real-life example is that of anti-mafia investigating magistrates.

Collective action problems. There are situations where if everyone acts in a certain way ('cooperates') everyone is better off, yet each person individually has an interest in benefitting from other people's cooperation without themselves complying – since they get the benefits of cooperation, but don't pay the costs; the result will be that rational actors will defect/free-ride, leading to a sub-optimal outcome for all. For example, in post-conflict states, where food and resources are very scarce, it makes no sense individually for people to trust fragile institutions to deliver goods and services, rather than using one's group contacts to broker deals. The result is that fragile institutions remain fragile. Under a powerful state, goods and services would be more optimally secured, but people cannot get from where they are to where they might like to be.

Presentation



Assessing corruption, poor conduct and institutional risks

Typologies of underlying causes of corruption:
Risk Assessment Workshop

**“Assessing corruption and corruption risks”
Strasbourg, 19 June 2012**

Quentin Reed and Mark Philp
Council of Europe Experts

Why conduct assessments?

- There are two main sources of policies to improve governance:
 - International standards and other models of good practice (see elaboration of standards/practices in Kyiv presentation, 29 March 2012)
 - Targeted research: assessment of practices and policies with the objective of
 - Identifying problems
 - Proposing solutions (policy measures) – not all of which may be covered by ‘standards and good practices’, and some of which may even sometimes appear to contradict them
 - CoE Guiding Principle 18: ‘To encourage research on corruption’
 - What standards have your policies been based on?

Areas of international standards

- Role of responsible AC body
- Law enforcement (detection, investigation, prosecution)
- Prevention of money laundering
- Organisation of public administration
- Administrative law
- Accountability mechanisms
- Codes of conduct
- Conflicts of interest and declaration of interests
- Transparency and access to information
- Political party and election campaign finance
- Financial control and audit
- Public procurement
- BEWARE: FORMAL COMPLIANCE vs REAL COMPLIANCE

Assessments: types

- Assessment of corruption and other poor practices (conduct)
- Assessment of risks
 - Risks = Factors within an institution that *may* lead to corruption/poor conduct or increase the risk of corruption/poor conduct occurring

Assessments of corruption and poor conduct/practices

- **What are we looking for?**
 - Not just corruption, practices/conduct that compromise an institution's capacity to perform its public service function in an impartial and accountable manner.
 - Two main types: i) officials behaving in way that serve their own interests rather than the public; ii) officials behaving in response to pressures from within the institution
 - See Handout 1
- **Quantitative vs qualitative methods of assessment.**
 - Quantitative: e.g. law enforcement statistics
 - Qualitative: e.g. focus group discussions about difficulties of obtaining a public service
 - Quantitative methods may yield numbers, but the numbers may not be accurate
 - Qualitative methods may not yield measurable indicators, but may be more valuable in identifying and describing problems
- **Methods: see handout**

Assessment of risks

- Assessment of risks should be mindful of the definition of risks: they do not necessarily CAUSE corruption
- Corruption ≠ Monopoly + Discretion – Accountability
- A wider range of institutional mechanisms and characteristics should be taken into account: e.g. statements of ethos; work environment
- See Handout 3

How should assessments be used

1

- What has been identified?
 - Corruption and other poor conduct/practices:
 - Incidence and seriousness
 - The nature of such practices (e.g. who initiates them, do they occur opportunistically or are they embedded in institutional culture, etc)
 - Risks
 - Absence/insufficiency of existing institutional design and mechanisms to i) encourage good conduct; ii) prevent/address corruption and poor conduct

How should assessments be used

2

- Information from assessments can be plugged into a 'corruption and policy matrix'
- Matrix serves as a tool to help identify appropriate policies

Islands of integrity: identifying and using good practices

- Assessments of conduct and risk may also identify good conduct and well-functioning institutional mechanisms
- These are of key importance!
 - They are examples of how things can and do work well in the local context
 - They are examples that may therefore be used as local models.

4 COUNTRY STUDIES

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4.1 Armenia: Financial Supervision of Public Officials

Technical Paper
Country risk assessment – Armenia
Financial Supervision of Public Officials
(“Income and Asset Declarations”)

prepared by

Tilman Hoppe, Project Long-Term Adviser
with input from Valts Kalniņš, Council of Europe Expert

March 2013

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1 SUMMARY

This assessment concentrates on the **financial** supervision of public officials through income and asset declarations. The assessment takes into account conflicts of interest to the extent that they are related to the finances of public officials.

Armenia is the fifth country in the Eastern Partnership region to introduce income and asset declarations (in 2001).

The strength of its income and asset declarations system relies in particular on the following features:

- Relevant high-ranking officials are included;
- Declarations are to be submitted within 15 days after the appointment, during office **annually** and upon leaving office;
- Declarations are made available **online**;
- Numeric financial information is complemented by **descriptive** information in most cases.

The declarations system would benefit from the following further **improvements** with regard to:

- Including mid- and **lower-level** civil servants;
- Including heads of the 12 semi-**autonomous districts** of Yerevan with more than 50,000 inhabitants;
- Including non-adult **children**, married children, and domestic household **partners** as well as declare **monetary funds** of all **family** members;
- Introducing declarations by family members when the official **assumes** and **leaves office**;
- Not applying heightened **thresholds** for declarations by family members;
- Providing distinct **descriptive** information for all financial positions;
- Considering to include other **expenditures** in the declarations;
- Abolishing all the thresholds for public **disclosure** of declared data at least for the public officials;
- Establishing a system of analysing and **auditing** declarations;
- Establishing a system of **sanctions**;
- Introducing the criminal offence of **illicit enrichment**.

2 SCOPE OF ASSIGNMENT

This Paper is part of the Project's regional Activity 1.4 "Risk Assessment: Typologies of underlying causes of corruption". The aim of this activity is to analyse institutional causes and risks of corruption, and identify weaknesses in countermeasures and need for action in integrity systems of the Eastern Partnership countries by addressing a specific sector in each country.

In consultations with the Armenian authorities "Income and asset declarations" has been selected as a sector for the risk assessment. The study analyses the system of income and asset declarations including its interfaces to other parts of the anti-corruption system. "Income and asset declarations" are closely related to conflict of interest, as finances of an official can lead to conflict of interest (for example, ownership in a company). This assessment considers also the conflict of interest aspect of financial supervision. However, it does not look into the whole system of declaring and supervising conflict of interest in Armenia, which would be a separate topic and would require an additional assessment of its own.

This assessment is the result of the desk review of legislation by the Council of Europe experts, Tilman Hoppe and Valts Kalniņš, and in-country meetings with relevant government institutions and civil society representatives held in Yerevan on 21-23 November 2012.

3 DECLARATIONS

3.1 History

In **2001**, Armenia adopted the “Law on Declaration of Assets and Incomes of High State Officials”.¹⁶ It is thus the fifth country in the Eastern Partnership region to introduce income and asset declarations system.¹⁷

In **2006**, Armenia adopted the “Law on Declaration of Assets and Incomes of Natural Persons”¹⁸ which repealed the Law of 2001.

In **2008**, to provide for the necessary bylaws, the Government adopted two Decrees: “Decree on Approval of the Form of the Declaration of Assets and Incomes of Physical Persons and the Procedure of its Completion” and “Decree on Establishing the List of Data Contained in the Declarations of Assets and Incomes of Officials”.¹⁹

3.2 Legal basis

In May **2011**, Parliament adopted a new Law on Public Service²⁰ that entered into force on 1 January 2012. In its Chapter VII the new Law deals with “Conflict of Interest of High-ranking Officials, Declaration of Property and Revenue” and in its Chapter VIII with “Organisation and Operational Rules of Ethical Committees for High-ranking Officials and Public Servants”.

The Law on Public Service **abrogates** in its Article 49 the Law of 2006 on Declaration of Assets and Incomes, as of 1 January 2012.

On 15 December 2011, the Government adopted a Decree on the new forms of **annual, office entry or leaving** declarations²¹ which also entered into force on 1 January 2012.

Likewise on 15 December 2011, the Government adopted another Decree on the information included in the declarations that shall be published.²²

Both Decrees of 15 December 2011 (and the annexed declarations **templates**) have been modified by Government Decrees of 23 February 2012 and 3 May 2012.²³

Furthermore, on 9 January 2012, the President signed a decree setting up the “**Ethics Commission** for High-Ranking Officials”.²⁴

¹⁶ Law No. 212 of 27 July 2001, <http://www.arlis.am/DocumentView.aspx?docid=938> (Armenian).

¹⁷ OECD, Asset Declarations for Public Officials – A Tool To Prevent Corruption (2011), p. 23, table 1.1, www.oecd.org/dataoecd/40/6/47489446.pdf; for Moldova see Centre for the Analysis and Prevention of Corruption, “Declaration of assets and income of state dignitaries, judges, prosecutors, public servants and persons holding managerial positions: challenges and solutions for Moldova” (2009), www.capc.md/docs/Study_declaration_of_assets_and_income.pdf.

¹⁸ Law No. 164 of 7 July 2006, <http://www.arlis.am/DocumentView.aspx?docid=40625> (Armenian).

¹⁹ <http://www.arlis.am/DocumentView.aspx?docid=40625> (Armenian).

²⁰ Law No. 172 of 26 May 2011, <http://www.arlis.am/DocumentView.aspx?docid=75504> (Armenian).

²¹ Decree No. 1835 of 15 December 2011, <http://www.arlis.am/DocumentView.aspx?docid=73176> (Armenian).

²² Decree No. 1819 of 15 December 2011, <http://www.arlis.am/DocumentView.aspx?docid=73190> (Armenian).

²³ Decree No. 205 of 23 February 2012, <http://www.arlis.am/DocumentView.aspx?docid=74317> (Armenian); Decree No. 627 of 3 May 2012, <https://www.e-gov.am/gov-decrees/item/21422/> (Armenian).

²⁴ www.president.am/hy/decrees/item/672/ (Armenian).

3.3 Persons covered

The Law on Public Service, in cases stipulated by this law, obliges not only **high-ranking officials** to declare their income and assets, but also the core members of their **household family**: the spouse of a high-ranking official, parents, as well as his/her adult and unmarried children, if any of them lives together with him/her (Article 32 para. 1 and 4, Law on Public Service).

In addition, high-ranking official has to disclose the names and positions of “related persons” working in the same sector as the high-ranking official (Article 32, para. 2, Article 36 para. 2, Law on Public Service). **Related persons** are family members and relatives related to the high-ranking official or his/her spouse, including persons related with up to the 2nd degree blood relationship. Up to the 2nd degree of blood relationship includes persons related to the high-ranking official with the 1st degree of blood relationship, as well as persons related to the latter with the 1st degree of blood relationship. The 1st degree of blood relationship includes “children, parents, sisters and brothers” (Article 5 no. 16, Law on Public Service).

High-ranking officials are defined in Article 5 para. 1 no. 15, Law on Public Service. They comprise the President, the Deputies of the Parliament (including the Chairman), the Prime Minister, Chiefs and Deputy Chiefs of Staffs of the Presidential Administration, Parliament, Government, Ministers and Deputy Ministers, heads and deputy heads of the state agencies created by Law, heads and deputy heads of adjunct bodies to the Government, plus judges, certain senior prosecutors, chiefs of staff, heads of provinces (governors) and of larger local communities (>50,000 inhabitants), heads of diplomatic missions, and assistants and advisers to the President, to the Chairman of the Parliament, to the Prime Minister.

Previous legislation obliged not only high-ranking officials, but also lower-ranking officials to declare their income. The following reasons had been given as to why the current legislation focuses only on high-ranking officials:

- On the one hand, verifying all declarations of thousands of lower-ranking officials would not be possible due to a **lack of resources**;
- On the other hand, submitting declarations **without verifications** – as has been the case in the past – would not justify the effort;
- Lower-ranking officials would lack the **decision power** that could generate a level of corruption proceeds detectable under financial declarations;
- The focus should be on **high-ranking** officials first, then on lower-ranking officials.

It seems, however, that the four arguments would not provide sufficient cause for excluding lower-ranking officials from the declaration system:

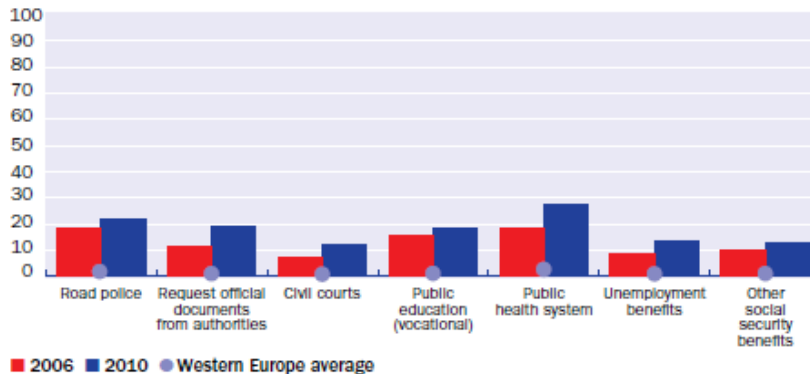
- Declarations by lower-ranking officials would not need to be reviewed by the Ethics Commission exclusively, but could be verified by **decentralised** units; furthermore, verifying a fraction of declarations would already create substantial impact by creating a risk of detection for all officials concerned;
- Declarations that are not verified are still helpful evidence when **investigating** a public official, even more, when they are incorrect and thus further corroborating an

initial suspicion; in addition, even a system where not all declarations are verified would still have some preventive impact on all public officials;

- There are many public officials who are placed relatively low in the administrative hierarchy but who still possess decision-making power or a function that would predispose them for embezzlement or bribery. They can generate considerable wealth through **administrative corruption**. For example, according to surveys on actual experience of corruption, more than 20% of service users pay bribes to road police or public health officials; more than 10% to the public service in general.²⁵

Irregular payments are slightly up since 2006

% of respondents who believe that irregular payments are used, by category



In short, it is unrealistic that out of the more than 200,000 persons employed by the State, only about 680 have decision power relevant to wealth generating corruption.²⁶

- Often, declaration systems are perceived to allow only for the financial supervision of low-ranking officials, but not for “big heads”. In this regard, it is certainly a good signal of the Armenian legislation to give **prominence** to the financial supervision of high-ranking officials. However, the above-mentioned reasons call for the supervision of an adequate number of lower-ranking officials as well. It should be noted that it would not be necessary to verify all declarations of this higher number of officials.

The Public Service Law includes the heads of communities with more than 50,000 inhabitants. 4 cities currently fall under this category. However, the heads of the 12 semi-**autonomous districts** of Yerevan are not included. This seems rather inappropriate for the 9 districts that have more than 50,000 inhabitants, and all the more for the 7 districts that have more than 100,000 inhabitants, some of them considerably more than the 3rd largest city in Armenia, Vanadzor (~ 117,000 inhabitants). More importantly, though, each autonomous district has its own elected leader and elected council, which makes them more similar to other local communities than to mere administrative units.

With regard to family, adult and unmarried children living with high-ranking officials are included in the declaration obligation, but **non-adult children** are not. With non-adult children it is even easier to hide assets under their name, than with adult children. This inconsistency cannot be explained. It would hence be recommended to include non-adult children.

²⁵ European Bank for Reconstruction and Development, “Life in Transition Survey” (2011), p. 61, www.ebrd.com/downloads/research/surveys/LITS2e_web.pdf.

²⁶ Republic of Armenia, Statistical Yearbook 2011, <http://www.armstat.am/file/doc/99466628.pdf>.

Unmarried **domestic partners** are said to be uncommon in Armenia. However, there is a non-negligible number of couples who are married “only” by church, but not under civil law. Legally, these spouses are not recognised as such and would not be obliged to submit declarations. It would hence be recommended to include domestic partners.

Correspondingly, it is unclear why a **married child** living in the same household would not be included.

3.4 Frequency

Declarations are to be submitted as follows (Article 33, Law on Public Service):

- **Annually** by high-ranking officials (as of 31 December, until 15 February of the next year);
- **Annually** by members of their core household family (as of 31 December, until 15 February of the next year);
- Upon **entering** and **leaving** office – 15 days after (by high-ranking officials only).

This rhythm is sufficient. The only gap seems to be that **family members** do not have to declare their finances when the official enters and leaves office.

3.5 Receipt and storage

All declarations are filed with the **Ethics Commission** for High-ranking Officials. The Commission has to register the declarations within three days upon receipt (Article 37, Law of Public Service). The Commission can define the “the procedure for the requirements to fill in the declarations and their submission” (Article 43 para. 1 no. 6, Law on Public Service).

The Ethics Commission has stated that declarations will be regarded as human resource files and be archived as such.

Public officials can fill out the forms in Word-files available online at www.ethics.am. It is the stated aim of the Commission to establish a full **electronic** system with the possibility of submitting the data online, and processing and verifying it through linked databases. The Commission has secured assistance by an international donor for this activity.

3.6 Content

The Law on Public Service and related legislation indicate what information is necessary for each financial category. In addition, the Commission elaborated guidelines/manuals for completing all the declarations which are available on the official website of the Commission www.ethics.am.

3.6.1 Financial categories and values

The declarations of the tax year shall cover the following financial positions:²⁷

²⁷ The rather complex legislation is not always easy to understand. The reading of the law in this and the following chapters relies on readings as provided for by the Armenian authorities.

For public officials and their spouses:

- **real estate** acquired and alienated in the tax year;
- **movable** property (including land, air, water vehicles, self-propelled and unmoving) acquired and alienated in the tax year;
- **securities** and investments acquired and alienated in the tax year;
- **loans** given out or returned in the tax year;
- **other valuables** purchased or sold with a value > AMD 8 in the tax year;
- **monetary** funds (amount at the beginning and at the end of the given fiscal year);
- **income** per fiscal year (including gifts, alimony, inheritance, prizes, winnings, lease and alienation of property, as well as income from abroad).

Family members – parents and children (adult and unmarried) living together with the high-ranking officials:

- **real estate** acquired and alienated in the tax year if the total value of all the items > AMD 50 million (~€95,000);
- **movable** property (including land, air, water vehicles, self-propelled and unmoving) acquired and alienated in the tax year if the total value of all the items > AMD 8 million (~€13,000);
- **securities** and investments acquired and alienated in the tax year if the total value > AMD 8 million (~ €15,000);
- **loans** given out or returned in the tax year if total of the transactions in the year > AMD 8 million for loans as assets (~ €15,000);
- **other valuables** acquired and alienated in the tax year > AMD 8 million (~ €15,000);
- **(monetary** funds: no declaration obligation for parents and children);
- **income** per fiscal year (including gifts, alimony, inheritance, prizes, winnings, lease and alienation of property, as well as income from abroad).

The threshold is reached, when the transactions or items of the given category **combined** add up to it. It should also be noted that different thresholds apply for the **publication** of the declarations, (see below at 3.7 “Public disclosure”).

It seems questionable to apply different declaration thresholds to family members: such a stark difference in thresholds seems an exception in Europe. At the same time, it makes it rather easy to transfer assets to family members outside financial supervision by the Commission. It might be another issue to what extent those “unlimited” declarations are published, should there be sweeping reasons for this.

In addition, the wording seems too narrow where it focuses only on the “purchase” or “sale” of property, but not on other forms of conveyance (gifts, inheritance, etc.).

Meanwhile, as mentioned above, a different form of declaration shall be submitted by the high-ranking official when assuming or leaving the high-ranking position. The following financial information should be declared in the mentioned declarations:

- **real estate** as of the date of assuming or leaving office;
- **movable** property (including land, air, water vehicles, self-propelled and unmoving) as of the date of assuming and leaving office;
- **securities** and investments as of the date of assuming or leaving office;
- **loans** as of the date of assuming or leaving office;
- **other valuables** with more than AMD 8 million value (~ €15,000) as of the date of assuming or leaving office as well as items alienated or acquired during the previous tax year and items alienated or acquired during the period between 1 January and the date of assuming or leaving office of the current tax year;
- **monetary** funds as of the date of assuming or leaving the position;
- **income** of the previous tax year as well as income received during the period between 1 January and the date of assuming or leaving office of the current tax year (including gifts, alimony, inheritance, prizes, winnings, lease and alienation of property, as well as income from abroad).

3.6.2 Descriptive information

In addition to numbers, in particular the following descriptive information is required:

- **real estate:** type, location;
- **movable** property: type, serial number, model;
- **securities** and investments: no descriptive information;
- **loans:** debtor's name and address;
- other **valuables:** name;
- **monetary** funds: no descriptive information;
- **income:** billing name and address.

Securities and investments, as well as monetary funds are the only categories that do not require descriptive information. If one does not know the names of companies and individuals to whom deposits, debts, etc. are related, one cannot verify the declaration. In addition, numbers without individual **specification** of the asset (name of share etc.) are of little help for the control of conflict of interest. From the perspective of investigating corrupt officials based on declarations, descriptive information such as bank account numbers would also seem essential.

Whereas some countries only show aggregated figures for family members, Armenia opted to declare financial positions for each **family** member individually. This makes it possible to verify the numbers provided.

3.6.3 Expenditures

There is no declaration requirement for expenditures on non-assets, such as luxury vacations etc. It would seem recommendable to consider including such a category, as it would make it to a certain extent harder for corrupt public officials to enjoy the proceeds of their illegal activity. However, controlling this financial category would be very difficult, if possible at all.

3.7 Public disclosure

The Law on Public Service briefly touches on the issue of publishing declarations:

“The functions of the Ethics Commission for High-Ranking Officials are [...] analyses and publication of declarations” (Article 43 para. 1 no. 2).

The Ethics Commission decided to make all submitted declarations available online on www.ethics.am. In addition, information concerning declarations can be obtained under freedom of information legislation.

However, not all information submitted to the Commission is made public. Article 37 para. 2 briefly addresses this issue:

“The list of data subject to publication included in the declaration, its content and form shall be established by the Government of the Republic of Armenia.”

The data subject to publication – and through that also the data not available to the public – is defined by Decree N1835 amended by Decree N627.²⁸ There are three categories of data that are not subject to publication:

- Personal data of the declarer;
- Data of third parties (employers, creditors, debtors, etc.);
- Data on financial transactions that need to be declared, but do not reach the different thresholds for publication.

Obviously, **personal data** of the declarer such as address of residence, passport number etc. should not be published.

Personal data of physical **third parties** could be regarded as worth protecting. However, data regarding legal third parties is a different case. It is important to know for the public with which companies an official maintains contracts. Sometimes, conflicts of interest arise out of such third party connections. However, those conflicts are often not visible to the body monitoring conflicts of interest, but only to people of the larger public.

The third category concerns data that is declared but does not reach the thresholds for publication that are in most cases higher than the thresholds for declaring. The thresholds for publication are as follows:

Public officials and spouses:

- **real estate** acquired and alienated if the total value of the items > AMD 50 million (~€95,000);
- **movable** property (including land, air, water vehicles, self-propelled and unmoving) acquired and alienated if the value of each item value > AMD 7 million (~ €13,000);
- **securities** and investments acquired and alienated if the value of each transaction > AMD 5 million (~€9,000);

²⁸ See above at footnote 23.

- **loans** given out or returned if the amount for each of the transaction > AMD 3 million (~ €6,000), (for loans as assets); there is no threshold for loans as **income**;
- **other valuables** acquired and alienated with a value > AMD 8 million (~ €15,000);
- **monetary** funds (amount at the beginning and at the end of the given fiscal year);
- **income** per fiscal year (including gifts, alimony, inheritance, prizes, winnings, lease and alienation of property, as well as income from abroad).

Other family members:

- **real estate** acquired and alienated if the total value of the items > AMD 50 million (~ €95,000);
- **movable** property (including land, air, water vehicles, self-propelled and unmoving) acquired and alienated if the value of each item > AMD 8 million (~ €15,000);
- **securities** and investments acquired and alienated if the value of each transaction > AMD 8 million (~ €15,000);
- **loans** given out or returned if the amount for each transaction > AMD 8 million (~ €15,000) for loans as assets; no threshold for loans as income;
- **other valuables** acquired and alienated with a value > AMD 8 million (~ €15,000);
- **income** per fiscal year (including gifts, alimony, inheritance, prizes, winnings, lease and alienation of property, as well as income from abroad).

The differing thresholds complicate the whole system without real need. They make it also more difficult for the public to understand and monitor declarations. Most importantly, such a difference in declaration and publication thresholds is an exception in Europe, making Armenia probably the only country imposing such a restriction on publication.

3.8 Verifications

There are currently about 680 public officials subject to the income and asset declaration requirements. Including household family members, the number of submitted declarations reaches about 2,000. The Law on Public Service briefly touches on the issue of verifying declarations:

“The functions of the Ethics Commission for High-Ranking Officials are [...] analyses and publication of declarations” (Article 43 para. 1 no. 2).

For this purpose, the Commission can request from any state body any information or assistance necessary for reviewing a declaration (as well as any other issue before the Commission), Article 43 para. 2, Law on Public Service.

3.8.1 Ad hoc

Private stakeholders such as the media or citizen activists can compare all publicly available declarations with any knowledge that they might have about the official.

Furthermore, the Ethics Commission can look into the declarations upon receipt of complaints or in any case of suspicion of wrong information.

Law enforcement authorities can verify the published declarations whenever they are conducting an investigation into the official concerned or any of his/her family members. In case of criminal cases, investigators can obtain the original declarations from the Commission according to the criminal procedural legislation.

3.8.2 Systematic

The Ethics Commission is still in the process of establishing a system of analysing and auditing declarations. It is recommended to establish standard procedures within the Commission containing in particular:

- Steps of handling the declarations;
- Analysing the declarations;
- Linkage to other databases;
- Criteria leading to further investigations (red flags);
- Methods to detect undeclared assets, etc., which are suspected to be in the possession of the official but which are not found in other state databases;
- Cooperation with other state bodies;
- Initiating/imposing sanctions.

The comparison of declarations with the real life situation will depend to a large extent on the availability and quality of publicly **registered data** on physical and legal persons. For example, certain areas of business are not controlled under current legislation, such as farming. It is thus possible for a public official to claim that he/she acquired any wealth from farming business, whereas it can be rather difficult to verify this information.²⁹

The current legislation only makes explicit reference to the Commission requesting information from state bodies, but remains silent on information by private persons. However, it would seem necessary that the Commission can request such information on a voluntary basis. According to the Commission, the law would allow the Commission to ask private persons to voluntarily provide information.

3.8.3 Ethics Commission for High-Ranking Officials

The Ethics Commission is an “independent body” under Article 40, Law on Public Service. The Members of the Ethics Commissions “shall not have the right to be a member of a political party [...] or occupy a position in a state or local self-government body or do any paid work, with the exception of scientific, pedagogical and creative works.” (Article 39, Law on Public Service).

On 9 January 2012, the President appointed the following five persons as nominated by different state bodies under Article 38 para. 4, Law on Public Service:

- Lilit Petrosyan by the Speaker of the National Assembly,

²⁹ See for example the allegation/question in Hetq, 9 July 2012, “Does Armenia’s Parliament Speaker Have a Green Thumb? Abrahamyan & Wife Make Millions Selling Farm Produce”, <http://hetq.am/eng/articles/16400/does-armenias-parliament-speaker-have-a-green-thumb?-abrahamyan-&wifemake-millions-selling-farm-produce.html>.

- Armen Khudaverdyan [former Secretary of Public Sector Reform Commission] by the Prime Minister
- Areg Shushyan by the Chairman of the Constitutional Court
- Emil Babayan [former Deputy Justice Minister] by the Chairman of the Court of Cassation
- Artak Sargsyan by the Prosecutor General.³⁰

The Commission elected Emil Babayan as Chairman, and Areg Shushyan as Vice Chairman. The Members serve a six-year term. They are dedicated full-time to the work of the Commission.

The real independence of this Commission has been questioned by some interviewees, and the extent to which the different institutions have identified their nominations independently from the President is open to doubt by at least some informed members of the public. Inclusion of civil-society representatives into the Commission would certainly have the potential of enhancing its acceptance and credibility among the public at large.

The Commission will apparently need further staff with the necessary investigative, financial, and legal capacity for reviewing declarations.

3.9 Impact

3.9.1 Public stakeholders

Asset declarations are used for criminal investigations, as for example in the investigation into the alleged embezzlement by Vardan Minas Oskanyan, Deputy of the National Assembly,³¹ who has been a member of the governing coalition (Prosperous Armenia party) but has for some time been perceived as being in fact closer to the opposition.

3.9.2 Private stakeholders

The Media have published numerous articles on contradictions and particularities around politicians' declarations. Example headlines from 2012 include:

- "Armenia's First Lady richer than her husband"³²
- "Ministers' Wives Have the Big Bank Accounts"³³
- "Financial Riddle? RA Justice Minister Reports 3 Million AMD as 'Other Income'"³⁴
- "Armenia's Provincial Governors Get Rich Quick"³⁵

In addition, there are allegations in the Media that "more than half of the 131 members in the current National Assembly of Armenia have a business, which is prohibited by law."³⁶

³⁰ www.oecd.org/corruption/acn/49910824.pdf.

³¹ Motion of the Prosecutor General of 5 October 2012 for lifting immunity, www.genproc.am/en/105/item/7359/.

³² 13 June 2012, www.a1plus.am/en/politics/2012/06/13/rita.

³³ <http://hetq.am/eng/articles/19596/ministers-wives-have-the-big-bank-accounts.html>.

³⁴ <http://hetq.am/eng/articles/17085/financial-riddle?-ra-justice-minister-reports-3-million-amd-as-other-income.html>.

³⁵ <http://hetq.am/eng/articles/19564/armenias-provincial-governors-get-rich-quick.html>.

³⁶

http://www.armenianow.com/news/politics/34536/property_declaration_armenian_parliament_members_ethnics_commission

3.10 Sanctions

Typically, declarations can lead to the following violations:

- late filing;
- incomplete filing;
- non-filing;
- false information.

Under previous legislation, Article 169 of the Code on Administrative Violations covered late and false filing of declarations. If the declaration was not submitted within 30 days after the warning, a **fine** would apply. Incomplete and non-filing were only covered by the former Asset Disclosure Law of 2006. None of these sanctions are currently applicable anymore. There is obviously little incentive though to comply with the declaration requirement if violating the rules does not lead to any sanctions.

With regard to **disciplinary** sanctions, there is no explicit link to violations of declaration requirements. In other countries of the Eastern Partnership, the non-submission of a declaration can lead (and has in fact led) to the removal from office.³⁷

It is worth noting that until now sanctions did only cover the public officials themselves. However, the obligation to declare finances concerns also **family** members. It would be a logical consequence to include family members into the sanction system as well: If the law imposes an obligation on them, there is no reason why this obligation should not be supported by an adequate sanction.

3.11 Illicit enrichment

A fully effective asset declaration system should lead to criminal convictions of public officials who accumulated illicit wealth. However, Armenian law enforcement authorities and judiciary seem to be hesitant to base corruption convictions on **circumstantial** evidence. By contrast, it seems necessary that the official is caught red-handed in the corruptive act (e.g. while accepting a bribe). Thus, it will not suffice to have circumstantial evidence that the inexplicable wealth of an official can only originate from corruptive practices in office.

Therefore, it seems recommendable to introduce the criminal offence of illicit enrichment into the **criminal code**. This would allow for a meaningful response to situations where there is a significant gap between an official's actual and explicable wealth. Illicit enrichment is a criminal offence under the United Nations Convention against Corruption (UNCAC), and about 40 countries have criminalised it.³⁸ In addition, there is a current trend in the Eastern Partnership region to consider introducing this crime into their legislation.

³⁷ See "Country risk assessment Ukraine, Financial Supervision of Public Officials ('Income and Asset Declarations')", available at www.coe.int/t/DGHL/cooperation/economiccrime/corruption/Projects/EaP-CoE%20Facility/EaP_default_en.asp.

³⁸ World Bank, "On the Take - Criminalizing Illicit Enrichment to Fight Corruption" (2012) www.unodc.org/documents/corruption/Publications/StAR/On_the_Take-Criminalizing_Illicit_Enrichment_to_Fight_Corruption.pdf.

In 2011, Ukraine introduced an offence called “illicit enrichment” (“Незаконне збагачення”, section 368-2 Criminal Code).³⁹ The offence is not exactly illicit enrichment according to the international standard of Article 20 UNCAC. The Criminal Code defines illicit enrichment as the “obtainment by an officer of illegal benefit in substantial amount or transfer by the officer of such benefit to close relatives, in the absence of signs of bribery”. However, the advantage of this Ukrainian regulation lies in the fact that the burden of proof is still fully upon the prosecution: In contrast to Article 20 UNCAC section 368-2 Criminal Code would not require the official to “reasonably explain” his wealth in relation to his income. Hence there is no indication that a conviction of a public official based on a significant discrepancy of his or her actual and declared wealth and on an overall review of the facts would violate the presumption of innocence or the prohibition of self-incrimination.

Nonetheless, such a lighter version would still seem to have impact. Supposed, the financial declaration system in Armenia is well implemented and does not contain any significant loopholes, it would allow the prosecution to comparatively easily prove a discrepancy between the actual wealth, and the status of wealth as formally declared by the official himself. Some additional proof might be necessary to show that the non-declared income can only be from illegitimate sources.

³⁹ Criminal Code as amended by Law No. 3207-VI of 7 April 2011, <http://zakon2.rada.gov.ua/laws/show/2341-14/page11> (Ukrainian).

4 RECOMMENDATIONS

The current system of income and asset declarations has several sound features for enhancing integrity in public office. The system would benefit from the following improvements:

Officials covered

Include the heads of the 12 semi-autonomous districts of Yerevan with more than 50,000 inhabitants. Include also mid- and lower-level civil servants, those in positions with high corruption risks (procurement etc.) and from sectors of high corruption (patrol police, health, education, prosecutors, etc.).

Family members

Include non-adult children, married children and domestic household partners in the declaration obligation. It is also important to require all family members (parents and children) to declare their monetary funds as well.

Frequency

Have family members also declare their finances when the official enters and leaves office.

Reporting thresholds

In order to prevent hiding of smaller assets under the names of relatives, it seems advisable that declarations of the relatives do not have any heightened thresholds compared to declarations of the officials themselves.

Descriptive information

All financial items need to be complemented by distinct descriptive information (names of companies, details of domestic and foreign bank accounts, creditors, etc.).

Expenditures

It would seem recommendable to consider including this category for expenses, which do not have to be declared already as assets.

Public disclosure

Abolish special thresholds for public disclosure of declared data at least as far the public officials are concerned.

Verifications

Continue establishing a system of analysing and auditing declarations.

Sanctions

Establish a system of at least disciplinary and administrative sanctions for late filing, incomplete filing, non-filing and false information.

Illicit enrichment

Introduce the criminal offence of illicit enrichment.

5 ANNEX

5.1 Law on Public Service (excerpt)

(Unofficial translation by the EaP/CoE Facility Project on “Good Governance and Fight against Corruption”)⁴⁰

Law of the Republic of Armenia
“On Public Service”

Adopted on 26 May 2011

CHAPTER I

GENERAL PROVISIONS

Article 1 The subject matter of the law

1. The law shall lay down the principles of the Public Service in the Republic of Armenia, its order of organization, rules of ethics, as well as shall regulate the relations concerning the declaration of property, income and related persons of high ranking officials.

[...]

Article 5 Principal concepts used in this law

[...]

15)

high ranking official – President of the Republic, Prime Minister, Deputies of the National Assembly, Members of the Constitutional Court, Judges, Ministers and Deputy Ministers, Prosecutor General and Deputy Prosecutors General, Prosecutors of Yerevan and Garrison Prosecutors, Heads of state bodies established by laws, Deputy heads and members of these bodies, Chairman of the Central Bank of Armenia, Deputy Chairman and members of the Board of the Central Bank of Armenia, Heads of state governing bodies under the Government, Deputy heads, Chairman of the Control Chamber, Deputy Chairmen, Members of the Board of the Control Chamber, Chief of Staff of the President of the Republic and Deputy Chiefs of Staff, Chief of Staff of the National Assembly and Deputy Chiefs of Staff, Chief of Staff of the Constitutional Court of Armenia, Chief of Staff of the Government and Deputy Chiefs of Staff, members of the Ethics Committee for high ranking officials, Mayor of Yerevan and Deputy Mayors, Governors and Deputy Governors, Heads of diplomatic missions in foreign countries, Secretary to the National Security Council, advisers and assistants to the President of the Republic, advisers and assistants to the President of the National Assembly, advisers and assistants to the Prime Minister, heads of communities with 50000

⁴⁰ A full version of the Law is available on the Project’s website.

and more habitants as of 1 January of the precedent year, as well as Head of the Presidential Oversight Service, Head of the Prime Minister's Oversight Service;

16)

Persons related to the high ranking officials – persons related to the high ranking official or his/her spouse, including persons related with up to 2nd degree blood relationship. Up to 2nd degree of blood relationship includes persons related to the high-ranking official with 1st degree of blood relationship, as well as persons related to the latter with 1st degree of blood relationship. The 1st degree of blood relationship includes children, parents, sisters and brothers;

17)

Conflict of interests – a situation, where the high ranking official shall make a decision within the framework of his/her competencies, which could be reasonably interpreted as an action governed by his/her or related person's interests;

18)

A superior official to the high ranking official – for the Chief of Staff of the President of the Republic, Secretary to the National Security Council, advisers and assistants to the President of the Republic - is the President of the Republic; for the Chief of Staff of the National Assembly, advisers and assistants to the President of the National Assembly – is the President of the National Assembly; for the Chief of Staff of the Constitutional Court – is the President of the Constitutional Court; for a Minister, Chief of Staff and Deputy Chiefs of Staff of the Government, Heads of state governing bodies under the Government, Head of Prime Minister's Oversight Service, advisers and assistants to the Prime Minister – is the Prime Minister; for the Deputy Ministers – is the Minister; for Deputy Prosecutors General, Prosecutors of regions, Prosecutor of Yerevan city and Garrison Prosecutors – is the Prosecutor General; for the Deputy heads of state governing bodies under the Government – Heads of the body; for the members of collegial state bodies established by law – Head of the given body; for the Deputy Chairmen and Members of the Board of the Central Bank of Armenia – is the Chairman of the Central Bank; for the members of the Control Chamber – is the Chairman of the Control Chamber; for the Deputy Chiefs of Staff of the President of the Republic – is the Chief of Staff of the President of the Republic; for the Deputy Chiefs of Staff of the National Assembly – is the Chief of Staff of the National Assembly; for the Deputy Chiefs of Staff of the Government – is the Chief of Staff of the Government; for the Deputy Mayors and Deputy Governors – respectively are the Mayor and the Governors; for the Heads of diplomatic missions in foreign countries – is the Foreign Affairs Minister. High ranking officials not listed in this clause are considered not having superior officials within the context of this law.

[...]

CHAPTER VII

CONFLICT OF INTERESTS OF HIGH RANKING OFFICIALS, DECLARATION OF PROPERTY AND INCOME

[...]

Article 32 Obligation of declarations on property, income and of related persons

1. The high ranking officials shall submit declarations on property, incomes to the Ethics Committee of high ranking officials in a procedure established by this law.
2. The high ranking officials shall submit declarations on related persons to the Ethics Committee of high ranking officials in a procedure established by this law.
3. If the appointment of a high ranking official is made through the nomination by another body, in this case the candidate shall submit declaration on property and income, and in cases stipulated by this law a declaration on related persons at the time of nomination.
4. The spouse of a high ranking official, parents, as well as his adult or not married child living together with him/her, shall submit declarations on property and income to the Ethics Committee of high ranking officials in cases stipulated by this law.

Article 33 Timeframe for declarations

1. The high ranking official shall submit declarations to the Ethics Committee of high ranking officials 15 days after the day of the assumption, termination of responsibilities. The mentioned persons shall submit declarations also during their term of office as of 31 December of each year but not later than 15 February of the next year.

Article 34 The content of the property declaration

1. The declaration by the high ranking official or his/her spouse shall include the following items belonging to them on property rights:
 - 1) the real estate – land plot, part of the subsoil, isolated water object, forest, perennial tree, building, construction, other land-fixed estate (hereinafter real estate), which has been aliened or acquired throughout the taxation year;
 - 2) the mobile estate – automobile transportation means, wheel, tracked, automotive machines or mechanisms, air, water transportation means (hereinafter mobile estate), which have been aliened or acquired throughout the taxation year;
 - 3) the security (bonds, check, bill and other documents classified as a security, with the exception of bank certificate) and (or) any document certifying any other investment (share, stock) (hereinafter security and (or) investment) which have been aliened or acquired throughout the taxation year;
 - 4) The loan, which the declarer handed over or which was returned to him throughout the taxation year. Within the context of this law, loan means lending money (loan amount) or other property identified by distinctive characteristics to the ownership of others on the condition of repayment of equal amount of money or return of equal quantity of received property and of similar type and quality (hereinafter loan);
 - 5) any estate not mentioned in paragraphs 1-4 of this clause exceeding the price of 8 million drams or of equal foreign currency (hereinafter expensive estate), which have been aliened or acquired throughout the taxation year;
 - 6) financial means (including the means in bank)
2. The declaration submitted by the high ranking official shall be accompanied by a signed list, which shall include the name, surname, relationship, birth date of his/her spouse, parent living together with him/her, as well as of the adult and not married child living together with him/her.
3. The declarations submitted by the high ranking official, the parent living together with him/her, as well as by the adult and not married child living together with

him/her shall submit the following estate belonging to them on the basis of ownership rights:

- 1) the real estate, if the total price (value) of the transactions to acquire the real estate in the taxation year exceeded 50 million drams. Inter alia, the total price (value) of the transactions to acquire the real estate or to alien it in case of exceeding 50 million drams, all transactions of acquiring and aliening the real estate shall be subject to declaring;
 - 2) the mobile estate, if the total price (value) of the transactions to acquire the mobile estate in the taxation year exceeded 8 million drams. Inter alia, the total price (value) of the transactions to acquire the real estate or to alien it in case of exceeding 8 million drams, all transactions of acquiring and aliening the mobile estate shall be subject to declaring;
 - 3) Security and (or) other investment, if the total price (value) of the transactions to acquire or alien the securities and (or) investments in the taxation year exceeded 8 million drams. Inter alia, the total price (value) of the transactions to acquire or alien the securities and (or) investments in case of exceeding 8 million drams, all transactions of acquiring and aliening the securities and (or) investments shall be subject to declaring;
 - 4) Loans, if the total price (value) of transactions to lend or repay the loans exceeded 8 million drams in the taxation year. Inter alia, the total price (value) of transactions to lend or repay the loans in case of exceeding 8 million drams all transactions of lending or repaying shall be subject to declaring;
 - 5) the expensive estate, which have been aliened or acquired in the taxation year;
4. The definition of the price (value) or the income in foreign currency of the estate subject to declaration mentioned in this Article is calculated on the basis of average currency exchange rate formed in currency markets published by the Central Bank of the Republic of Armenia for the day of the transaction, and the price (value) of in kind transactions - on the basis of procedure to define the price (value) for reflecting the income in kind (non-monetary) or estate in the declaration.
5. In declaring the estate, one shall mention:
- 1) in case of the real estate – the type, address of location, availability in the beginning and at the end of the taxation year, the price (value) of acquiring or aliening and the currency;
 - 2) in case of the mobile estate – the type of the mobile estate, mark and series, availability in the beginning and at the end of the taxation year, the price (value) of acquiring or aliening and the currency;
 - 3) in case of securities and (or) investment – the currency, price (value) of the security in the beginning and at the end of the taxation year, the price (value) of acquiring or aliening;
 - 4) in case of loans – the title or the surname of the debtor, name or patronymic name, address, currency of the loan, amount (size) of the loan in the beginning and at the end of the taxation year, the amount (size) of lent and repaid loan;
 - 5) in case of the expensive estate – the denomination of the estate, its availability in the beginning and at the end of the taxation year, the price (value) of acquiring or aliening the estate;
 - 6) in case of financial means – the currency of the financial means, amount in the beginning of the taxation year – 1 January and at the end of the taxation year – 31 December;

1. The income declaration of the high ranking official, his/her spouse, the parent living together with him/her, as well as of the adult and not married child living together with him/her, shall include the incomes throughout the taxation year and their sources set forth by this Article.
2. A source for the income of the declarer shall be the entity, which paid the declarer income set forth by this Article throughout the taxation year. Particularly, sources of income may be a state governing or local self-government body, a commercial, non-commercial organization, a company, a branch, a representation, individual entrepreneur (hereinafter organization) or a non-entrepreneurial natural entity. Taxes and (or) other obligatory payments established by law, in case of being kept by the source of income, the incomes shall be declared without these amounts. This rule does not cover the persons submitting annual income calculation set forth by law of the Republic of Armenia "On Income Tax".
3. Pursuant to this law, the following incomes in the dram of the Republic of Armenia, in foreign currency or in kind (non - monetary) shall be subject to declaration:
 - 1) the payment for work or other payments adjusted to it;
 - 2) the royalty or copy right reimbursement for enjoying copy right or use of the right for literature, artistic or scientific work, use of the right for licenses, trade mark, project or model, secret formula or process, electronic calculation machines and data base software or right to use industrial, commercial, scientific equipments or compensation (royalty) for providing information on industrial, technical, organizational, commercial, scientific experiment;
 - 3) received loans (credits) or the interests and compensation received for loans (credits);
 - 4) shares;
 - 5) incomes (benefits) in casinos or in gambling;
 - 6) material or monetary benefits (prizes) received in contests and competitions, as well as by lotteries;
 - 7) the estate, financial means (with the exception of those received for work or service) received by donation or assistance;
 - 8) property (including financial means) received by inheritance;
 - 9) compensations received by insurance
 - 10) income received through entrepreneurial activity;
 - 11) income received as a result of the alienation (including those not mentioned in Article 8) of the estate (with the exception of financial means);
 - 12) rental fee or other compensation, income received as a result of civil contracts;
 - 13) lump sum payments;
 - 14) income derived from property rights;
4. Other incomes not specified in clause 2 of this Article shall be subject to declaring by mentioning their types and sources.
5. While declaring the income, the following shall be mentioned:
 - 1) the type of the income;
 - 2) the income source – the title or the surname of the income payer, name and patronymic, address;
 - 3) the size (amount) of the income;
 - 4) the income currency;

Article 36 The content of declaration by related persons

1. The declaration submitted by the person related to the high ranking official shall contain:
 - 1) for the member of the Constitutional Court – the related persons occupying a position of a member in the Constitutional Court;
 - 2) for the Ministers and Deputy Ministers – the related persons occupying a position in the ministry;
 - 3) for the Prosecutor General, Deputy Prosecutors General, prosecutors of regions, of the Yerevan City and garrisons – the related persons occupying a position of a prosecutor, judge, investigator;
 - 4) for the heads and deputy heads of state bodies under the government –the related persons occupying a position in that body (including in structural and territorial subdivisions, as well as in state non-commercial organizations);
 - 5) for the heads and members of collegial state bodies established by law – the related persons occupying positions either of head or member, as well as related persons occupying a executive position in commercial organizations functioning under the regulation of these bodies;
 - 6) for the judges – the related persons occupying positions of a prosecutor, judge or investigator;
2. The declaration submitted by the related persons shall mention:
 - 1) name, patronymic, surname;
 - 2) occupied position;
3. In the person enlisted in clause 1 of this Article has lost his/her relation with the related person and is not able to declare him/her as a related person due to the lack of information, then he/she shall enclose a relevant statement mentioning the kinship and the name, patronymic, surname of the person.

Article 37 Register of declarations and publication of data

1. Within 3 working days after the receipt of the declaration, the Ethics Committee of high ranking officials shall enter it into the register of declarations.
2. The list of data subject to publication included in the declaration, its content and form shall be established by the Government of the Republic of Armenia.
3. The Ethics Committee of high ranking officials shall provide the protection of data not subject to publication.

CHAPTER 8

THE PROCEDURE FOR THE FORMATION AND FUNCTIONING OF THE ETHICS COMMITTEES FOR THE PUBLIC SERVANT AND HIGH RANKING OFFICIALS

Article 38 The Ethics Committees for the Public Servant and High ranking officials and their formation

1. The Ethics Committees shall be established by the bodies envisaged by Article 2 of this law.
2. The Ethics Committees may be established in the General Prosecutor's Office, which shall be entitled to verify the compliance of ethic rules.

Relations concerning the compliance of ethic rules by the judges shall be regulated by the Judicial Code of the Republic of Armenia.

The procedure for formation, functioning, initiating proceedings concerning the violation of ethic rules mentioned in this clause, shall be established by relevant rules.

3. An Ethics Committee shall be established for the high ranking officials. The procedure for the functioning of the Ethics Committee of high ranking officials shall be established by this law. The working rules of the Ethics Committee of high ranking officials shall be established by the decision of the Ethics Committee.
4. The Ethics Committee of high ranking officials shall be comprised of five members. The members of the Committee shall be appointed by the President of the Republic upon the nomination by the President of the National Assembly, the Prime Minister, the President of the Constitutional Court, the Chairman of the Court of Cassation, the Prosecutor General on the principle of one nomination each, for six years term. The Ethics Committee of high ranking officials shall elect a Chairman and a Vice Chairman among its members.
5. Any citizen having attained the age of 30, having higher education, possessing high moral features, well known among the society and having at least 10 years of employment record may become a member of the Ethics Committee.

Article 39 The prohibition of being engaged in other activities for the members of Ethics Committee of high ranking officials

1. Members of the Ethics Committee shall not have the right to be a member of a political party or a member of a representative body or occupy a position in a state or local self-government body or do any paid work, with the exception of scientific, pedagogical and creative works.

Article 40 The independence of the member of the Ethics Committee of high ranking officials

1. The member of the Ethics Committee of high ranking officials is independent in exercising his authorities; he/she shall obey only the Constitution and the laws of the Republic of Armenia.
2. Members of the Committee shall not subordinate to a state or self-government body or an official and shall remain independent from the nominating and appointing persons.

Article 41 The termination of authorities of a member of the Ethics Committee for high ranking officials

1. The term of authorities of a member of the Ethics Committee for high ranking officials shall terminate the same day of the sixth year following his/her appointment. The authorities of the member of the Ethics Committee for high ranking officials shall be terminated ahead of time:
 - 1) if his/her citizenship of the Republic of Armenia has been stopped;
 - 2) if he/she has been convicted by a final court judgment for committing intentional crime or has been sentenced to imprisonment by a final court judgment for committing non-intentional crime;
 - 3) if he/she has been recognized of limited capacity, declared to be a missing person or dead by a final judgment;

2. The President of the Republic shall be entitled to terminate ahead of time the authorities of the member of the Ethics Committee for high ranking officials, if the latter:
 - 1) neglected in accomplishing his/her duties;
 - 2) missed the committee meetings more than twice throughout a year without reasonable excuse;
 - 3) breached the requirements of Article 39 of this law;
3. In case of termination of authorities of the committee member ahead of time, the President of the Republic shall nominate a new member for the rest of the established term. In this case, if the rest of the term is less than a year, then the term of office of the new member shall be established by adding six years to the rest of the term of the previous member.
4. The member of the Ethics Committee for high ranking officials may resign through submitting resignation to the President of the Republic. The President of the Republic shall admit the resignation of the committee member within a month. The Committee member may withdraw his/her recognition before its admission by the President of the Republic of Armenia.
5. In case of the ahead of time termination of authorities of the member of the Ethics Committee for high ranking officials, an appointment for the vacant seat shall be exercised in a procedure set forth by this law.

Article 42 The remuneration of the member of the Ethics Committee for high ranking officials

1. The member of the Ethics Committee for high ranking officials shall receive remuneration for exercising functions stemming up from this law.
2. The wage rate for the member of the Ethics Committee for high ranking officials shall be established on the basis of fifteen fold size of the base wage rate for civil servants envisaged in the law «On the Budget» of the Republic of Armenia for each year, for the Vice-President – sixteen fold and for the President – seventeen fold.
3. The logistic and organization support of the functioning of the Ethics Committee for high ranking officials shall be performed by the Staff of the President of the Republic.

Article 43 Functions of the Ethics Committee for high ranking officials

1. The functions of the Ethics Committee for high ranking officials are as follows:
 - 1) the conduct of the register of declarations of the high ranking officials and other persons envisaged by this law;
 - 2) analyses and publication of declarations;
 - 3) revelation of the conflict of interests of high ranking officials (with the exception of the conflict on interests of deputies, members of the Constitutional Court, judges and prosecutors) and the violations of the rules of ethics (with the exception of the violation of the rules of ethics by members of the Constitutional Court, judges and prosecutors, as well as violation of rules of ethics by deputies) and presentation of proposals to the President of the Republic, to the National Assembly and the Government directed at their elimination and prevention;
 - 4) the revelation of the breach of the rules of ethics not related to the exercise of official duties of the members of the Constitutional Court, judges and prosecutors

- and presentation of proposals to the President of the Republic, to the National Assembly and the Government directed at their elimination and prevention;
- 5) the publication of information on the cases of the breach of ethic rules or conflicts of interests revealed within the framework of its authorities, as well as on the measures undertaken in that regard;
 - 6) definition of the procedure for the requirements to fill in the declarations and their submission;
2. The Ethics Committee has the right:
 - 1) to request and receive any materials or documents necessary for the matter of discussion in the Ethics Committee from any state or self-government body, state or community institution, state organization or officials thereof
 - 2) to request any state or self-government body, state or community institution, state organization or officials thereof, with the exception of the members of the Constitutional Court, courts, judges and prosecutors to conduct verifications, researches, expertise on the circumstances subject to revelation of the matter under the discussion of the Ethics Committee and present the results thereon.
 3. The materials, documents and other information requested by the Ethics Committee for high ranking officials shall be forwarded to the Committee as soon as possible, but not later than within 10 days after the receipt of the request from the Ethics Committee, if other timeframe is not mentioned in the request or, if the addresser is not proposing other reasonable timeframe for its execution.
 4. Members of the Ethics Committee are entitled to have unrestricted access to any state or community institution or organization, as well as get acquainted with any material or document related to the matter of discussion in the Ethics Committee.
 5. The Ethics Committee for high ranking officials shall publish through media , within one month after the end of each year, the revealed cases of the conflict of interests and measures undertaken in that regard.

Article 44 Proceedings in the Ethics Committee for high ranking officials

1. The Ethics Committee shall initiate proceedings upon its own initiative.
2. The Ethics Committee may initiate proceedings on the breach of the ethics rules:
 - 1) pursuant to an application lodged by any person;
 - 2) upon its own initiative;
 - 3) pursuant to the application lodged by a high ranking official concerning his/her request to verify breach of rules by him/her;
3. The high ranking official shall be informed within five days time period after the initiation of proceedings, who shall submit his explanations and objections to the Committee within ten days. As a result of the initiated proceedings, the Ethics Committee for high ranking officials shall issue its conclusion within one month period.
4. The conclusion of the Ethics Committee on the breach of the ethics rules and the decision thereon of the competent official of the relevant state body, if available, shall be inserted in the website of the state body within five days after the day the decision was adopted. If elements of crime (corpus delicti) are emerged, then the Committee shall send all materials to the Prosecutor's General Office of the Republic of Armenia.
5. The conclusion on the violation of rules of ethics by the Ethics Committee for high ranking officials shall be sent to the President of the Republic of Armenia and superior of the high ranking official.

6. The conclusion of the Committee may be appealed within one month after its adoption by the high ranking official, whose behavior was concerned in the conclusion.

CHAPTER 9 INCENTIVES FOR CIVIL SERVANTS, IMPOSITION TO DISCIPLINARY PENALTIES AND DISMISSING FROM THE POSITION

Article 45 Types of incentives applied to the public servants

1. For a long service, as well as for high quality performance of service duties or special assignments, types of incentives set forth by the legislation may be applied to the Public Servants. The types of incentives applied to the public servants, as well as the procedure of their application shall be established by the different types of the state service, as well as by the laws regulating the service in communities and by other legal acts.

Article 46 Disciplinary penalties applied to the public servants

1. Disciplinary penalties shall be applied to the public servant in a procedure established by law for non-performance or improper performance of service duties for unjustified reason, as well as for exceeding service authorities, violating the internal rules of labor discipline.
2. Before assigning a disciplinary penalty the official having jurisdiction to apply disciplinary penalty, shall request a written explanation on the disciplinary penalty from the public servant who has committed the disciplinary violation.
3. For each disciplinary violation one disciplinary penalty may be assigned.
4. The types of disciplinary penalties applied to the Public Servant, as well as the procedure for applying penalties and the relations thereon shall be regulated by different types of the state service, as well as by the laws regulating the service in communities and by other legal acts.

Article 47 The Grounds for dismissing the Public Servant from the Position

1. Having regard to the peculiarities of the state and community service, the grounds for dismissing the Public Servant from the position shall be established by separate types of the state service, as well as by the laws regulating the service in communities and by other legal acts.
2. A ground for the dismissal of the Public Servant from the position shall be the non-compliance with the requirements of Article 24 of this law.

CHAPTER 10 SOLUTION OF DISPUTES AND RESPONSIBILITY FOR VIOLATING THE LEGISLATION ON THE CIVIL SERVICE

Article 48 Solution of Disputes and Responsibility for violating the Legislation on the Public Service

1. The disputes related to the application of the legislation on the Public Service shall be solved in a procedure established by the legislation of the Republic of Armenia.
2. The persons breaching the legislation on the Public Service shall bear liability for the cases and in the procedure established by law.

5.2 Decree 1835

***Unofficial translation by the EaP/CoE Facility Project on
“Good Governance and Fight against Corruption”***

Annex 1

of the RoA Government

Decision # 1835 – N

as of December 15, 2011

LIST

**OF DATA IN THE HIGH-RANKING OFFICIALS’ PROPERTY, INCOME AND
CONNECTED PERSONS’ DECLARATIONS,**

**AS WELL AS IN THE PROPERTY AND INCOME DECLARATIONS OF THE HIGH-
RANKING OFFICIALS’ SPOUSE, PARENT LIVING WITH HIM/HER, AS WELL AS
ADULT AND SINGLE CHILDREN LIVING WITH HIM/HER,**

SUBJECT FOR PUBLICATION (DISCLOSURE)

1. The following data in the high-ranking officials’ property, income and connected persons’ declarations, as well as in the property and income declarations of the high-ranking officials’ spouse, parent living with him/her, as well as adult and single children living with him/her, are subject to publication (disclosure):

1) Position held by a high-ranking official,

2) Type and price (value) of the acquired and, in case of alienation, alienated real estate of the high-ranking official and his/her spouse during the fiscal year, as well as type and price (value) of the acquired and, in case of alienation, alienated real estate of the high-ranking official's parent living with him/her, as well as adult and single children living with him/her during the fiscal year, if the total price (value) of the property acquisition or alienation transaction has exceeded 50 million drams or equivalent foreign currency.

3) Type, trademark, serial number and price (value) of movables, if the price of alienated and, in case of acquisition, acquired one unit of movable property of the high-ranking official and his/her spouse during the fiscal year as exceeded 7 million drams or equivalent foreign currency, as well as the type, trademark, serial number and price (value) of the alienated and, in case of acquisition, acquired movables during the fiscal year by the high-ranking official's parent living with him/her, as well as adult and single children living with him/her, if the total price (value) of acquisition, and in case of alienation, alienation transaction has exceeded 8 million drams or equivalent foreign currency.

4) Type of securities and/or the document certifying other investment and the price (value) of securities and/or other investment, if the total price of alienation and, in case of acquisition, acquisition transaction of securities by the high-ranking official and his/her spouse during the fiscal year has exceeded 5 million drams or equivalent foreign currency, as well as the type of securities and/or the document certifying other investment and the price (value) of securities and/or other investment alienated and, in case of acquisition, acquired during the fiscal year by the high-ranking official's parent living with him/her, as well as adult and single children living with him/her, if the total price of acquisition and/or other investment transactions or total price of alienation transaction have exceeded 8 million drams or equivalent foreign currency.

5) Loan, if lending or repayment transaction during the fiscal year by the high-ranking official and his/her spouse has exceeded 3 million drams or equivalent foreign currency, as well as lending and repayment by the high-ranking official's parent living with him/her, as well as adult and single children living with him/her, if the total price of lending transactions and the total price of repayment transactions have exceeded 8 million drams or equivalent foreign currency.

6) Any property (valuable property) and its price (value) acquired and, in case of alienation, alienated during the fiscal year by the high-ranking official and his/her spouse, parent living with him/her, as well as adult and single children living with him/her and not mentioned in this list that exceed 8 million drams or equivalent foreign currency.

7) Amount of total income received by the high-ranking official and his/her spouse, parent living with him/her, as well as adult and single children living with him/her.

D. SARGSYAN,

CHIEF OF STAFF OF

THE GOVERNMENT OF ARMENIA

Annex N 2

of the RoA Government

Decision # 1835 – N

as of December 15, 2011

CONTENT

OF DATA IN THE HIGH-RANKING OFFICIALS' PROPERTY, INCOME AND CONNECTED PERSONS' DECLARATIONS,

AS WELL AS IN THE PROPERTY AND INCOME DECLARATIONS OF THE HIGH-RANKING OFFICIALS' SPOUSE, PARENT LIVING WITH HIM/HER, AS WELL AS ADULT AND SINGLE CHILDREN LIVING WITH HIM/HER,

SUBJECT TO PUBLICATION (DISCLOSURE)

1. Data in the high-ranking officials' property, income and connected persons' declarations, as well as in the property and income declarations of the high-ranking officials' spouse, parent living with him/her, as well as adult and single children living with him/her, subject to publication (disclosure), shall have the following content:

1) Year for which declaration has been submitted,

2) Position held by the high-ranking official,

3) Type and price (value) of acquired and, in case of alienation, alienated real estate - land plot, part of subsoil, isolated water facility, forest, perennial plant, building, structure, other land-fixed property - by the high-ranking official and his/her spouse, parent living with him/her, as well as adult and single children living with him/her,

4) Type and price (value) of acquired and, in case of alienation, alienated movables - automobile vehicles with engines that use over 50 cub. cm. working volume, with their maximum speed exceeding 50 km per hour, as well as attachments and semi-attachments of different load-lift capacities, wheeled, caterpillar wheel, self-propelled vehicle or mechanism, air and water transport - by the high-ranking official and his/her spouse, parent living with him/her, as well as adult and single children living with him/her during the fiscal year,

5) Type and the price (value) of acquired and, in case of alienation, alienated securities (bonds, checks, promissory note, stocks and other documents classified as security according to the laws of the Republic of Armenia, with the exception of bank certificates) and/or the document certifying other investment (shares and equity - security and (or) other investment) by the high-ranking official and his/her spouse, parent living with him/her, as well as adult and single children living with him/her during the fiscal year,

6) Loan, which the high-ranking official and his/her spouse, parent living with him/her, as well as adult and single children living with him/her has lent or which has been repaid to him during the fiscal year. For the purposes of this law loan is the disclosure by the declarer as ownership to another entity money (the amount of loan) or other specific and identifiable property with the condition of repayment of money of the same amount or return of property of equal quantity and of the same type and quality,

7) Income received in commodity (non-monetary income) by the high-ranking official and his/her spouse, parent living with him/her, as well as adult and single children living with him/her during the fiscal year in Armenian drams,

8) income received in foreign currency – amount and type of currency - by the high-ranking official and his/her spouse, parent living with him/her, as well as adult and single children living with him/her during the fiscal year,

9) Any property (valuable property) and its price (value) acquired and, in case of alienation, alienated during the fiscal year by the high-ranking official and his/her spouse, parent living with him/her, as well as adult and single children living with him/her and not mentioned in the Annex 2 of the Government of Armenia Decision # 1835-N as of December 15, 2011, that exceed 8 million drams or equivalent foreign currency.

2. Amount of total income in Armenian Drams received by the high-ranking official and his/her spouse, parent living with him/her, as well as adult and single children living with him/her during the fiscal year.

3. The following data subject to publication should be included in the high-level official's declaration on connected persons:

1) Position held by a person connected with the high-level official,

2) Agency, where a person connected with the high-level official holds his/her position,

3) Subdivision of the agency, where a person connected with the high-level official holds his her position,

4) Job description (short) of a person connected with the high-level official holds his her position.

D. SARGSYAN,

CHIEF OF STAFF OF

THE GOVERNMENT OF ARMENIA

FORM

OF DATA IN THE HIGH-LEVEL OFFICIALS' _____ PROPERTY, INCOME AND CONNECTED PERSONS' DECLARATIONS, AS WELL AS IN THE _____ PROPERTY AND INCOME DECLARATIONS OF THE HIGH-RANKING OFFICIALS' SPOUSE, PARENT LIVING WITH HIM/HER, AS WELL AS ADULT AND SINGLE CHILDREN LIVING WITH HIM/HER, SUBJECT TO PUBLICATION (DISCLOSURE)

1. DATA IN THE HIGH-LEVEL OFFICIALS' _____ PROPERTY, INCOME AND CONNECTED PERSONS' DECLARATIONS, SUBJECT TO PUBLICATION (DISCLOSURE)					
2.	Position held by high-level official				
3. Persons connected with the high-level officials					
	Name of agency where connected person holds a position		Relevant sub-division where connected person holds a position		Position held and short description of the job
1.	2.		3.		4.
3.1					
3.2					
3.3					
3.4					
4. High-level official's real estate					
	Type and price (value) of the acquired real estate during the fiscal year		Type and price (value) of the alienated real estate during the fiscal year		Type of movables available in the end of the year
	Type	Price (value)	Type	Price (value)	
1.	2.	3.	4.	5.	6.
4.1					
4.2					

4.3						
4.4						
5. High-level official's movables						
	Type, serial number, trademark, and price (value) of the acquired movables during the fiscal year		Type, serial number, trademark, and price (value) of the alienated movables during the fiscal year		Type of movables available in the end of the year	
	Type, serial number, and trademark	Price (value)	Type, serial number, and trademark	Price (value)		
1.	2.	3.	4.	5.	6.	
5.1						
5.2						
5.3						
5.4						
6. High-level official's securities						
	Type and price (value) of the acquired securities during the fiscal year		Type and price (value) of the acquired securities during the fiscal year		Type of securities available in the end of the year	
	Type	Price (value)	Type	Price (value)		
1.	2.	3.	4.	5.	6.	
6.1						
6.2						
6.3						
6.4						
7. Loan lent by and repaid to the high-ranking official						
	Type and price (value) of the loan lent by the official during the fiscal year		Type and price (value) of the loan repaid to the official during the fiscal year		Type and price (value) of the loan available in the end of the year	
	Type	Price (value)	Type	Price (value)	Type	Price (value)
1.	2.	3.	4.	5.	6.	7.
7.1						
7.2						
7.3						
7.4						
8. Valuable property of a high-level official (property not mentioned in this table and exceeding 8 million drams or equivalent foreign currency)						
	Type and price (value) of the valuable property acquired during the fiscal year		Type and price (value) of the valuable property alienated during the fiscal year		Type of the valuable property available in the fiscal year	
	Type	Price (value)	Type	Price (value)		

1.	2.	3.	4.	5.	6.	
8.1						
8.2						
8.3						
8.4						
High-level official's income						
Received in commodity (non-monetary)		Received in foreign currency		Received in AMD		
		amount	currency			
1.		2.	3.	4.		
10. DATA IN THE _____ PROPERTY AND INCOME DECLARATIONS OF THE HIGH-RANKING OFFICIALS' SPOUSE, PARENT LIVING WITH HIM/HER, AS WELL AS ADULT AND SINGLE CHILDREN LIVING WITH HIM/HER, SUBJECT TO PUBLICATION (DISCLOSURE)						
11. Real estate of high-ranking officials' spouse, parent living with him/her, as well as adult and single children living with him/her						
		Type and price (value) of the acquired real estate during the fiscal year		Type and price (value) of the alienated real estate during the fiscal year		Type of real estate available in the end of the year
		Type	Price (value)	Type	Price (value)	
	Spouse					
11.1						
11.2						
11.3						
11.4						
	Parent					
11.5						
11.6						
11.7						
11.8						
	Child					
11.9						
11.10						
11.11						
11.12						
12. Movables of high-ranking officials' spouse, parent living with him/her, as well as adult and single children living with him/her						
		Type, serial number, trademark, and price (value) of the acquired movables during the fiscal year		Type, serial number, trademark, and price (value) of the alienated movables during the fiscal year		Type of movables available in the end of the year

		Type, serial number, and trademark	Price (value)	Type, serial number, and trademark	Price (value)	
	Spouse					
12.1						
12.2						
12.3						
12.4						
	Parent					
12.5						
12.6						
12.7						
12.8						
	Child					
12.9						
12.10						
12.11						
12.12						
13. Securities of high-ranking officials' spouse, parent living with him/her, as well as adult and single children living with him/her						
		Type and price (value) of the acquired securities during the fiscal year		Type and price (value) of the acquired securities during the fiscal year		Type of securities available in the end of the year
		Type	Price (value)	Type	Price (value)	
	Spouse					
13.1						
13.2						
13.3						
13.4						
	Parent					
13.5						
13.6						
13.7						
13.8						
	Child					
13.9						
13.10						
13.11						
13.12						
14. Loan lent by and repaid to the high-ranking officials' spouse, parent living with him/her, as well as adult and single children living with him/her						
		Type and price (value) of the loan lent by the spouse of the official during the fiscal year		Type and price (value) of the loan repaid to the spouse of the official during the fiscal year		Type and price (value) of

						the loan available in the end of the year	
		Type	Price (value)	Type	Price (value)	Type	Price (value)
		Spouse					
14.1							
14.2							
14.3							
14.4							
		Parent					
14.5							
14.6							
14.7							
14.8							
		Child					
14.9							
14.10							
14.11							
14.12							
15. Valuable property of the high-level official's spouse, parent living with him/her, as well as adult and single children living with him/her (property not mentioned in this table and exceeding 8 million drams or equivalent foreign currency)							
		Type and price (value) of the valuable property acquired during the fiscal year		Type and price (value) of the valuable property alienated during the fiscal year		Type of the valuable property available in the fiscal year	
		Type	Price (value)	Type	Price (value)		
		Spouse					
15.1							
15.2							
15.3							
15.4							
		Parent					
15.5							
15.6							
15.7							
15.8							
		Child					
15.9							
15.10							
15.11							
15.12							

16. Income of the high-level official's spouse, parent living with him/her, as well as adult and single children living with him/her						
		Received in commodity (non-monetary)		Received in foreign currency		Received in AMD
				amount	currency	
	Spouse					
16.1						
16.2						
16.3						
16.4						
	Parent					
16.5						
16.6						
16.7						
16.8						
	Child					
16.9						
16.10						
16.11						
16.12						

D. SARGSYAN,
CHIEF OF STAFF OF
THE GOVERNMENT OF ARMENIA

5.3 Decree 1819

DECREE

OF THE GOVERNMENT OF THE REPUBLIC OF ARMENIA

N 1819-N of December 15, 2011

ON APPROVING THE TEMPLATES FOR DECLARATION OF THE PROPERTY AND INCOME OF HIGH-RANKING OFFICIALS AND THE RELATED PERSONS IN THE FISCAL YEAR, PROPERTY AND INCOME OF HIGH-RANKING OFFICIALS AND THE RELATED PERSONS AS OF THE DATE OF ASSUMING OR RESIGNING THE OFFICIAL RESPONSIBILITIES

The Government of the Republic of Armenia *decides*:

1. To approve:

- 1) the template for the declaration of the property and income of high-ranking officials and the related persons in the fiscal year according to the Annex N 1,
- 2) the template for the declaration of property and income of high-ranking official and the related persons as of the date of assuming or resigning the official responsibilities according to the Annex N 2.

2. This Decree enters into force on the tenth day after its official publication.

**The Prime-Minister of the Republic of
Armenia** **T. Sargsyan**

December 23, 2011
Yerevan

TEMPLATE
FOR DECLARATION OF THE INCOME OF HIGH-RANKING OFFICIALS AND RELATED PERSONS
FOR _____ FISCAL YEAR

The first, middle and the last name of Declarant	Passport Number, date of issuance and the code
Position held	The year of assuming the position
Address of registration	Address of residence

1. Related persons

	Telephones
Relation, the first, middle and the last name, date of birth	Relation, the first, middle and the last name, date of birth
Relation, the first, middle and the last name, date of birth	Relation, the first, middle and the last name, date of birth
Relation, the first, middle and the last name, date of birth	Relation, the first, middle and the last name, date of birth

Related officials

Relation, the first, middle and the last name	Position held
Relation, the first, middle and the last name	Position held
Relation, the first, middle and the last name	Position held

The declaration contains pages

Day, month and year of submission of declaration **(signature)**

2. Property of high-ranking official										
	Type of real estate purchased during the fiscal year, address of its location, value and the currency				Type of real estate disposed during the fiscal year, address of its location, value and the currency				Type of real estate existing at the beginning of the fiscal year	Type of real estate existing at the end of the fiscal year
	Type	Location	Value	Currency	Type	Location	Value	Currency		
1	2	3	4	5	6	7	8	9	10	11
2.1.										
2.2.										
2.3.										
3. Mobile assets of high-ranking official										
	Type of mobile assets purchased during the fiscal year, serial number, model and value		Type of mobile assets disposed during the fiscal year, serial number, model and value		Type of mobile asset existing at the beginning of the fiscal year	Type of mobile asset existing at the end of the fiscal year				
	Type, serial number, model	Value	Type, serial number, model	Value						
1	2	3	4	5	6	7				
3.1.										
3.2.										
3.3.										

4. Securities or other investment made by high-ranking official												
	Type of securities other investment made during the fiscal year, currency and the value			Type of securities other investment disposed the fiscal year, currency and the value			Type, the currency and the value of securities or other types of investments existing at the beginning of the fiscal year			Type, the currency and the value of securities or other types of investments existing at the end of the fiscal year		
	type	currency	value	type	currency	value	type	currency	value	type	currency	value
1	2	3	4	5	6	7	8	9	10	11	12	13
4.1.												
4.2.												
4.3.												
5. Borrowings given by or returned to high-ranking official												
	Name of the borrower or the first, middle and the last name, address		Currency and the amount of the borrowing given by the person during the fiscal year		Currency and the amount of the borrowing returned to the person during the fiscal year		Currency and the amount of the borrowing existing at the beginning of the year		Currency and the amount of the borrowing existing at the end of the year)			
	Name or the first, middle and the last name	Address	Currency	Amount	Currency	Amount	Currency	Amount	Currency	Amount		
1	2	3	4	5	6	7	8	9	10	11		
5.1.												
5.2.												
5.3.												
5.4.												
Valuable assets of high-ranking officials (not specified in this table exceeding AMD 8 mln or equivalent in foreign currency)												
	Name, value and the currency of valuable assets purchased in the fiscal year			Name, value and the currency of valuable assets disposed in the fiscal year			Name of valuable asset at existing at the beginning of the fiscal year	Name of valuable asset at existing at the end of the fiscal year				
	Name	Value	Currency	Name	Value	Currency						
1	2	3	4	5	6	7	8	9				
6.1.												
6.2.												
6.3.												
7. Monetary resources of high-ranking official												
	Currency and the amount of monetary resources at the beginning of the year, as of January 1			Currency and the amount of monetary resources at the end of the year, as of December 31								
	currency		amount	currency		amount						
1	2	3	4	5	6	7	8	9				
7.1.												
7.2.												
7.3.												
8. Incomes of high-ranking officials												
	Source of income in AMD, address, type of income, amount				Source of income in foreign currency, address, type of income, amount				Source of income in product (non-monetary), address, type of income, amount			
	Sources (the title, the first, middle or the last name of the person paying the income)	Address of the sources of receiving the income	Type	Amount	Sources (the title, the first, middle or the last name of the person)	Address of the sources of receiving the income	Type	Amount	Sources (the title, the first, middle or the last name of the person paying the income)	Address of the sources of receiving the income	Type	

					paying the income)						
1	2	3	4	5	6	7	8	9	10	11	12
8.1.											
8.2.											
8.3.											
8.4.											
8.5.											
8.6.											
8.7.											
8.8.											
8.9.											
8.10.											
8.11.											
8.12.											
8.13.											
8.14.											
8.15.											

1. This declaration shall be completed in the order prescribed by articles 32-35 of the RA law “On Public Service”.
2. While completing this declaration, additional pages containing relevant points of declaration shall be provided, if the columns to be filled in with the data subject to declaration are not sufficient for providing all the relevant information.

**Chief of Staff of the Government
of the Republic of Armenia**

D. Sargsyan

**Annex N 2
To the Decree of the Republic of Armenia N 1819-N
Of December 15, 2011**

TEMPLATE

FOR THE DECLARATION OF PROPERTY AND INCOME OF HIGH-RANKING OFFICIAL AND THE RELATED PERSONS AS OF THE DATE OF ASSUMING OR RESIGNING THE OFFICIAL RESPONSIBILITIES

The first, middle and the last name of Declarant	Passport Number, date of issuance and the code
Position held	The year of assuming the position
Address of registration	Address of residence

1. Related persons

	Telephones
Relation, the first, middle and the last name, date of birth	Relation, the first, middle and the last name, date of birth
Relation, the first, middle and the last name, date of birth	Relation, the first, middle and the last name, date of birth
Relation, the first, middle and the last name, date of birth	Relation, the first, middle and the last name, date of birth

Related officials

Relation, the first, middle and the last name	Position held
Relation, the first, middle and the last name	Position held
Relation, the first, middle and the last name	Position held

The declaration contains pages Day, month and year of submission of declaration (signature)

2. Type, the address, value and currency of the real estate of high-ranking official as of the date of assuming or resigning the official responsibilities				
	type	address	value	currency
1	2	3	4	5
2.1.				
2.2.				
2.3.				
3. Mobile assets of of high-ranking official as of the date of assuming or resigning the official responsibilities				
Type, serial number, model and value of the existing mobile assets				
	type	serial number	model	value
1	2	3	4	5
3.1.				
3.2.				
3.3.				
4. Securities or other types of investments by high-ranking official as of the date of assuming or resigning the official responsibilities				
Type, currency and amount of securities of other investment				
	type	value	currency	
1	2	3	4	
4.1.				
4.2.				
4.3.				
5. Borrowings given by or returned to high-ranking official as of the date of assuming or resigning the official responsibilities				
Name (the first, middle and the last name) of the borrower taking or returning the borrowing.				

address, currency and the amount of the borrowing											
	Name, the first, middle or last name of the borrower	Address of the borrower	Currency	Amount							
1	2	3	4	5							
5.1.											
5.2.											
5.3.											
6. Valuable assets of high-ranking official as of the date of assuming or resigning the official responsibilities (not included in this table and exceeding 8 mln AMD or its equivalent)											
Name, value and the currency of the existing valuable asset											
	name	value	currency								
1	2	3	4								
6.1.											
6.2.											
6.3.											
7. Monetary resources of high-ranking official as of the date of assuming or resigning the official responsibilities											
Currency and the amount of the existing monetary resources											
	currency	amount									
1	2	3									
7.1.											
7.2.											
7.3.											
8. Incomes of high-ranking officials as of the date of assuming or resigning the official responsibilities											
	Source of income in AMD, address, type of income, amount				Source of income in foreign currency, address, type of income, amount				Source of income in product (non-monetary), address, type of income, amount		
1	Sources (the title, the first, middle or the last name of the person paying the income)	Addresses of the sources of receiving the income	Type	Amount	Sources (the title, the first, middle or the last name of the person paying the income)	Address of the sources of receiving the income	Type	Amount	Sources (the title, the first, middle or the last name of the person paying the income)	Addresses of the sources of receiving the income	Type
8.1.											
8.2.											
8.3.											
8.4.											
8.5.											
8.6.											
8.7.											
8.8.											
8.9.											
8.10.											
8.11.											
8.12.											
8.13.											
8.14.											
8.15.											

1. This declaration shall be completed in the order prescribed by articles 32-35 of the RA law "On Public Service".
2. While completing this declaration, additional pages containing relevant points of declaration shall be provided, if the columns to be filled in with the data subject to declaration are not sufficient for providing all the relevant information.

**Chief of Staff of the Government
of the Republic of Armenia**

D. Sargsyan

5.4 Decree 205

DECREE
OF THE GOVERNMENT OF THE REPUBLIC OF ARMENIA ON MAKING AMENDMENTS TO THE DECREE N 1819-N OF
DECEMBER 15, 2011

DECREE OF THE GOVERNMENT OF THE REPUBLIC OF ARMENIA

N 205-N of February 23, 2012

ON MAKING AMENDMENTS AND SUPPLEMENTS TO THE DECREE OF THE GOVERNMENT OF THE REPUBLIC OF ARMENIA N 1819-N, OF DECEMBER 15, 2011

The Government of the Republic of Armenia decides:

1. Make the following supplements and amendments to the Decree of the Government of Armenia N 1819-N “On approving the templates of declarations of the property and income in the fiscal year of high-ranking officials and the related persons and property and income of high-ranking official and the related persons as of the date of assuming or resigning the official responsibilities”
 - 1) in the title of the decree after the words “of declarations of the property and income of high-ranking officials and the related persons in the fiscal year” add the words “, the declaration of the property owned with the right of ownership, as well as the income of the spouse of the high-ranking official, the parent, adult and single child living with him/her in the fiscal year”.
 - 2) in paragraph 1 of the Decree
 - a. amend the template of declaration of property and income of high-ranking official, as well as related persons approved by subparagraph 1 (Annex N 1) in new edition, according to Annex 1;
 - b. amend the template of declaration of property and income of high-ranking official and the related persons as of the date of assuming or resigning the official responsibilities (Annex N2), approved by subparagraph 2, in new edition, according to Annex N 2;
 - c. Add a new subparagraph3 to the paragraph with the following content: “3) template for declaration of the income of the spouse of the high-ranking official, the parent, adult and single child living with him/her, in the fiscal year, according to Annex N 3.”.
 - 3) add a new Annex N 3 to the Decree (template for declaration of the income in the fiscal year of the spouse of the high-ranking official, the parent, adult and single child living with him/her) according to Annex N 3.
2. This Decree enters into force on the next day after its official publication.

The Prime-Minister of the Republic of Armenia

February 29, 2012

Yerevan

T. Sargsyan

Annex N 1
To the Decree of the Republic of Armenia N 205-N
Of February 23, 2012

“Annex N 1
To the Decree of the Republic of Armenia N 1819-N
Of December 15, 2011”

DECLARATION
OF HIGH-RANKING OFFICIALS AND RELATED PERSONS

NN	DATA ON HIGH-RANKIGN OFFICIALS	
1.	The first, middle and the last name of Declarant	
2.	Position held	
3.	The year of assuming the position	
4.	Passport Number, date of issuance and issued by	
5.	Address of registration	
6.	Address of residence	
7.	Telephones, e-mail address	
8.	Day, month and year of submission of declaration	
9.	Pages contained in declaration	

(signature of Declarant)

A. PERSONS RELATED TO HIGHT-RANKING OFFICIAL

A1. The spouse of the high-ranking official, the parent, adult and single child living with him/her

NN	First, middle and last name	Date of birth
1.	Spouse	
2.	Parent	
3.		
4.	Child	
5.		
6.		

A2.

NN	Position held	Relation	The first, middle and last name
1.			
2.			
3.			

B. PROPERTY OF HIGH-RANKING OFFICIAL

B1. Real estate

NN	Type	Location	Existing at the beginning of the fiscal year	Purchased at the beginning of the fiscal year		Disposed at the beginning of the fiscal year		Existing at the end of the fiscal year
				Value	Currency	Value	Currency	
1	2	3	4	5	6	7	8	9
1.1.								
1.2.								
1.3.								

B2. Mobile assets

NN	Type	Serial number, model	Existing at the beginning of the fiscal year	Purchased at the beginning of the fiscal year		Disposed at the beginning of the fiscal year		Existing at the end of the fiscal year
				Value	Currency	Value	Currency	
1	2	3	4	5	6	7	8	9
2.1.								
2.2.								
2.3.								

B3. Securities or other investment

NN	Type	Currency	Value at the beginning of the fiscal year	Purchased in the fiscal year	Disposed in the fiscal year	Value at the end of the fiscal year
				value	value	
1	2	3	4	5	6	7
3.1.						
3.2.						
3.3.						

B4. Borrowings given or received

JN	Name of the Borrowing company or first, middle and last names	Address of the Borrower	Currency	Amount of the borrowing at the beginning of the fiscal year	Given in the fiscal year	Received in the fiscal year	Amount of the borrowing at the end of the fiscal year
1	2	3	4	5	6	7	8
4.1.							
4.2.							
4.3.							

B5. Any property (valuable assets) not specified in this table exceeding AMD 8 mln or equivalent in foreign currency

JN	Name of	Existing at the	Purchased at the	Disposed at the	Existing at the
----	---------	-----------------	------------------	-----------------	-----------------

	property	beginning of the fiscal year	beginning of the fiscal year		beginning of the fiscal year		end of the fiscal year
			Value	Currency	Value	Currency	
1	2	3	4	5	6	7	8
5.1.							
5.2.							
5.3.							

B6. Monetary resources

NN	Currency	Amount at the beginning of fiscal year	Amount at the end of fiscal year
1	2	3	4
6.1.			
6.2.			
6.3.			

C. INCOMES OF HIGH-RANKING OFFICIALS

NN	Type of income	The title, the first, middle or the last name of the person paying the income	Address of the payer	Currency	Amount of income		
					In drams	In currency	In goods
1	2	3	4	5	6	7	8
7.1.							
7.2.							
7.3.							
7.4.							
7.5.							
Total						X	

(signature of Declarant)

1. This declaration shall be completed in the order prescribed by articles 32-35 of the RA law "On Public Service", as well as the guidelines for filling in the declaration of property and income of high-ranking official.
2. While completing this declaration, the additional pages containing relevant points of declaration shall be provided, if the columns to be filled in with the data subject to declaration are not sufficient for providing all the relevant information.
3. The line "Total" of the table "Income" shall be completed in line with the requirements of the guidelines for completing the declaration of the property and the income of high-ranking official."

**Chief of Staff of the Government
of the Republic of Armenia**

D. Sargsyan

Annex N 2
To the Decree of the Republic of Armenia N 205-N
of February 23, 2012

Annex N 2
To the Decree of the Republic of Armenia N 1819-N
Of December 15, 2011

DECLARATION

OF PROPERTY AND INCOME OF HIGH-RANKING OFFICIAL AND THE RELATED PERSONS AS OF THE DATE OF ASSUMING OR RESIGNING THE OFFICIAL RESPONSIBILITIES

NN	INFORMATION ON OF HIGH-RANKING OFFICIAL	
1.	The first, middle and the last name of Declarant	
2.	Position held	
3.	The date of assuming (resigning) the position	
4.	Passport Number, date of issuance and issued by	
5.	Address of registration	
6.		
7.	Telephones, e-mail address	
8.	Day, month and year of submission of declaration	
9.	The pages contained in the declaration	

(signature of Declarant)

A. PERSONS RELATED TO HIGH-RANKING OFFICIAL

A1. The spouse of the high-ranking official, the parent, adult and single child living with him/her

NN ը/կ	First, middle and last name	Date of birth
1.	Spouse	
2.	Parent	
3.		
4.	Child	
5.		

6.			
----	--	--	--

A2. Related persons holding position and having up to 2nd degree relation to the high-ranking official or his/her spouse

NN	Position held	Relations	First, middle and last name
1.			
2.			
3.			
4.			

2. The real estate of high-ranking official as of the date of assuming or resigning the official responsibilities

NN	Type of real asset	Address
1	2	3
2.1.		
2.2.		
2.3.		

3. Mobile assets of of high-ranking official as of the date of assuming or resigning the official responsibilities

NN	Type of mobile asset	Serial number, model
1	2	3
3.1.		
3.2.		
3.3.		

4. Securities or other types of investments by high-ranking official as of the date of assuming or resigning the official responsibilities

NN	Type of securities or other types of investments	Value	Currency
1	2	3	4
4.1.			
4.2.			
4.3.			

5. Borrowings given by or returned to high-ranking official as of the date of assuming or resigning the official responsibilities

NN	Title of the borrower or the first, middle and the last name	Address of the borrower	Currency	Value
1	2	3	4	5
5.1.				
5.2.				
5.3.				

6. Any property (valuable asset) of high-ranking official purchased and disposed as of the date of assuming or resigning the official responsibilities in the fiscal year, as well as of January 1 of the year of assuming or resigning the official responsibilities up to the date of assuming or resigning the official responsibilities (not included in points 2-5 of this table and exceeding AMD 8 million or its equivalent)

NN	Name of property	Brief description	Purchased		Disposed		Existing as of the date of assuming or resigning the official responsibilities
			Value	Currency	Value	Currency	
1	2	3	4	5	6	7	8
5.1.							
5.2.							
5.3.							

7. Monetary resources of high-ranking official as of the date of assuming or resigning the official responsibilities

NN	Currency of monetary resources	Amount of monetary resources
1	2	3
7.1.		
7.2.		
7.3.		

8. Incomes of high-ranking officials prior to the fiscal year of assuming or resigning the official responsibilities, as well as of the January 1 of the year of assuming or resigning the official responsibilities up to the date of assuming or resigning the official responsibilities

N №	Type of income	Name of the organization or the first, middle and last name of the physical person paying the income	Address of the payer	Currency	Amount of income		
					In drams	In currency	In goods
1	2	3	4	5	6	7	
8.1.							
8.2.							
8.3.							
8.4.							
8.5.							
8.6.							
Total						X	

(signature of Declarant)

1. This declaration shall be completed in the order prescribed by articles 32-35 of the RA law "On Public Service", as well as the guidelines for filling in the declaration of property and income of high-ranking official.

2. While completing this declaration, the additional pages containing relevant points of declaration shall be provided, if the columns to be filled in with the data subject to declaration are not sufficient for providing all the relevant information.
3. The line "Total" of the table "Income" shall be completed in line with the requirements of the guidelines for completing the declaration of the property and the income of high-ranking official."

Chief of Staff of the Government
of the Republic of Armenia

D. Sargsyan

Annex N 3

To the Decree of the Republic of Armenia N 205-N
of February 23, 2012

Annex N 3

To the Decree of the Republic of Armenia N 1819-N
Of December 15, 2011

**DECLARATION
ON THE PROPERTY AND INCOME OWNED BY THE SPOUSE OF HIGH-RANKING
OFFICIAL, THE PARENT, ADULT, SINGLE CHILD LEAVING WITH HIM/HER WITH
THE RIGHT OF OWNERSHIP FOR**

YEAR

NN	INFORMATION ON THE SPOUSE OF HIGH-RANKING OFFICIAL, THE PARENT, ADULT, SINGLE CHILD
1.	First, middle and last name of high-ranking official
2.	Position held by high-ranking official
3.	First, middle and last name of the spouse (parent), child, date of birth
4.	Passport number of spouse (parent), child, date of issuance, issued by
5.	Telephone and e-mail address of spouse (parent), child, date of birth
6.	Date of submission of declaration by spouse (parent), child, date of birth

7.	Pages contained in the declaration	
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(signature of Declarant)

A. PROPERTY OF THE SPOUSE OF HIGH-RANKING OFFICIAL, THE PARENT, ADULT, SINGLE CHILD

A1. Real Estate

NN	Type	Location	Existing at the beginning of the fiscal year	Purchased in the fiscal year		Disposed at the beginning of the fiscal year		Existing at the end of the fiscal year
				Value	Currency	Value	Currency	
1	2	3	4	5	6	7	8	9
1.1.								
1.2.								
1.3.								

A2. Mobile assets

NN	Type	Serial number, model	Existing at the beginning of the fiscal year	Purchased in the fiscal year		Disposed at the beginning of the fiscal year		Existing at the end of the fiscal year
				Value	Currency	Value	Currency	
1	2	3	4	5	6	7	8	9
2.1.								
2.2.								
2.3.								

A3. Securities or other investment

NN	Type	Currency	The price the beginning of fiscal year	Purchased in the fiscal year	Disposed at the beginning of the fiscal year	The price the end of fiscal year
				Price	Price	
1	2	3	4	5	6	7
3.1.						
3.2.						
3.3.						

A4. Borrowings given or received

NN	Name of the Borrowing company or first, middle and last names	Address of the borrower	Currency	Borrowed amount at the beginning of fiscal year	Given in the fiscal year	Received in the fiscal year	Amount of the borrowing at the end of the fiscal year
1	2	3	4	5	6	7	8
4.1.							

4.2.							
4.3.							

A5. Any property (valuable assets) not specified in A1-A4 sections of this table exceeding AMD 8 mln or equivalent in foreign currency

NN	Name of property	Existing at the beginning of the fiscal year	Purchased in the fiscal year		Disposed at the beginning of the fiscal year		Existing at the end of the fiscal year
			Value	Currency	Value	Currency	
1	2	3	4	5	6	7	8
5.1.							
5.2.							
5.3.							

A6. Monetary resources of owned by the spouse of high-ranking official

NN	Currency	Amount at the beginning of fiscal year	Amount at the end of fiscal year
1	2	3	4
6.1.			
6.2.			
6.3.			

B. INCOME OF THE SPOUSE OF HIGH-RANKING OFFICIAL, THE PARENT, ADULT, SINGLE CHILD

NN	Type of income	Name of the paying company or first, middle and last name of the payer	Address of the payer	Currency	Size of income		
					In drams	In currency	In goods
1	2	3	4	5	6	7	8
Total						X	

(signature of Declarant)

1. This declaration shall be completed in the order prescribed by articles 32-35 of the RA law "On Public Service", as well as the guidelines for filling in the declaration of property and income of high-ranking official.
2. While completing this declaration, the additional pages containing relevant points of declaration shall be provided, if the columns to be filled in with the data subject to

declaration are not sufficient for providing all the relevant information.

3. The line “Total” of the table “Income” shall be completed in line with the requirements of the guidelines for completing the declaration of the property and the income of high-ranking official.”.

**Chief of Staff of the Government
of the Republic of Armenia**

D. Sargsyan

5.5 Decree 627

Unofficial translation by the EaP/CoE Facility Project on “Good Governance and Fight against Corruption”

DECREE N 627-N OF THE GOVERNMENT OF THE REPUBLIC OF ARMENIA

of May 3, 2012

ON MAKING AMENDMENTS AND SUPPLEMENTS TO THE DECREE N 1835-N OF THE GOVERNMENT OF THE REPUBLIC OF ARMENIA OF DECEMBER 15, 2011

According to part 2 of article 37 of the RA law “On public service”, the Government of the Republic of Armenia **decides:**

1. to make the following amendments and supplements to the Decree N 1835 – N of the Government of the Republic of Armenia “On the list of the data to be presented in declarations of property and income of the high-ranking officials and related persons, as well as the property and the income of the spouse of high-ranking official, his/her dependent parent, dependent adult single child, subject to disclosure, the content and format of declaration” of December 15, 2011:
 - 1) In the heading of the Decree
 - a. replace the words “the property of the high-ranking officials” with the phrase “the property of the high-ranking officials in the fiscal year “,
 - b. before the words “as well as” add the phrase “in the declaration of the property and income of high-ranking official, as well as related persons as of the date of assuming or resigning official responsibilities of the position”,
 - c. in the heading replace the words “of spouse”, “of parent” and “of the child”, respectively with the words “to the spouse”, “to the parent” and “to the child”,
 - d. in the heading, after the words “of the child” add the words «in the fiscal year with the right of ownership”.
 - 2) In paragraph 1 of the Decree:
 - a. edit sub-paragraph 1 as follows:

“1) the list of data in the declaration of the property and income of high-ranking officials and related persons in the fiscal year, the property and income of high-ranking official as of the date of assuming or resigning the official responsibilities and the related persons included in the declaration, as well as the property and income belonging to the spouse, dependent parent and dependent single child of the high-ranking official with the right of ownership in the fiscal year subject to publication (disclosure), according to the Annex N 1”,
 - b. edit sub-paragraph 2 as follows:

“2) the content of the declaration of property and income of high-ranking officials and related persons in the fiscal year, property and income of high-ranking official and the related persons as of the date of assuming or resigning the official responsibilities included in the declaration, as well as the property and income belonging to the spouse, dependent parent and dependent single child of the high-ranking official with the right of ownership in the fiscal year subject to publication (disclosure), according to the Annex N 2”,
 - c. edit sub-paragraph 3 as follows:

“3) define that the property and income of high-ranking officials and related persons in the

fiscal year, property and income of high-ranking official and the related persons as of the date of assuming or resigning the official responsibilities, as well as the property and income belonging to the spouse, dependent parent and dependent single child of the high-ranking official shall be declared in the procedure prescribed in paragraph 1 of RA Government Decree N 1819-N of December 15, 2011, excluding the publication of the data not subject to disclosure according to the current Decree”.

- 3) Formulate the Annex N 1 to the Decree in new edition, according to the Annex N 1;
 - 4) Paraphrase the Annex N 2 to the Decree in new edition, according to the Annex N 2;
 - 5) Repel the Annex N 3 to the Decree;
2. This law enters into force on the next day following its official publication.

**The Prime-Minister of the
Republic of Armenia**

T. Sargsyan

May 24, 2012
Yerevan

**Annex N 1
to the RA Government Decree N 627-N,
of May 3, 2012**

LIST

OF DATA TO BE PRESENTED IN THE DECLARATION OF THE PROPERTY AND INCOME OF HIGH-RANKING OFFICIAL AND THE RELATED PERSONS IN THE FISCAL YEAR, PROPERTY AND INCOME OF HIGH-RANKING OFFICIAL AND THE RELATED PERSONS AS OF THE DATE OF ASSUMING OR RESIGNING THE OFFICIAL RESPONSIBILITIES INCLUDED IN THE DECLARATION, AS WELL AS THE PROPERTY AND INCOME BELONGING TO THE SPOUSE, DEPENDENT PARENT AND DEPENDENT SINGLE CHILD OF THE HIGH-RANKING OFFICIAL WITH THE RIGHT OF OWNERSHIP IN THE FISCAL YEAR SUBJECT TO PUBLICATION (DISCLOSURE)

1. The data to be presented in the declaration of the property and income of the high-ranking official and the related persons in the fiscal year subject to publication (disclosure) include:
 - 1) the fiscal year;
 - 2) the first, middle and the last name of the declarant (high-ranking official);
 - 3) the position of the high-ranking official;
 - 4) the day, month and year of assuming the position;
 - 5) the day, month and year of submitting the declaration;
 - 6) the first, middle and the last name of the spouse, dependent parent and dependent adult and single child of the high-ranking official;
 - 7) the first, the middle and the last name of the persons related to high-ranking official including the persons having second degree of relation to them, their position and the relation to the high-ranking official;
 - 8) the type of the real estate, the value and the currency of the property purchased in the given fiscal year, the value and the currency of the property disposed in the given fiscal year, if the total value of purchase or disposal transactions of the real estate exceeds AMD 50 million or equivalent;
 - 9) the type of mobile assets, the model, the serial number, the value and the currency of the asset obtained in the given fiscal year, if the unite price for the disposed asset in the fiscal year by the high-ranking official or his/her spouse, and in case of the purchase, of the purchased asset exceeds AMD 7 million or its equivalent;
 - 10) the type securities and (or) other documents proving any other investment and its currency, the value of securities purchased in the given fiscal year, the value of securities disposed in the given fiscal year, if the transaction value exceeds AMD 5million or its equivalent;
 - 11) the currency of the borrowing given or returned in the given fiscal year, the value of the borrowing given or returned in the given fiscal year, if the total value of borrowing transactions in the given fiscal year exceeds AMD 3 million or its equivalent;
 - 12) the name of valuable assets not specified in point B1-B4 of the declaration approved by sub-paragraph 1 of paragraph 1 of the RA Government Decree N 1819-N, of December 15, 2011, exceeding AMD 8 million or its equivalent, the value and the currency of the property purchased in the given fiscal year, the value and the currency of the property disposed in the given fiscal year;
 - 13) the currency of monetary funds, the amount at the beginning and at the end of the given fiscal year;
 - 14) the type, the currency, the amount in currency, and the total amount of the income in AMD and in products earned in the given fiscal year by the high-ranking official;
2. The data included in the declaration on the property and income of the high-ranking official and

the related persons, subject to publication (disclosure) as of the date of assuming and resigning the responsibilities are:

- 1) the first, middle and the last name of the declarant (high-ranking official);
 - 2) the position of the high-ranking official;
 - 3) the day, month and year of assuming (resigning) the position;
 - 4) the day, month and year of submitting the declaration;
 - 5) the first, middle and the last name of the spouse, dependent parent and dependent adult single child of the high-ranking official;
 - 6) the first, middle and the last name of the persons related to high-ranking officials including the persons having second degree relation to them and holding a position, their position and the relation to the high-ranking official;
 - 7) the type of the real estates as of the date of assuming or resigning official responsibilities;
 - 8) the type, the model and the serial number of the mobile asset as of the date of assuming or resigning official responsibilities;
 - 9) the type, the value and the currency of securities and (or) the document proving other investment as of the date of assuming or resigning official responsibilities;
 - 10) the currency and the amount of the borrowing given or returned in the given fiscal year, if the borrowing given or returned exceeds AMD 3 million or its equivalent;
 - 11) the name, the brief description of any property (valuable property) existing prior to the fiscal year of assuming or resigning the responsibilities of the high-ranking official, or the property purchased and disposed within the period of January 1 of the fiscal year of assuming or resigning the responsibilities up to the date of assuming or resigning them, not included in points 2-5 of the declaration table, exceeding AMD 8 million or equivalent, which still exists as of the date of assuming or resigning the responsibilities;
 - 12) the currency and the amount of monetary funds, as of the date of assuming or resigning the responsibilities;
 - 13) the type, the currency, the amount in currency of any property existing in the prior fiscal year of assuming or resigning the responsibilities of the high-ranking official, or the property purchased and disposed within the period of January 1 of the fiscal year of assuming or resigning the responsibilities up to the date of assuming or resigning, (total) amount of income in money and product.
3. The data included in the declaration of the property and income of the spouse, dependent parent, dependent adult single child possessing it with the right of property, subject to publication (disclosure) are:
- 1) the fiscal year;
 - 2) the first, middle and the last name of the high-ranking official;
 - 3) the position of the high-ranking official;
 - 4) the day, month and year of assuming the position;
 - 5) the first, middle and the last name of the spouse (the parent, the child);
 - 6) the day, month and year of submitting the declaration by the spouse (the parent, the child);
 - 7) the type of the real estate, the value and the currency of the property purchased in the given fiscal year, the value and the currency of the property disposed in the given fiscal year, if the total value of purchase or disposal transactions of the real estate exceeds AMD 50 million or equivalent;
 - 8) the type of the real estate owned by the dependent parent, adult single child living with the high-ranking official, the value and the currency of the property purchased in the fiscal year, the value and the currency of the property disposed in the fiscal year, if the total amount of purchase or disposal transactions exceeds AMD 50 million or its equivalent;
 - 9) the type and the model of mobile assets owned by the spouse of the high-ranking official, the serial number, the value and the currency of the asset obtained in the given fiscal year, or the value and the currency of the asset disposed in the given fiscal year, if the unit price for the asset disposed by the spouse of the high-ranking official in the fiscal year, or in case

- of purchase, purchased in the given fiscal year exceeds AMD 7 million or its equivalent;
- 10) the type of the mobile asset of dependent parent, adult single child living with the high-ranking official, the value and the currency of the property purchased in the fiscal year, the value and the currency of the property disposed in the fiscal year, if the total amount of purchase or disposal transactions made by the parent or single child of the high-ranking official exceeds AMD Է 8 million or its equivalent;
 - 11) the type, the value and the currency of securities and (or) the document proving other investment by the spouse of the high-ranking official in the fiscal year, the value of the securities purchased in fiscal year, the value of the securities disposed in the fiscal year, if the transaction value exceeds AMD 5 million or its equivalent;
 - 12) the type, the value and the currency of securities and (or) the document proving other investment by the dependent parent or single child of the high-ranking official in the fiscal year, the value of the securities purchased in fiscal year, the value of the securities disposed in the fiscal year, if the value of transactions made by the parent or single child of high-ranking official exceeds AMD 8 million or its equivalent.
 - 13) the currency of the borrowing given or returned by the spouse of the high-ranking official in the given fiscal year, the size of the borrowing given or returned in the given fiscal year, if the borrowing transaction value in the given fiscal year exceeds AMD 3 million or its equivalent;
 - 14) the currency of the borrowing given or returned by the parent or the single child of the high-ranking official in the given fiscal year, the size of the borrowing given or returned in the given fiscal year, if the borrowing transaction value in the given fiscal year exceeds AMD 8 million or its equivalent;
 - 15) the name of valuable assets of the spouse of high-ranking official not specified in point A1-A4 of the declaration approved by sub-paragraph 3 of paragraph 1 of the RA Government Decree N 1819-N, of December 15, 2011, exceeding AMD 8 million or its equivalent, the value and the currency of the property purchased in the given fiscal year, the value and the currency disposed in the given fiscal year, the value and currency of the asset purchased in the given fiscal year and the value and currency of the asset disposed in the given year;
 - 16) the name of valuable assets of the parent or adult single child living with high-ranking official not specified in point A1-A4 of the declaration approved by sub-paragraph 3 of paragraph 1 of the RA Government Decree N 1819-N, of December 15, 2011, exceeding AMD 8 million or its equivalent, the value and the currency of the property purchased in the given fiscal year, the value and the currency disposed in the given fiscal year, the value and currency of the asset purchased in the given fiscal year and the value and currency of the asset disposed in the given year;
 - 17) the currency of monetary funds owned by the spouse of high-ranking official, the amount at the beginning and at the end of the given fiscal year;
 - 18) the type, the currency, the amount in currency, and the total amount of the income in AMD and in product earned in the given fiscal year by the spouse of high-ranking official;
 - 19) the type, the currency, the amount in currency, and the total amount of the income in AMD and in product earned in the given fiscal year by the parent and the adult single child living with the high-ranking official”.

**Chief of Staff of the Government
of the Republic of Armenia**

D. Sargsyan

**Annex N 2
to the RA Government Decree N 627-N,
of May 3, 2012**

**«Annex N 2
to the RA Government Decree N 1835-N,
of December 15, 2011**

CONTENT

OF THE DECLARATION OF THE PROPERTY AND INCOME OF HIGH-RANKING OFFICIALS AND THE RELATED PERSONS IN THE FISCAL YEAR, PROPERTY AND INCOME OF HIGH-RANKING OFFICIAL AND THE RELATED PERSONS AS OF THE DATE OF ASSUMING OR RESIGNING THE OFFICIAL RESPONSIBILITIES INCLUDED IN THE DECLARATION, AS WELL AS THE PROPERTY AND INCOME OWNED BY THE SPOUSE, DEPENDENT PARENT AND DEPENDENT SINGLE CHILD OF THE HIGH-RANKING OFFICIAL WITH THE RIGHT OF PROPERTY IN THE FISCAL YEAR SUBJECT TO PUBLICATION (DISCLOSURE)

1. The data to be included in the declaration of the property and income of the high-ranking officials in the fiscal year and the persons related to them and subject to publication (disclosure) shall contain the following information:
 - 1) the fiscal year for which the declaration is submitted;
 - 2) the first, middle and the last name of high-ranking official (declarant), as it is written in passport;
 - 3) full name of the position of high-ranking official, including the name of the state agency;
 - 4) the date of assuming the responsibilities;
 - 5) the date of submission of declaration;
 - 6) the first, middle and the last name of the parent and adult single child living with high-ranking official;
 - 7) the first, middle and the last name of the persons related to high-ranking officials or his/her spouse including the persons having second degree relation to them, their position and the relation to the high-ranking official or his/her spouse, full name of the position held, including the name of the state agency or the structural unit where he/she holds a position, the relation type;
 - 8) type of the real estate owned by the high-ranking official with the right of ownership, the plot, part of land, isolated water facility, forest, aged planting material, structure, construction, other property located on the land, disposed or purchased in the fiscal year, the total amount and the currency of those transactions;
 - 9) type, the serial number, the model, date of production, the price and the currency of the mobile assets owned by the high-ranking official with the right of property, and namely a vehicle, the working capacity of the motor of which exceeds 50 cubic cm, and with the maximum speed of 50 km/hours, as well as other trailer-truck or semi-trailer, wheeled, truck-chained, self-propelled vehicle or mechanism, air or water vehicle, disposed or purchased in the fiscal year;
 - 10) bonds purchased by the high-ranking official in the fiscal year and in case of disposal also disposed notes, the check, the promissory notes, shares and other documents classified as securities according to the law of the Republic of Armenia, except for the bank certificates and (or) other documents proving investment, i.e. the share, dividends (banknote and (or) other

- investment), as well as their value and the currency;
- 11) borrowing given by or returned to high-ranking official in the fiscal year; borrowing is money (borrowed amount) or other property having specific features of the type given to a different person with the condition to return the same amount of money or the property with the equivalent value and having the same features and the type, the size of the borrowing, name of the currency;
 - 12) the name of valuable assets not specified in point B1-B4 of the declaration approved by subparagraph 1 of paragraph 1 of the RA Government Decree N 1819-N, of December 15, 2011, exceeding AMD 8 million or its equivalent, the value and the currency of the property purchased in the given fiscal year, the value and the currency disposed in the given fiscal year;
 - 13) the currency of monetary funds owned by the spouse of high-ranking official, the amount at the beginning and at the end of the given fiscal year;
 - 14) type of the income earned in the fiscal year by the high-ranking official, name of the currency, the total size of the incomes in dram, other currency and product (non-monetary), the total size of the income in product (non-monetary) expressed in dram, the total size of the income in other currency, by the types of the currency;
2. The data included in the declaration on the property and income of the high-ranking official and the persons related to them as of the date assuming and resigning the position responsibilities subject to publication (disclosure) shall contain:
- 1) the first, middle and the last name of the declarant (high-ranking official);
 - 2) the position of the high-ranking official, including the name of the agency;
 - 3) the day, month and year of assuming (resigning) the position;
 - 4) the day, month and year of submitting the declaration;
 - 5) the first, middle and the last name of the spouse, parent and adult and single child of the high-ranking official;
 - 6) the first, middle and the last name of the persons related to high-ranking officials including the persons having second degree relation to them and holding a position, including the state agency and the structural division and the relation to the high-ranking official;
 - 7) the type of the real estate: the plot, the land, isolated water facility, the forest, aged plant material, structure, construction and other facility constructed on the land;
 - 8) the type, the serial number, model, date of production of the mobile asset owned by the high-ranking official with the right of property, and namely a vehicle the working capacity of the motor of which exceeds 50 cubic cm, and with the maximum speed of 50 km/hour, as well as other trailer-truck or semi-trailers, wheeled, truck-chained, self-propelled vehicle or mechanism, air or water vehicle, disposed or purchased in the fiscal year;
 - 9) securities, in particular the bonds, checks, the promissory note, shares and other documents classified as securities by the law of the Republic of Armenia, except for the bank certificates and (or) other documents proving investment, i.e. the share, dividends (banknote and (or) other investment), as well as their value and the currency;
 - 10) the currency and the amount of the borrowings as of the day of assuming or resigning of official position; borrowing is money (borrowed amount) or other property having specific features of the type given to a different person with the condition to return the same amount of money or the property with the equivalent value and having the same features and the type, the size of the borrowing, name of the currency;
 - 11) the name, brief description of any property (valuable property) and any other notes on valuable assets existing in the fiscal year prior to assuming or resigning the responsibilities of the high-ranking official, or the property purchased and disposed within the period of January 1 of the fiscal year of assuming or resigning the responsibilities up to the date of assuming or resigning, not included in points 2-5 of the declaration table, exceeding AMD 8 million or equivalent, which still exist as of the date of assuming or resigning the responsibilities;
 - 12) the currency and the value of monetary funds as of the day of assuming or resigning the

- responsibilities;
- 13) the type of the income, currency, the total amount of the income earned in the fiscal year prior to assuming or resigning the responsibilities of the high-ranking official, or the property purchased and disposed within the period of January 1 of the fiscal year of assuming or resigning the responsibilities up to the date of assuming or resigning, expressed in dram, foreign currency and products (non-monetary), total amount of the income in products (non-monetary) expressed in dram, the total amount of the income in other currency by types of the currency.
3. The data included in the declaration of the property and income owned by the spouse, parent, adult single child with the right of property, subject to publication (disclosure) shall contain:
- 1) the fiscal year for which the declaration is submitted;
 - 2) the first, middle and the last name of the high-ranking official;
 - 3) the name of the position of the high-ranking official, including the name of the state agency;
 - 4) the day, month and year of assuming the position;
 - 5) the first, middle and the last name of the spouse (the parent, the child) as it is in the passport;
 - 6) the day, month and year of submitting the declaration by the spouse (the parent, the child);
 - 7) the type of the real estate owned by the spouse of the high-ranking official with the right of property (a plot, a land, water facility, aged planting material, structure, construction, any other property on the land), obtained or disposed in the fiscal year, the value and the currency of the property;
 - 8) the type of the real estate owned by the parent or single child living with the high-ranking official with the right of property (a plot, a land, water facility, aged planting material, structure, construction, any other property on the land), obtained or disposed in the fiscal year, if the total value of transactions in the fiscal year exceeds AMD 50 million or its equivalent. And in case if the total value of purchase or disposal transactions exceed AMD 50 million, information about all purchase and disposal transactions, their value and the currency shall be specified as well;
 - 9) type, the serial number, model, date of production, the price and the currency of the mobile asset owned by the spouse of high-ranking official with the right of property, vehicle the working capacity of the motor of which exceeds 50 cubic cm and with the maximum speed of 50 km/hour, as well as other trailer-trucks or semi-trailers, wheeled, truck-chained, self-propelled vehicle or mechanism, air or water vehicles, disposed or purchased in the fiscal year,;
 - 10) type the serial number, model, date of production, the price and the currency of the mobile asset owned by the parent or adult single child of high-ranking official with the right of property, vehicle the working capacity of the motor of which exceeds 50 cubic cm and with the highest speed of 50 km/hour, as well as other trailer-trucks or semi-trailers, wheeled, truck-chained, self-propelled vehicle or mechanism, air and water vehicle, disposed or purchased in the fiscal year, if the total amount of purchase transactions and in case of disposal, the amount of disposal transactions exceed AMD 8 million or its equivalent. And in case if the total value of purchase or disposal transactions exceeds AMD 8 million, all purchase and disposal transactions of mobile assets, their value and the currency shall be specified as well;
 - 11) securities purchased or in case of disposal, disposed by the spouse of high-ranking official (the bond, check, promissory note, share and other documents classified as securities by the law of the Republic of Armenia), except for bank certificates and (or) or the documents proving other types of investment (the share, dividends (securities or other type of investment)), as well as the value and the currency;
 - 12) securities purchased or in case of disposal, disposed by the parent or adult single child of high-ranking official in he given fiscal year (the bond, check, promissory note, share and other documents classified as securities by the law of the Republic of Armenia), except for bank certificates and (or) or the documents proving other types of investment (the share, dividends (securities or other type of investment)), if the total value of purchase or disposal transactions

- exceeds AMD 8 million or its equivalent. And in case if the total value of transactions of purchases or disposals exceeds AMD 8 million, all purchase and disposal transactions related to securities, as well as their value and the currency shall be specified;
- 13) the currency of the borrowing given by or returned to the spouse of the high-ranking official in the given fiscal year; borrowing is money (borrowed amount) or other property having specific features of the type given to a different person with the condition to return the same amount of money or the property with the equivalent value and having the same features and the type, the size of the borrowing, name of the currency
 - 14) the name of valuable assets not specified in point B1-B4 of the declaration of the spouse of high-ranking official approved by sub-paragraph 1 of paragraph 1 of the RA Government Decree N 1819-N, of December 15, 2011, exceeding AMD 8 million or its equivalent, the value and the currency of the property purchased in the given fiscal year, the value and the currency disposed in the given fiscal year;
 - 15) the name of valuable assets not specified in point B1-B4 of the declaration of the parents or adult and single child of high-ranking official approved by sub-paragraph 1 of paragraph 1 of the RA Government Decree N 1819-N, of December 15, 2011, exceeding AMD 8 million or its equivalent, the value and the currency of the property purchased in the given fiscal year, the value and the currency disposed in the given fiscal year;
 - 16) the currency of monetary funds of the high-ranking official, the amount at the beginning and at the end of the given fiscal year;
 - 17) the type, the currency, the amount in currency and the total amount of the income earned by the spouse of high-ranking official in AMD, in currency and in product (non-monetary), expressed in dram, foreign currency presented by the types of the currency;
 - 18) the type, the currency, the amount in currency, and the total amount of the income earned by the parent, adult and single child of high-ranking official in AMD, in currency and in product (non-monetary), expressed in dram, foreign currency and presented by the types of the currency”.

**Chief of Staff of the Government
of the Republic of Armenia**

D. Sargsyan

5.6 Interviews

Wednesday, 21 November 2012, Yerevan
<ul style="list-style-type: none">- Ministry of Justice- Transparency International Ukraine- Media representative
Thursday, 22 November 2012, Yerevan
<ul style="list-style-type: none">- Commission on Ethics of High-Level Officials- Prosecutor General's Office, Anti-corruption Department
Friday, 23 November 2012, Yerevan
<ul style="list-style-type: none">- Financial Monitoring Centre- Ministry of Justice

4.2 Azerbaijan: Ethics in civil service

Technical Paper Country risk assessment – Azerbaijan

“Ethics in Civil Service”

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1 SUMMARY

Azerbaijan has undertaken substantial reforms in public administration during the last years. One of the issues that remains challenged is poor conduct by a part of the civil servants' workforce. This study is the result of a desk review of legislation and a field mission to Baku (23-27 April 2012), and focuses on patterns of ethical weaknesses, possible explanations, and most importantly, recommendations for action.

The three most common **ethical violations** seem to be:

- Lack of service culture;
- Bribe and "gift" taking;
- Abuse of conflict of interest.

Possible **explanations** for these shortcomings are:

- Remains of previous Soviet standards;
- Lack of ethical leadership;
- Lack of training on how to deal with ethical dilemmas;
- Lack of enforcement of ethical rules;
- Working conditions;
- The myth of the "unquestionable state";
- The tendency to hide ethical violations;
- Lack of respect for public assets;
- Lack of public awareness.

The following actions could each enhance the ethical culture in Azerbaijan's public administration:

- Introducing competitive reporting on agencies;
- Ensuring a higher independency of Ethics Commissioners;
- Having Ethics Commissioners reporting to the Civil Service Commission rather than to heads of agencies;
- Elaborating regulations on investigations by Ethics Commissioners and on disciplinary proceedings;
- Considering assignment of competency for disciplinary proceedings to Ethics Commissioners; Strengthening and specialising the ethics unit at the Civil Service Commission (staffing and creation of specialised unit);
- Coordinating ethics at all state institutions through one body (e.g. Civil Service Commission);
- Rolling out interactive trainings on ethical dilemmas nationwide, supported by strategic planning;
- Considering appropriate actions to ensure high ethical leadership and public awareness by adopting and implementing a conflict of interest law, an asset declaration system and abolishing immunities of high public officials;
- Making integrity testing a standard prevention and monitoring measure.

2 SCOPE OF ASSIGNMENT

This Paper is part of the Project's regional Activity 1.4 "Risk Assessment: Typologies of underlying causes of corruption". The aim of this activity is to analyse causes and risks of corruption, and identify weaknesses in countermeasures and need for action in integrity systems of the Eastern Partnership countries by addressing a specific sector in each country.

For Azerbaijan, "Ethics in Civil Service" has been chosen as a topic. The purpose of this study is twofold: it serves as a risk assessment for addressing corruption risks related to general ethical violations in civil service, and it will contribute to trainings of trainers on ethics for civil servants to be conducted on 16-17 October 2012 in Baku in the framework of this Project. This study is thus focusing on patterns of poor conduct, possible explanations, and most importantly, recommendations for action. It does not, and cannot – given the resources and time allocated for this exercise within the Project – give an exhaustive picture of the state of civil service in Azerbaijan.

3 KEY FIGURES

3.1 Statistics

About 28,648 civil servants are employed in the public administration system of Azerbaijan (as of end of 2010). This is about 0.7 % of all working people. 28% of civil servants are women (8,115). See Appendix 8.2 for further statistics.

3.2 Salary and social security

The average national monthly salary for civil servants is 425 Manat (about €430 as of June 2012), ranging from 170 Manat on some regional level to 572 Manat in Baku. Whereas teachers might earn as low as 120 Manat, civil servants at the Presidential Administration can earn beyond 1,000 Manat.

Several laws and bylaws are aimed at guaranteeing social security of civil servants, for example regulations:

- "About the Providing of Civil Servants with Pension";
- "About Compulsory Insurance of Civil Servants";
- "About Increasing the Coefficient of the Addition to the Salary for Those of Civil Servants Whose Activity is Connected with a Danger to the Life".

However, it appeared from the interviews that the Regulations "About the Compulsory Insurance of Civil Servants" are still in the process of being fully implemented.

4 ETHICAL FRAMEWORK

4.1 Laws

The legal framework of the civil service in Azerbaijan is contained in numerous laws, decrees and orders of the President, decisions of the Parliament and of the Cabinet of Ministers. There are

about 90 various pieces of legislation, both primary and secondary, which regulate civil service in different sectors and in different areas.⁴¹

4.1.1 Law on Civil Service

The Law on Civil Service of 2000 became effective as of 1 September 2001 (n°926IQ). It remains the main legal act for civil servants, but does not cover **law enforcement** officials, officials of the National Bank and of regional and local administration, and some other officials, who are regulated by sector specific acts.

Article 20 of the Law on Civil Service contains rules on incompatibilities:

“20.1. The civil servant shall not be entitled to the following:

20.1.1. to hold an additional paid position (except for temporary position in order provided for by the labour legislation), no elective or appointed in state bodies;

20.1.2. except for scientific and creative activity, to be involved in pedagogical and other paid activity without a permission of the head of state body he/she serves in;

20.1.3. to be an attorney of the third persons on cases of state or local self-governing bodies;

20.1.4. to use for the benefit of third persons an information on issues concerning his/her civil service and state secret or any other secret being protected by the law within the terms specified by the legislation of the Republic of Azerbaijan after civil service termination;

20.1.5. to travel abroad at the expense of foreign country not notifying the head of the state body he/she is serves in;

20.1.6. to take part in activity of the political parties during fulfilment of service duties;

20.1.7. to participate in strikes and other actions damaging work of the state authorities;

20.1.8. to use the status of civil servant in order to promote a religion and to officialise religious actions in the objects being subordinated to the state bodies;

20.2. Member of the Election commission with a decisive vote must not be engaged in civil service.

20.3. If actions of civil servant conflict with requirements of this article, he/she shall upon receipt of notification determine for himself/herself whether he/she prefers civil service or other activity and inform the head of the state body he/she serves in on this decision within thirty (30) days unless otherwise is provided in the legislation.”

It should be noted that Article 15 of the Council of Europe’s Model Code of Conduct for Public Officials⁴² extends incompatibilities to unpaid positions and activities as well, with the option of receiving permission and guidance in unclear cases:

⁴¹ OECD/ACN Monitoring Report, 2nd Round, 31 March 2010, p. 31, www.oecd.org/dataoecd/8/11/44996103.pdf.

⁴² Recommendation No. R (2000) 10 of the Committee of Ministers to Member states on codes of conduct for public officials (Adopted by the Committee of Ministers at its 106th Session on 11 May 2000), http://www.coe.int/t/dghl/cooperation/economiccrime/corruption/default_en.asp.

“Article 15 – Incompatible outside interests

1. *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.*
2. *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.*
3. *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.”*

Including unpaid activities would have the advantage of preventing circumventions by pretending activities to be unpaid, or from owning (and running) own businesses which might not be necessarily understood as a “paid position”.

According to Article 23.1 Law on Civil Service, *“violations of ethical conduct rules shall be a ground for calling civil servant to disciplinary responsibility.”*

The proceedings are regulated in Article 25 of the Law on Civil Service which foresees the following disciplinary **sanctions**:

- rebuke;
- reduction in salary from 5% up to 30% for a period of one year;
- transfer to the same grade position but with the lower official salary;
- transfer to the lower grade position;
- demotion of professional rank for one level;
- dismissal from the civil service.

4.1.2 Ethics Conduct Rules

The Law on Rules of Ethics Conduct of Civil Servants has become effective as of 16 August 2007.

The main ethical areas addressed by the Law are (respective articles in brackets):

- Honesty (4)
- Respect for rights and freedoms of individuals and legal persons (8.1)
- Civilised behaviour (9)
- Loyalty (6)
- Obedience (10)
- Transparency (7.3, 17.1)
- Confidentiality (8.3, 17.2-3)

- Impartiality (11)
- Conflict of interest (15)
- Receipt of gifts and benefits (12,13.1, 14)
- Use of public property (16)
- Public/political activity (18)
- Incompatibilities (revolving doors) (23)

Many government entities have adopted their own codes of ethics, as for example the Ministry of Economic Development.

In addition, there are ethical standards and courts in place for some independent professions, including lawyers, notaries, auditors and accountants.

4.1.3 Draft Law on Prevention of Conflict of Interest

A Law on Prevention of Conflict of Interest has been debated for years⁴³ and the current draft defines conflict of interest and rules of incompatibility but has not been passed by the Parliament yet.⁴⁴ The National Action Plan for Combating Corruption for 2012-2015 foresees as Action 9.1 the “submission of proposals on improvement of legislation related to the prevention of conflict of interests in the activity of the civil servants and other officials working in the state institutions”. However, it does not contain an explicit commitment for adopting the draft Law on Conflicts of Interest.

4.1.4 Gifts

The Law on Combating Corruption includes a provision on accepting gifts with a monetary limit per year. The Law on Rules of Ethics Conduct of Civil Servants 2007 and the Law on Combating Corruption 2005 set the limits on gifts that may be accepted by civil servants in section 14 and section 8 respectively. The limit is the value of 55 Manats per year (about €55).

4.1.5 Asset declarations

The Law on Combating Corruption requires public officials since 2005 to submit asset declarations. However, submission and verification of declarations is not yet operational. Under current legislation, declarations cannot be disclosed to the public.

The National Action Plan for Combating Corruption for 2012-2015 does not contain an explicit commitment for making the asset declaration system operational, but rather touches only on one aspect of it (Action 9.3: “Preparation of proposals on electronic submission of financial declarations by officials”).

⁴³ See Council of Europe AZPAC Project “[Expert opinion on the draft Law on the Prevention of Conflicts of Interest in the Activities of the Public Officials](http://www.coe.int/t/dghl/cooperation/economiccrime/corruption/Projects/AZPAC/951-AZPAC-TP-draftCol%20law.pdf)” by Quentin Reed, 2008, <http://www.coe.int/t/dghl/cooperation/economiccrime/corruption/Projects/AZPAC/951-AZPAC-TP-draftCol%20law.pdf>.

⁴⁴ OECD/ACN, *ibid*.

4.2 Institutions

4.2.1 Civil Service Commission

The Civil Service Commission (CSC) under the President of the Republic of Azerbaijan was established by Decree of the President of the Republic of Azerbaijan No 180 of 19 January 2005. The CSC is mandated to:

- Carry out competitive exams for entry into the civil service;
- Carry out/conduct competitive promotions for vacant positions;
- Organise training and re-training of civil servants;
- Draft legislation and bylaws in the area of civil service;
- Oversee implementation of the civil code of ethics;
- Manage the registry of civil servants;
- Carry out awareness raising campaigns;
- Exercise strategic oversight over the civil service.

The legal department of the CSC consists of 3 staff members, two of which conduct trainings. The staff currently shares one office, but will be moving into a new office on the new premises of the CSC that are under construction.

4.2.2 Civil Service Management Board

The Civil Service Management Board (hereinafter the “Board”) consists of 18 members. The President, the Chairman of Milli Mejlis (Parliament) and the Chairman of the Constitutional Court of Azerbaijan each appoint 6 members. The board is not recognised as a state body but is a high-level, mainly consultative organ. The main objective of the Board is to supervise the implementation of the Law on Civil Service and to elaborate relevant legal acts and methodical guidance on civil service.

4.2.3 Ethics Commissioners

As implied by Article 22 of the Law on Ethical Rules, each state body has to appoint an Ethics Commissioner who will be in charge of overseeing the implementation of ethical rules. In practice, those Ethics Commissioners are either from human resources or internal audit departments, or heads of agencies themselves. Most Ethics Commissioners are high-level officials. In some cases, Ethics Commissioners are appointed from the expert ranks. This poses a challenge, as they cannot make use of the additional resources (staff, office, etc.) which are available to heads of departments.

4.3 Enforcement

4.3.1 Trainings

Training on ethics is provided as a part of vocational trainings, but is not included in inductive trainings.

Trainings have been concentrating so far on presenting the ethical regulations, and on clarifying possible questions in a classroom discussion. Trainings do not contain interactive or group work on

ethical dilemmas. There is also no training available for Ethics Commissioners on good practices and challenges in disciplinary proceedings. There is yet no training plan available on how ethics trainings could reach all civil servants within a given timeframe.

There is no formal incentive to take part in trainings, such as the requirement for civil servants to have taken part in an ethics training one year prior to promotion.

Training statistics are not available on the CSC's website as numerical charts, but only as narrative information for the years 2010 and 2011 lacking key data such as number of participants and duration of trainings:

"500 booklets on ethics were published in 2010 and distributed among civil servants and citizens. Investigation for complaints and information entered from civil servants and citizens to the Commission about violations of the ethics conduct rules was held. In relation with implementation of the Action Plan of the "National Strategy on Transparency Increase and Fighting against Corruption" (2007-2011) by the Commission, delivery of trainings and workshops for central and local executive power bodies on ethics conduct issues was included into the Action Plan as regular (quarter) activity in 2010.

The representatives of the Commission delivered trainings on the actual topics – essence and principles of ethics conduct rules, ethics conduct rules required from civil servants and their observance, implementation of the Law of the Republic of Azerbaijan "On ethics conduct rules of civil servants" for employees of Ministry of Economic Development on 18 March, 15 April, 6 May, 16 June, 13 July, 12 November; for employees of the Ministry of Ecology and Natural Resources on 21 April; for employees of the Ministry of Communication and Informational Technologies on 9 June and for employees of the State Committee for Securities on 28 September. Presentation on the "Ethics conduct rules of civil servants" was made for employees of 11 administrative executive power bodies of Baku city on 24 February.

The Commission sent relevant letters to central and local executive power bodies and in the letters the Commission recommended on delivery of trainings for ethics conduct rules, and required semi-annual information about delivered trainings and results of complaints entered because of violation of ethics conduct rules and applied disciplinary actions in accordance with article 20.0.2 of the Law of the Republic of Azerbaijan "On ethics conduct rules of civil servants".

Results of summarizing information presented by the central executive power bodies about ethics conduct issues showed that trainings on ethics conduct rules of civil servants were organized in the Ministry of Transport, Ministry of Finance, Ministry of Economic Development and Ministry of Education during 2010 due to approved schedule."⁴⁵

2011:

"[...] In cooperation with United Nations Development Programme (UNDP) and the German International Cooperation (Giz), and together with local authorities, central

⁴⁵ Report for performance of the Civil Service Commission in 2010 in the field of human resources management in civil service, 9 February 2011, http://dqm.k.az/aze/index.php?option=com_content&view=article&id=2525%3Akomissiyann-2010-cu-il-rzind-faliyyti-bard-hesabat&catid=90%3Akomissiyann-faliyyti-bard-illik-hesabatlar-&Itemid=89&lang=en.

*executive bodies and local divisions, regional trainings were organized for the employees of judicial bodies. 600 civil servants took part [...] in 75 cities and districts. [...]*⁴⁶

4.3.2 Disciplinary proceedings

Ethics Commissioners propose the initiation of disciplinary proceedings based on ethical violations. The decision to initiate proceedings resides with the head of the respective state body. The civil servant in question can appeal against any disciplinary sanction to the CSC, and in next instance to the administrative courts.

Information about disciplinary sanctions is kept in the human resources files of the civil servants concerned.

As with training statistics, statistics on disciplinary proceedings are not available on the CSC's website as numerical charts, but only as narrative information for the year 2011 lacking key data such as category of violation, sanction applied, number of complaints and investigations, etc.:

2011:

*"The civil servants serving in the Ministry of Labour and Social Protection of the Population, Ministry of Economic Development, State Committee for Securities, State Statistics Committee, Ministry of Industry and Energy, State Committee of Land and Cartography, Executive Power of Gubadli region, Executive Power of Kurdemir region, Executive Power of Kalbadjar region, Executive Power of Imishli region, Executive Power of Nasimi district of Baku city, Executive Power of Lachin region violated ethics conduct rules and relevant disciplinary actions were applied against them."*⁴⁷

4.3.3 Internal and external complaints

Public officials can complain to their superiors, or, directly to the Ethics Commissioners within their state body.

Citizens can complain about ethical violations to the respective state body, to its Ethics Commissioner, or to the Civil Service Commission. Statistical data on the number of complaints by citizens is not publicly available.

4.3.4 E-governance

The website "etika.az" provides comprehensive information on ethical regulations. Citizens can lodge complaints there online, which are forwarded to the Civil Service Commission. This website also contains contact information of all Ethics Commissioners (name, position, contact details) in central and local state bodies.

⁴⁶ Annual Report of the Civil Service Commission 2011,

http://www.dqmk.az/aze/index.php?option=com_content&view=article&id=2681%3Akomissiyann-2011-ci-il-rzind-faliyyti-bard-hesabat&catid=90%3Akomissiyann-faliyyti-bard-illik-hesabatlar-&Itemid=89&lang=en (in Azerbaijani).

⁴⁷ Report for performance of the Civil Service Commission in 2010 in the field of human resources management in civil service, 9 February 2011, http://dqmk.az/aze/index.php?option=com_content&view=article&id=2525%3Akomissiyann-2010-cu-il-rzind-faliyyti-bard-hesabat&catid=90%3Akomissiyann-faliyyti-bard-illik-hesabatlar-&Itemid=89&lang=en.

The website of CSC contains all ethical regulations and provides some information about implementation (trainings, disciplinary proceedings).⁴⁸

4.3.5 Public awareness

Public awareness of ethics seems to be growing, with the number of reported violations increasing. Still, information about ethical rules does not seem to be displayed in all public agencies.

4.4 Policy

The National Action Plan for Combating Corruption for 2012-2015 makes reference to ethics reforms as follows:

“Article 10. Improvement of Ethical Conduct Rules

Actions and indicators of implementation

10.1 Arrangement of regular ethical conduct trainings and study courses for civil servants

Implementation: Central and local executive authorities and Civil Service Affairs Commission with the President of the Republic of Azerbaijan in 2012-2015

10.2 Preparation, submission to the Commission on Combating Corruption and publication of the annual reports on ethical conduct, which shall include information on awareness raising, instances of violation and disciplinary punishment measures applied

Implementation: Central and local executive authorities and Civil Service Affairs Commission with the President of the Republic of Azerbaijan in 2012-2015

10.3 Elaboration of an effective mechanism for investigation of complaints on violation of the ethical behavior conduct

Implementation: Central and local executive authorities and Civil Service Affairs Commission with the President of the Republic of Azerbaijan in 2013-2014

10.4 Allocation of the ethic conduct section on the web-pages of the state institutions, which shall contain mechanism of electronic submission of complaints on unethical behavior, ethic rules, reports, etc.

Implementation: Central and local executive authorities in 2013

10.5 Development of the ethical conduct training and study module and definition of the minimum requirements thereof

Implementation: Commission on Combating Corruption and Civil Service Affairs Commission with the President of the Republic of Azerbaijan in 2013-2014”

Several other strategies/action plans touch upon civil service reform from different angles as well.⁴⁹

⁴⁸ <http://dqm.az/aze/index.php?lang=en>.

⁴⁹ http://dqm.az/aze/index.php?option=com_content&view=article&id=2259&Itemid=247&lang=en.

5 ETHICAL WEAKNESSES

5.1 Patterns

As mentioned above, there is no statistical data available on the number and categories of ethical violations. The interviews conducted during the field mission point to the following ethical issues being the main challenges.

5.1.1 Lack of service culture

Civil servants tend to treat citizens not as clients, but as subjects dependant on their power and discretion. This attitude manifests itself as follows:

- choice of disrespectful words and tone;
- lack of assistance to citizens in need (provision of advice or other available resources, etc.);
- unwillingness to proceed with matter.

This pattern of ethical violations is related to Article 8.1 of the Law on Rules of Ethics Conduct of Civil Servants “Respect for rights and freedoms of individuals and legal persons”.

5.1.2 Abuse of conflict of interest

Civil servants, especially in local and regional contexts, would let their family or friendship loyalties influence their decision-making. This pattern has also been reported on the central level, where high-level officials of different ministries would be connected and influenced by cross-cutting family interests. This pattern of ethical violation is related to Article 11 of Law on Rules of Ethics Conduct of Civil Servants, which deals with impartiality.

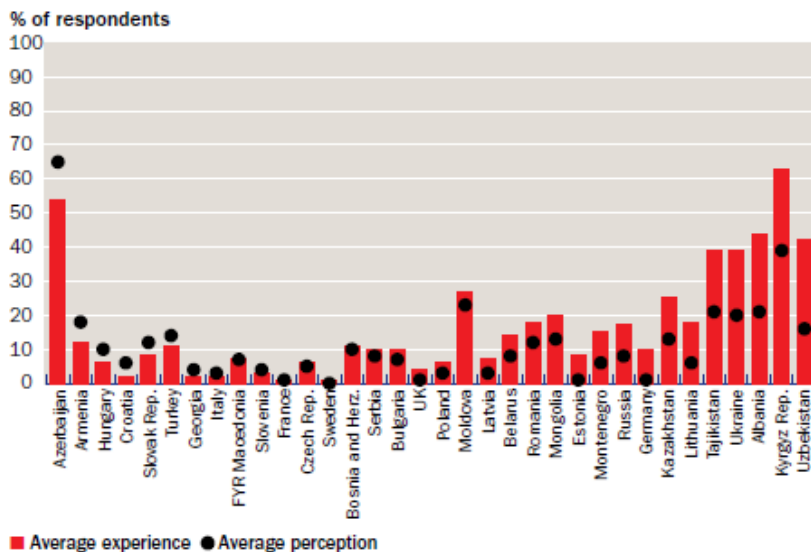
5.1.3 Bribe and gift taking

One of the three most cited ethical violations is bribe and “gift” taking. It is probably the most serious ethical violation as it constitutes a criminal offence at the same time.

A high level of bribery in public service in Azerbaijan is not only suggested by perception-based surveys, but also by experience-based surveys, such as the “Life in Transition Survey” (LiTS) by the European Bank for Reconstruction and Development⁵⁰:

⁵⁰ European Bank for Reconstruction and Development, “Life in Transition Survey” (2010), p. 39, www.ebrd.com/downloads/research/surveys/LiTS2e_web.pdf.

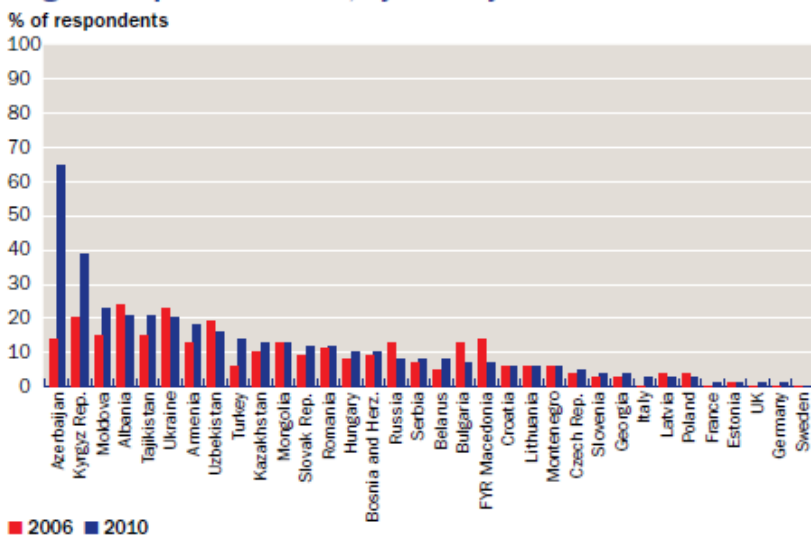
Perception versus experience of corruption



Source: LITS II (2010).

Note: "Average perception" refers to the proportion of respondents who say people like themselves usually or always have to make unofficial payments or gifts averaged across all public services covered by the survey. "Average experience" refers to the proportion of respondents who say they or a member of their household have made an unofficial payments or a gift in the past 12 months averaged across all public services covered by the survey.

Average level of perceived necessity of unofficial payments or gifts for public services, by country



Source: LITS I (2006), LITS II (2010).

Note: "Perception of unofficial payments" refers to the proportion of respondents who say people like themselves usually or always have to make unofficial payments or gifts averaged across all public services covered by the survey.

5.2 Occurrence

Most respondents of the interviews have pointed out that ethical violations occur more frequently on local level than on central level.

As for sectors, traffic police and prosecutor's office/judiciary seem among the most challenged sectors.

Ethical violations are not limited to contacts between public officials and citizens, but reportedly occur among public officials, especially from officials in a higher level of hierarchy towards subordinates.

6 POSSIBLE EXPLANATIONS

The following reasons were given for the poor standards of conduct in the public sector:

- Certain ethical attitudes are simply a legacy of **soviet standards** of treating clients that are visible in elder civil servants. These attitudes are handed down to some extent from elder civil servants to new ones as part of the “formation process”. The (partial) perpetuation of this systemic ethical abuse generates apathy and fear, both among potentially progressive civil servants and among citizens;
- In some state bodies the **leadership** is lacking enough visible ambition for high ethical standards; without such leadership there is little courage or even motivation in the lower hierarchies for change. Surveys among civil servants in other countries show that a need for ethical leadership is among the top necessities for changing ethical attitudes among civil servants;⁵¹
- Civil servants are not sufficiently aware of ethical values in civil service. There seems to be also a lack of awareness and **training** on how to deal with ethical dilemmas. In addition, there seems to be a misconception that a conflict of interest is already corruption, and not only the wrong handling of it;
- There seems to be a clear lack of **enforcement** in some parts of public administration. Some state bodies report outstandingly low numbers of disciplinary proceedings to the Civil Service Commission; some state bodies do not even report any numbers at all. This is in stark contrast to the frequent and almost systemic ethical violations reported by virtually all interviewees;
- The lack of cooperation in reporting disciplinary proceedings to the Civil Service Commission seems to be facilitated by the misunderstanding that a high number of investigated and adjudicated ethical cases would be a sign of an administration with a high number of ethical violations, and thus, a general poor conduct;
- **Public awareness** of ethics seems to be growing, with the number of reported violations increasing. Still, information about ethical rules does not seem to be displayed in all public agencies;
- Interviewees for this Study, as well as past assessments pointed out systemic and long-standing conflicts of interest by high public officials owning companies in lucrative sectors.⁵² Ethical violations in conflicts of interest situations and personal enrichment of leadership would always reflect negatively down to the ethical motivation of ordinary civil servants (and citizens);

⁵¹ A Comparative Approach towards Public Service Ethics in Estonia, Latvia and Lithuania by Jolanta Palidaukaite (Lithuania), Aive Pevkur (Estonia), Iveta Reinholde (Latvia), Paper presented at EGPA annual conference in Madrid, 2007 <http://www.law.kuleuven.be/integriteit/egpa/previous-egpa-conferences/madrid-2007/polidaukaite.pdf>.

⁵² C. W. Johnson (2006). Improving Program Design and Management to Enhance Anti-Corruption Impact in the USAID Azerbaijan Portfolio. Paper produced by Development Alternatives Inc. for USAID/Caucasus-Azerbaijan, January 2006, http://pdf.usaid.gov/pdf_docs/PNADP875.pdf; Quentin Reed, Regulating conflicts of interest in challenging environments: The case of Azerbaijan, U4 Issue 2010:2, <http://www.u4.no/publications/regulating-conflicts-of-interest-in-challenging-environments-the-case-of-azerbaijan/downloadasset/184>.

- **Working conditions** seem to be a factor for civil servants to perform on a high standard, including ethically. This would concern mainly salaries and office space;
- The “**unquestionable state**” seems to be a strong cultural belief and value in Azerbaijan. This belief has a strong impact on the attitude of civil servants as well as on the willingness of citizens to stand up for their rights;⁵³
- Strongly connected with the “unquestionable state” is the tendency to perceive a **transparent** dealing with ethical violations in public administration as “washing dirty linen in public.” A related Turkish saying is: “a broken arm should remain inside the sleeve”,⁵⁴
- A large part of society was isolated from the state elite of the Ottoman and Soviet government. As a consequence, there is **little respect**, in practice, to the protection of **public assets**. Therefore, citizens and civil servants tend to see no problem in capturing public assets in illegal ways, as they feel it is now their time to use them.

⁵³ See for Turkey: Omurgonulsen/Oktem, Towards An Understanding Of The Cultural Pillars Of Ethical Administration In Turkey: A Qualitative Research Endeavour, <http://www.law.kuleuven.be/integriteit/egpa/previous-egpa-conferences/milan-2006/omurgunulson.pdf>.

⁵⁴ Alan Doig, Background Review, Council of Europe TYEC Project, 2009, http://www.coe.int/t/dghl/cooperation/economiccrime/corruption/Technical%20Papers/TYEC/1062_TYEC_TP_17_RP_Draft_CorrupRewTR_AD_March09.pdf.

7 RECOMMENDATIONS

7.1 Competitive reporting on agencies

The Civil Service Commission provides narrative information on trainings delivered and disciplinary proceedings carried out on the basis of information submitted by state bodies. There is room for further improvement, as the narrative information does not allow for a transparent comparison of all state bodies. As a consequence, there is no competition among agencies and thus no incentive for performing well.

Charts on trainings and disciplinary proceedings should show all state bodies, including those that did not provide any information at all. All charts need to show total figures and what these numbers mean in percentages. For example:

Template Training Chart:

Ethics trainings	2009		2010		2011		Total				
	Participants	Training	Participants	Training	Participants	Training	Short trainings	Longer trainings	Total staff	Trained staff	% trained staff
Ministry A	50	short	0	short	0	short	1	0	3.000	60	2
Ministry B	70	long	30	short	50	short	2	1	300	140	50
etc.											

“Short” training: Presentation of ethical rules, question and answer (short training)

“Long” training: Interactive training involving group work on case scenarios with ethical dilemmas, discussion (longer training)

Template Disciplinary Proceedings Chart:

Disciplinary proceedings	2009				2010				2011				Total		
	Complaints	Proceedings initiated	Salary sanctions	transfer, demotion, dismissal	Complaints	Proceedings initiated	Salary sanctions	transfer, demotion, dismissal	Complaints	Proceedings initiated	Salary sanctions	transfer, demotion, dismissal	Complaints	Sanctions	% Sanctions
Ministry A	20	2	1	0	15	1	0	0	5	0	0	0	40		2
Ministry B	2	2	2	0	1	1	0	0	0	0	0	0	3		67
etc.															

“Salary sanctions”:

Art. 25.2.2. and Art. 25.2.3. Civil Service Law

“transfer, demotion, dismissal”:

Art. 25.2.4., 25.2.5. and 25.2.6. Civil Service Law

“Rebukes” under (Art. 25.2.1. Civil Service Law) are not counted.

A high number of complaints and a low percentage of sanctions normally indicate a low level of ethical practice and disciplinary enforcement. It is important to show the number of complaints received within or concerning each Ministry, not just the number of disciplinary proceedings. Otherwise there will be a counterincentive for Ministries not to initiate disciplinary proceedings in order to lower statistical figures.

For the number of complaints, all data should be incorporated, including complaints received via www.etika.az and by the Civil Service Commission itself.

Template Chart on Complaints:

Complaints	2009				2010				2011				Total				%	
	to agency	to etika.az	to civil service commission	total	to agency	to etika.az	to civil service commission	total	to agency	to etika.az	to civil service commission	total	to agency	to etika.az	to civil service commission	total	Number of staff	Ratio complaints/staff
Ministry A	1	0	0	1	0	0	0	0	0	2	1	3	1	2	2	5	500	1
Ministry B	2	0	0	2	1	0	2	3	0	8	1	9	3	8	3	14	100	14
etc.																		

Such a chart could create an incentive for state bodies to enhance the ethical culture and thus reduce the number of complaints.

7.2 Ethics Commissioners

7.2.1 Independence

As long as Ethics Commissioners are dependent in their decisions about ethical violations on the heads of agencies, this will create the following problems:

- Heads of agencies or other internal policy considerations (e.g. worries about the agency's image) might influence Ethics Commissioners in their decisions about ethical violations;
- A lack of unified application of ethical rules.

It is therefore recommended to make Ethics Commissioners independent from their heads of agencies.

7.2.2 Reporting to Civil Service Commission

At the same time, though, Ethics Commissioners should be responsible to one unified body - the Civil Service Commission.

A similar regulation is indicated for example in Turkish Law, Art 29 of the Ethics Code⁵⁵, which states: "Ethics Commission works in cooperation with the [National] Council [of Ethics at the Prime Minister's Office]." An indication of the independence of ethics commissions is also found in Art. 30 of the Ethics code: "The [Ethics] Commission is authorized to deliver opinion about the problems faced during the practice of the principles of ethical behaviour."

⁵⁵ "Regulation on the Principles of Ethical Behavior of the Public Officials and Application Procedures and Essentials", entered into effect as published in Official Gazette dated 04/13/2005 and numbered 25785;

<http://www.antalya.gov.tr/yukleme/dosya/80cd296afe348cf9f60ddf6057df1e11.pdf>

(English); <http://www.mevzuat.adalet.gov.tr/html/23127.html> (Turkish).

7.3 Investigations and disciplinary proceedings

7.3.1 Regulation

The current Law on Ethics does not elaborate on how Ethics Commissioners can carry out their investigations, what the procedure is, what their rights are, the evidence used, and the rights of the officials in questions. It is recommended to clarify this investigative role of Ethics commissioners in the law. The ethics investigations should be merged with disciplinary proceedings in order to avoid overlaps or confusion between the two.

The Law on Civil Service regulates disciplinary proceedings in one article (Art. 25 “Liability of civil servants”) which comprises about 550 words.

Legislation in other countries often goes into much more detail: the Federal Law on Disciplinary Proceedings of Germany⁵⁶ is comprised of 12,700 words, which is about 23 times more than the Azerbaijani regulation. If one includes bylaws⁵⁷, this rises up to about 45 times more words (24,000 words). The Austrian law on disciplinary proceedings comprises 45 articles with 5,400 words (Art. 91-135 of Civil service Law, bylaws not counted), 10 times more than the Azerbaijani regulation.⁵⁸

This purely numerical comparison indicates what is lacking in terms of substance in the Azerbaijani law:

- Competencies and initiation of disciplinary procedures;
- Rights of the public official;
- Taking of evidence;
- Decision-making;
- Appeal procedures;
- Appeal procedures at court.

7.3.2 Competency for disciplinary proceedings

Currently, the head of agency is the body competent for disciplinary decisions. This might not be the ideal solution, for the same reason that Ethics commissioners should not be dependent on heads of agencies (see above 7.2):

- Worries about the agency’s image might influence heads of agencies in their decisions about sanctioning ethical violations;
- A lack of unified application of ethical rules.

Therefore, it seems preferable to assign this task to the Ethics commissioners, who coordinate their investigations and decisions with the Civil Service Commission. The Civil Service Commission should have – if possible under new legislation – the authority to seize jurisdiction over a case at its own discretion.

⁵⁶ <http://www.gesetze-im-internet.de/bdgb/BJNR151010001.html>.

⁵⁷ http://www.verwaltungsvorschriften-im-internet.de/bsvwvbund_25092003_ZA4dP10600810001.htm.

⁵⁸ <http://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10008470>.

On the other hand, it does not seem recommendable to administer disciplinary sanctions by a separate, independent disciplinary committee in each state agency, as is the case in Turkey. Experts have criticized this separation in the past as ineffective.

7.4 Civil Service Commission

7.4.1 Ethics unit and funding

The Civil Service Commission has assigned ethical matters to the Legislative Department. In this Department two out of a total of three staff take care of all ethical matters (regulation, trainings, public awareness, reporting) in addition to general legal tasks. In order to roll out ethics trainings to a total public workforce of 28,500 civil servants in Azerbaijan, more staffing and a more specialised ethics unit at the Civil Service Commission would appear to be necessary. This would be even more the case if the Civil Service Commission would be more involved in the coordination of ethical investigations.

7.4.2 Streamlining ethics oversight

It is somewhat unfortunate that the Civil Service Commission would not have at least partial jurisdiction also over ethics at law enforcement agencies, judiciary, parliament, etc. There might be some sectors where regulating and implementing ethics might be regarded as a matter of independence (e.g. judiciary, parliament). However, at least reporting on ethical violations and sanctions, trainings, and prevention in general should be brought together nationally at the Civil Service Commission.

7.5 Trainings

Experience shows that ethical change in attitudes is possible. As an auditor's rule of thumb, it might be assumed that 5-10 % of civil servants are "immune" to temptation to engage in ethical violations, 5-10% will always be prone to such violations, and the other 80-90% are generally decent but may be in need of guidance or at risk of succumbing to temptation in certain situations. These 80-90% are the target group of trainings and will in the end make the impact visible.⁵⁹ In 2008, the Council of Europe provided a "Proposed National Strategy for Training on Ethics and Conflict of Interest for civil servants of the Republic of Azerbaijan"⁶⁰ as part of the AZPAC Project "Support to the anti-corruption strategy of Azerbaijan". The recommendations formulated in the proposed strategy are still fully valid today. A few points are highlighted below:

7.5.1 Substance

Often trainings are only conducted by presenting the code of ethics to participants, pointing out what civil servants are not allowed to do, and answering a few questions. The impact of such trainings tends to be rather low and could be even counterproductive. In order to achieve a positive, high impact, the following should be considered:

⁵⁹ Quentin Reed, AZPAC-Project Presentation "Training for Azerbaijan Civil Service Commission, 11 March 2008: Implementation of Rules of Ethical Conduct", unpublished.

⁶⁰ Technical Paper: Proposed National Strategy for Training on Ethics and Conflict of Interest for civil servants of the Republic of Azerbaijan, Quentin Reed (United Kingdom), <http://www.coe.int/t/dghl/cooperation/economiccrime/corruption/Projects/AZPAC/951-AZPAC-TP-Strategy%20on%20ethics%20trainings-Reed.pdf>.

- Trainings should focus on the code of ethics as a useful tool for civil servants;
- Ethics is not about memorizing solutions, but about raising awareness concerning ethical dilemmas, and how officials should use the principles contained in rules of conduct to make the right decision on what to do. Therefore, trainings should have participants actively discussing relevant, real life scenarios with ethical dilemmas.

A joint Council of Europe and European Union Project on Ethics for the prevention of corruption in Turkey (TYEC) was implemented by the Council of Europe from 2007 to 2009.⁶¹ Besides reviewing existing ethics regulations, the Project focused on eventually reaching the whole Turkish public administration through an ethics training programme. The Project trained members of the ethics commissions in each public agency to be ethics trainers. Those trained trainers would either train further trainers, or train civil servants on ethics. The ethics trainings were designed as interactive, using case scenarios on ethical dilemmas. A second phase of the Project is currently being implemented for the years 2012-2014.

The methodology and training materials developed within the TYEC project will be used by the EaP/CoE Facility Project for the two pilot trainings of trainers to be conducted on 16-17 October 2012 in Baku.

Future trainings should include:

- A guided classroom discussion on:
 - o What is ethics?
 - o What are the reasons for poor ethical conduct?
- A presentation and discussion of the ethical framework in Azerbaijan.
- Group work on ethical case scenarios, followed by a classroom discussion.
- A presentation of real life case scenarios on how disciplinary proceedings are carried out, and a guided classroom discussion on what the appropriate sanctions would have been in these cases.

Trainings and training materials on interactive ethics trainings should be available to all Ethics Commissioners.

7.5.2 Strategic Planning

A planning document would need to lay out answers to the following questions: How can ethics trainings be rolled out to all 28,600 civil servants? How many training sessions will be conducted and how many trainers would be needed during which timeframe?

7.6 Policy

7.6.1 Ethical leadership

⁶¹ http://www.coe.int/t/DGHL/cooperation/economiccrime/corruption/projects/TYEC/TYEC_en.asp.

Surveys among civil servants in other countries show that a need for ethical leadership is among the top necessities for changing ethical attitudes among civil servants.⁶² It seems, however, as if there are limits to having such a clear ethical leadership. Some of interviewees for this Study, as well as past assessments have pointed out systemic and long-standing conflicts of interest by high public officials owning companies in lucrative sectors.⁶³ Ethical violations in conflicts of interest situations and personal enrichment of leadership would always reflect negatively down to the ethical motivation of ordinary civil servants (and citizens). Hence, the adoption and implementation of laws on conflict of interest and asset declaration system, as well as the abolishment of immunities might be among the first visible steps in dealing with this challenge. Regulation of incompatibilities in the current civil service law should also be reviewed.

7.6.2 Reducing immunities

The question of immunities is connected to ethical leadership. The privilege of immunity from prosecution (and most often disciplinary proceedings) supports perception of impunity, and thus of ethical weakness of high public officials.⁶⁴ This perception reflects negatively on the ethical motivation of “ordinary” civil servants as well as of citizens.

In Azerbaijan, the following categories of functionaries are immune from criminal prosecution:

1. President (Art. 106 Constitution)
2. Deputies (Art. 90, 91 Constitution)
3. Prime Minister (Art. 126 Constitution)
4. Judges (Art. 128 Constitution)

It must be noted that there are countries in West- and Eastern Europe with much more progressive immunities regulations. In Bosnia and the Netherlands for example, only one category of functionaries enjoys comprehensive criminal immunity: the President/the Queen. Deputies only enjoy immunities for acts performed in official function (speeches, votes). In the United Kingdom, deputies do not even enjoy this privilege.

7.6.3 Public awareness

Information about ethical rules needs to be displayed in all public agencies, and the Civil Service Commission should ensure this through the network of ethics commissioners for example.

⁶² A Comparative Approach towards Public Service Ethics in Estonia, Latvia and Lithuania by Jolanta Palidaukaite (Lithuania), Aive Pevkur (Estonia), Iveta Reinholde (Latvia), Paper presented at EGPA annual conference in Madrid, 2007 <http://www.law.kuleuven.be/integriteit/egpa/previous-egpa-conferences/madrid-2007/polidaukaite.pdf>.

⁶³ C. W. Johnson (2006). Improving Program Design and Management to Enhance Anti-Corruption Impact in the USAID Azerbaijan Portfolio. Paper produced by Development Alternatives Inc. for USAID/Caucasus-Azerbaijan, January 2006, http://pdf.usaid.gov/pdf_docs/PNADP875.pdf; Quentin Reed, Regulating conflicts of interest in challenging environments: The case of Azerbaijan, U4 Issue 2010:2, <http://www.u4.no/publications/regulating-conflicts-of-interest-in-challenging-environments-the-case-of-azerbaijan/downloadasset/184>.

⁶⁴ See e.g. Transparency International's Bribe Payers Survey 1999, p. 4 (63% of respondents to a survey by Gallup International see 'public official's immunity' as one of the 'main factors that have contributed to an increase in corruption', ranking it the 2nd most important factor), www.transparency.org/policy_research/surveys_indices/bpi.

7.7 Integrity testing

Sometimes not only public officials, but also citizens will profit from ethical violations: the policeman will pocket the “fine” (bribe), and his superiors often partially profit from the money collected during the day; at the same time, the taxi-driver will pay only half of the fine to the policeman than he would owe to the State.

Sometimes citizens could even be regarded as the instigators of ethical violations. For example, in some countries citizens generally do not like to fasten their seat-belts. Some are more willing to bribe police officers if caught than abide by the rules. As they pay a much smaller bribe to the police officer than would be the fine for the violation, those citizens have a keen interest in keeping a corrupt environment.

This ethical collusion between public officials and citizens will not be broken, unless there is a targeted intervention: integrity testing. It has proved to be successful in some environments with weak integrity and would be recommended for sectors with a reported systemic occurrence of bribery and other ethical violations.⁶⁵

Since 1994, the New York City Police Department has conducted integrity tests within the following framework⁶⁶:

- Any ethical violation can be an objective of the testing: bribery, service mentality, police brutality, discrimination, etc.;
- Realistic scenarios such as the offering of cash from an arrested drug dealer, but played by officers of the integrity unit;
- Integrity tests are recorded using audio and video electronic surveillance as well as the placement of witnesses at the scene;
- Targeted tests: these aim at specific officers who are suspected of corruption, based upon previous allegations by citizens, criminals or colleagues;
- Random tests: aimed at a random selection of officers;
- All officers are aware that such a program exists, but are not told about the frequency or occurrence of such tests;
- No police officer can now know whether or not a corrupt offer is an integrity test.

The integrity tests have had the following impact so far:

- Officers believe that it is better to be safe and to report the incident, instead of overlooking it or accepting the bribe offer;
- About 20% of the officers who were tested based on previous suspicions failed the test, and were prosecuted and removed from the force;
- Only 1% of the officers who are subjected to random tests fail.

The objectives of integrity testing are:⁶⁷

⁶⁵ See: OSCE, Best practices in combating corruption, 2004 (English, Russian and Azerbaijani), p. 141 (English version), www.osce.org/eea/13738.

⁶⁶ The following text is based on the OSCE, Best practices in combating corruption, 2004 (English and Russian), Chapter 12, page 142-144 (“Integrity testing”); Chapter 6 (“Building an ethical administration”), www.osce.org/eea/13738.

⁶⁷ The following text is based on “The United Nations Handbook on Practical Anti-Corruption Measures for Prosecutors and Investigators” (2004), pages 91-97, www.unodc.org/pdf/corruption/publications_handbook_prosecutors.pdf.

- Identifying public officials, agencies and citizens prone to corrupt practices;
- Collecting evidence for prosecution;
- Increasing the perceived risk of detection and thus deter corruption among officials and citizens;
- Encouraging officials to follow on their obligation of reporting bribe offerings (as any offer could be an integrity test);
- Identifying public officials who are honest and trustworthy, which can be credited for promotions;
- Identifying the training needs of public officials, i.e. patterns of misconduct which could go back on a lack of awareness for ethical challenges;
- Showing to the public that government is serious about prosecuting corruption.

Overall, integrity testing is an extremely effective and cost-efficient deterrent to corruption. However, any real crackdown on bribery as well as on other ethical violations would dry out sources of income that normally run from ordinary policemen up to the highest officials. Application of integrity testing is in this regard a litmus test for the willingness to seriously change the course. In order to avoid abuse for personal gain or against political opponents, the unit carrying out the tests must be of the highest integrity itself.

8 APPENDIX

8.1 Interviews

Monday, 23 April 2012, Baku
<ul style="list-style-type: none">- Lawyers Association- Ombudsman's Office
Tuesday, 24 April 2012, Baku
<ul style="list-style-type: none">- Legal Department, Civil Service Commission- Department of Civil Service and Personnel, Ministry of Economics
Wednesday, 25 April 2012, Baku
<ul style="list-style-type: none">- Civil Service Commission- Human Resources Department of State Committee for Securities- Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ)- Council of Europe Office in Baku- Secretariat of the Commission on Combating Corruption, Administration of the President
Friday, 27 April 2012, Baku
<ul style="list-style-type: none">- Secretariat of the Commission on Combating Corruption, Administration of the President
Phone Interviews
<ul style="list-style-type: none">- Mr Quentin Reed, Team Leader, former Council of Europe Project "Support to the Anti-Corruption Strategy of Azerbaijan (AZPAC)"

A request for a meeting with UNDP Office, Baku, about the 2012 Project "Good Governance through Civil Service Reform, Phase III" remained unanswered.⁶⁸

⁶⁸ <http://www.un-az.org/undp/sehife.php?lang=eng&page=020011>.

8.2 Statistics: workforce, wages, etc.

The following information is taken from the webpage of the State Statistical Committee of the Republic of Azerbaijan:⁶⁹

2.1 Distribution of employed population by economic activities

thsd. persons

	2005	2006	2007	2008	2009	2010
On economy, total	4062,3	4110,8	4162,2	4215,5	4271,7	4329,1
Agriculture, forestry and fishing	1573,6	1583,2	1597,6	1611,3	1628,6	1655,0
Mining	42,3	44,1	44,3	44,2	42,7	41,5
Manufacturing	198,4	203,4	206,7	211,4	214,2	208,9
Electricity, gas and steam production, distribution and supply	27,9	30,9	34,6	34,9	30,0	30,6
Water supply; waste treatment and disposal	23,9	24,3	25,4	27,5	25,3	25,2
Construction	211,9	217,0	222,5	226,0	229,0	287,5
Trade; repair of transport means	634,8	649,2	656,5	670,0	678,9	626,7
Transportation and storage	174,6	176,7	178,9	181,2	183,6	179,1
Accommodation and food service activities	25,1	25,3	25,7	26,0	26,3	46,9
Information and communication	32,3	32,7	33,2	33,5	34,0	55,8
Financial and insurance activities	18,1	20,9	21,2	21,5	21,8	24,4
Real estate activities	82,1	83,0	84,1	85,2	86,3	69,6
Professional, scientific and technical activities	43,4	43,9	44,4	45,0	45,6	45,6
Administrative and support service activities	38,7	38,0	34,9	33,8	38,7	46,5
Public administration and defence; social security	256,6	259,6	262,9	266,3	269,8	279,1
Education	345,1	342,8	348,9	355,2	361,0	349,8
Human health and social work activities	188,8	189,1	192,6	192,4	201,9	170,3
Art, entertainment and recreation	52,4	53,2	53,2	54,3	56,9	59,6
Other service activities	92,3	93,5	94,6	95,8	97,1	127,0

Note: Number of employed persons by economic activity was precise since 2005 based on results of 2009 population census and NACE rev.2

⁶⁹ http://www.azstat.org/statinfo/labour/en/005_1.shtml.

5.1 Number of employees holding the civil service positions in 2005-2010

person

Administrative posts according to classification	2005	2006	2007	2008	2009	2010
On Republic, Total	25735	26970	27566	27977	28482	28648
including female	7350	7474	7821	7982	8096	8115
Administrative posts according to I-IV classification - total	757	793	608	615	619	866
including female	142	158	136	142	139	210
Administrative posts according to V-IX classification - total	20731	21746	22181	22283	22627	22467
including female	4482	4626	4898	4857	4888	4811
head of division	3479	3312	3428	3465	3516	3472
including female	268	185	250	223	220	215
deputy head of division	2133	2177	2242	2279	2291	2339
including female	241	221	230	232	220	219
head of sector	1737	1767	1855	1853	1873	1872
including female	274	287	307	297	307	308
chief consultant	5057	5308	5450	5474	5579	5572
including female	1203	1199	1284	1273	1275	1278
senior consultant	1176	1195	1160	1212	1224	1180
including female	244	267	251	282	278	270
leading consultant	2925	3150	3157	3079	3176	3138
including female	876	899	933	941	939	915
consultant	4224	4837	4889	4921	4968	4894
including female	1376	1568	1643	1609	1649	1606
Supplementary posts in civil service - total	4247	4431	4777	5079	5236	5315
including female	2726	2690	2787	2983	3069	3094
chief specialist	2267	2345	2512	2733	2854	2929
including female	1510	1467	1505	1639	1727	1788
senior specialist	791	852	1038	1125	1172	1207
including female	526	563	656	685	711	720
leading specialist	393	423	418	418	450	453
including female	272	281	258	282	282	274
specialist	796	811	809	803	760	726
including female	418	379	368	377	349	312

**5.4 Average monthly nominal wages of civil servants
by economic regions in 2005-2010**

manat

Indicators	2005	2006	2007	2008	2009	2010
On Republic						
Total	181,6	185,1	237,5	345,4	420,8	425,7
of which: officials according to administrative posts	237,5	229,5	285,8	397,4	481,1	496,2
including female	238,9	227,8	289,8	433,9	508,6	498,5
Baku city						
Total	267,3	253,8	331,2	489,0	572,0	572,1
of which: officials according to administrative posts	524,9	416,9	516,2	733,9	832,5	849,8
including female	449,9	377,0	465,8	731,5	816,1	725,4
Absheron economic region						
Total	125,4	136,4	166,3	234,5	300,0	301,7
of which: officials according to administrative posts	174,3	184,3	232,7	335,5	423,3	434,7
including female	131,6	165,8	206,9	287,6	373,9	370,0
Ganja-Gazakh economic region						
Total	131,3	144,1	171,3	247,7	321,0	323,3
of which: officials according to administrative posts	157,9	176,6	214,3	291,9	379,7	387,3
including female	145,8	165,3	202,9	278,7	355,6	373,5
Shaki-Zagatala economic region						
Total	121,4	135,8	167,7	238,9	309,1	314,9
of which: officials according to administrative posts	161,6	176,1	213,4	296,3	385,1	388,9
including female	156,8	164,2	236,1	341,7	430,5	449,4
Lankaran economic region						
Total	129,7	145,5	177,2	252,5	317,0	321,4
of which: officials according to administrative posts	154,6	173,2	212,0	302,5	379,7	386,9
including female	129,5	152,7	189,7	272,8	342,3	367,9
Guba-Khachmaz economic region						
Total	125,3	138,7	166,8	241,6	312,6	317,6
of which: officials according to administrative posts	143,8	174,8	213,0	290,4	377,5	397,9
including female	121,7	154,3	191,1	280,6	376,5	394,9
Aran economic region						
Total	128,5	140,7	174,5	244,7	314,9	322,3
of which: officials according to administrative posts	161,5	172,2	212,2	292,2	375,5	396,4
including female	160,2	161,0	213,8	302,4	372,8	412,9
Yukhari Garabagh economic region						
Total	137,1	145,4	193,5	260,7	331,2	332,6
of which: officials according to administrative posts	165,9	176,8	233,1	310,2	379,1	395,0
including female	138,7	146,7	198,3	268,9	333,3	364,1
Kalbajar-Lachin economic region						
Total	132,3	151,6	189,2	305,1	332,1	336,4
of which: officials according to administrative posts	161,4	177,6	221,7	367,3	385,8	400,5
including female	140,7	175,7	209,2	361,5	368,0	408,2
Daghlig Shirvan economic region						
Total	124,4	139,2	175,7	266,3	315,5	321,3
of which: officials according to administrative posts	161,3	177,7	220,9	332,2	375,7	388,8
including female	149,7	167,8	200,6	309,5	370,4	370,1
Nakhchivan economic region						
Total	167,2	178,7	219,4	291,6	379,3	389,4
of which: officials according to administrative posts	199,3	218,3	277,0	351,7	470,0	506,5
including female	246,5	232,4	320,0	415,1	534,8	580,4

5.9 Average monthly nominal wages of civil servants in 2010

in manat

Indicators	Calculated wages fund for civil servants	Social payments not included in wages fund	Average monthly nominal wages
On Republic			
Total	146048956,7	82688,4	425,7
of which: officials according to administrative posts	44263424,4	17896,8	496,2
including female	4294717,2	3851,9	498,5
Baku city			
Total	76875017,7	47123,3	572,1
of which: officials according to administrative posts	15266591,1	1067,9	849,8
including female	1854134,9	-	725,4
Absheron economic region			
Total	2520167,2	-	301,7
of which: officials according to administrative posts	714676,1	-	434,7
including female	119865,3	-	370,0
Ganja-Gazakh economic region			
Total	11232929,4	4101,3	323,3
of which: officials according to administrative posts	4852173,9	540,9	387,3
including female	600659,5	180,9	373,5
Shaki-Zagatala economic region			
Total	5759275,8	-	314,9
of which: officials according to administrative posts	2170212,8	-	388,9
including female	226499,5	-	449,4
Lankaran economic region			
Total	5650651,0	9458,0	321,4
of which: officials according to administrative posts	2367940,0	2360,0	386,9
including female	119194,0	-	367,9
Guba-Khachmaz economic region			
Total	3948171,7	-	317,6
of which: officials according to administrative posts	1666566,6	-	397,9
including female	203775,5	-	394,9
Aran economic region			
Total	16293886,3	12874,8	322,3
of which: officials according to administrative posts	6864920,9	8541,0	396,4
including female	475708,5	1876,0	412,9
Yukhari Garabagh economic region			
Total	5272791,2	5982,0	332,6
of which: officials according to administrative posts	2536158,7	5387,0	395,0
including female	200961,3	1795,0	364,1
Kalbajar-Lachin economic region			
Total	3839549,8	805,0	336,4
of which: officials according to administrative posts	2129252,8	-	400,5
including female	171426,5	-	408,2
Daghigh Shirvan economic region			
Total	3427920,5	-	321,3
of which: officials according to administrative posts	1464893,8	-	388,8
including female	106589,0	-	370,1
Nakhchivan economic region			
Total	11228596,1	2344,0	389,4
of which: officials according to administrative posts	4230037,7	-	506,5
including female	215903,2	-	580,4

Technical Paper

Country risk assessment – Belarus

“Ethics in Public Service”

prepared by

Tilman Hoppe, Project Long-Term Adviser

with input from Valts Kalniņš, Council of Europe Expert

16 September 2013

ECCU-EaP-.../2013

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9 SUMMARY

This study is the result of a desk review of legislation and a three-day field mission to Minsk (10-12 September 2013) interviewing different stakeholders. Within the narrow scope of this exercise (see below Chapter 2), based on the limited number of interviews organisationally possible in a field mission and on the data accessible and made available, the following observations can be made:

The legislative framework is quite comprehensive and exhaustive, in particular after recent amendments including further regulation of conflicts of interests and gift acceptance. Codes of conduct exist yet only in a few state entities; rolling out such codes to the whole state sector is under consideration.

In general, public servants seem to be very oriented and keen towards following what is ordered to them by the letter of the law, including ethical regulations. Such an approach will clearly lead to substantial impact of such rules. There seems to be potential for further understanding of ethics not only as a question of simply following the rules, but also as a form of understanding one's own role and public image irrespective of the fact that it is ordered by law. In other words, ethics consists not only of "must not's" but also opens positive options and possibilities. In addition, aspiration to a high ethical performance would probably not come only from simply keeping within ethical prohibitions.

Trainings at the Academy of Public Administration seem to make use of many modern and advanced interactive training techniques. On the face of it, such trainings seem to support the development of public servants as understanding ethics not only as rules, but also personal values. Trainings implemented in some sector specific institutions seem to be more rule and deterrence-based.

Questions of public servants about ethics in daily life as well as violations are dealt with in the hierarchical line of reporting. There exist no special bodies (such as ethics commissioners or a commission) providing uniform advice on such questions; the anti-corruption commissions existing in many state bodies focus on structural preventive measures, but do not review individual cases. Non-criminal violations are subject to disciplinary and administrative proceedings, and are reportedly followed-up in general.

The interviews and provided documents did not reveal any substantial systematic weaknesses in the ethical performance in public administration. The potential for further enhancement could be unfolded by considering the following measures:

- providing guidance for public servants through codes of conduct in all sectors of public administration, including regional and local level, and continuing to include representatives of civil society and expert groups in the drafting and enhancement of such rules;
- reviewing the feasibility and added value of one or several intra-institutional or external bodies entrusted with overseeing and advising on the implementation of ethical codes and on ethical challenges in the daily practices of public servants; this function may also be carried out by existing entities;
- keeping in mind for all trainings carried out that ethical awareness consists not only of following rules but also of the ability to reflect and question a good interpretation of these rules in unforeseen dilemmas;

- involving the public in the further evolvement of ethical rules and values not only through publicising criminal cases of corruption violations, but also discussing cases and questions of ethical challenges;
- collecting data centrally or regionally on disciplinary proceedings and on complaints management in order to ensure the identification of entities with possible weak practices.

10 SCOPE OF THE ASSIGNMENT AND OF “ETHICS”

This Paper is part of the Project’s regional Activity 1.4 “Risk Assessment: Typologies of underlying causes of corruption”. The aim of this activity is to analyse causes and risks of corruption, and identify weaknesses in countermeasures and need for action in integrity systems of the Eastern Partnership countries, by addressing a specific sector in each country. For Belarus, “Ethics in public service” has been chosen as a topic by the General Prosecutor’s Office.

The purpose of this study is twofold: it serves as a risk assessment for addressing risks of ethical violations in public service, and at the same time, it contributes to trainings on anti-corruption concepts and ethics for public servants conducted on 30 September – 3 October 2013 in Minsk in the framework of this Project. This study is thus focusing on patterns of ethical conduct, possible explanations, and recommendations for action. It does not, and cannot – given the resources and time allocated for this exercise within the Project – give an exhaustive picture of the state of public service in Belarus.

The topic of ethics relates to this anti-corruption Project, as corruption is always embedded in a general culture of lack of service mentality, disrespect or disdain for citizens, and absence of caring about the public good. At the same time, the level of respect for and implementation of laws is always low in an environment with a low level of ethical culture. In addition, a low level of ethics almost always creates the perception of corruption, even if there is in reality no correspondingly high level of bribery.

The risk assessment is focusing on the executive sector, leaving out the judiciary and legislative. Interview partners were all from central authorities; thus, the assessment does not include the regional and local perspective of ethics.

Ethics could be understood broadly, it is influenced by, and relates to a broad range of governance issues, such as separation of powers, immunities, freedom of information, political diversity, freedom of opinion, empowerment of citizens etc. In addition, ethics is connected in the end to the whole integrity framework of a country. Such issues are subject of the joint 1st and 2nd Round GRECO-evaluation of Belarus. In order to avoid any duplication with the GRECO evaluations, this risk assessment is trying to isolate the topic of “ethics” from broader political, governance and corruption prevention issues. This rather narrow and somewhat isolated view on ethics would be artificial if it were not complemented by additional information; however, as long as this report is read together with the evaluation reports by GRECO, it is hoped that the reader will gain a complete and differentiated picture.

11 KEY FIGURES

11.1 Statistics

About **55,300** public servants are employed in the public administration system of Belarus (as of end of 2012, not including law enforcement staff).⁷⁰ This is about 1.2 % of all working people. Under a reform that has started in 2013, the number of public servants is planned to be cut by about 13,000 down to 43,000.⁷¹

There are numerous central state units, which include 24 line ministries and 7 Committees. In addition, there are regional and local state units,⁷² and various other public institutions and organisations, including state-run enterprises.

11.2 Salary and social security

The average national monthly salary for public servants is the equivalent of about €401 (as of November 2012 all figures before taxes). The average nominal monthly salary in the first six months of 2013 was BYR 4,770,900 (about €418) in the economy as a whole and BYR 4,942,000 (about €433) in the state administration.⁷³ Several laws and bylaws are aimed at guaranteeing social security of public servants, and include the right to a pension, benefits to bereaved, and health care for some higher public servants (cf. Article 46 Public Service Law).

⁷⁰ <http://news.belta.by/en/news/president?id=703933>.

⁷¹ <http://news.belta.by/en/news/president?id=703933>.

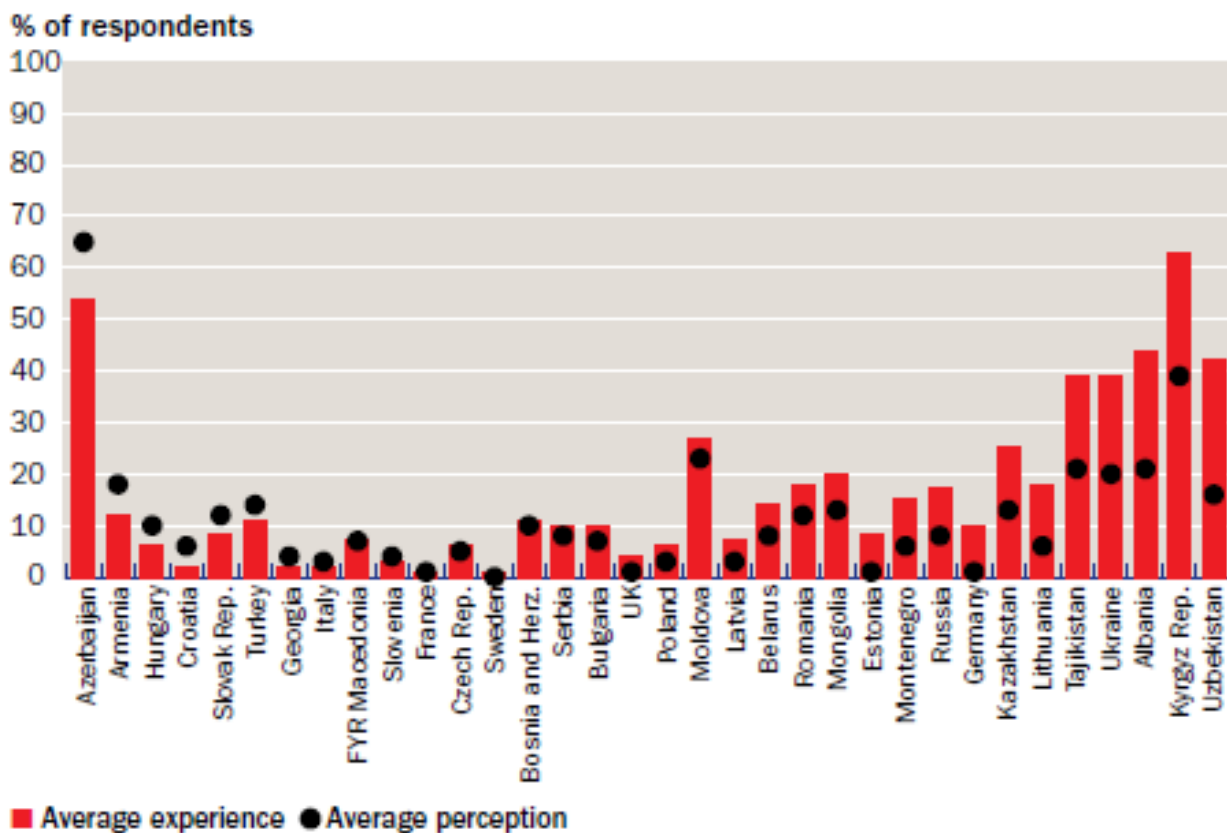
⁷² <http://www.e-belarus.org/links/egov.html>; see also <http://pravo.by/main.aspx?guid=3871&p0=p30600289&p2={NRPA}>

⁷³ http://belstat.gov.by/homep/ru/indicators/doclad/2013_7/15.pdf. Conversion to € according to the currency rate on the website: <http://www.exchangerates247.com/> (as of September 2013).

12 THE STATE OF CORRUPTION IN CIVIL SERVICE

The level of bribery in Belarus is relatively low compared to the region, according to the experience and perception-based “Life in Transition Survey” (LiTS) by the European Bank for Reconstruction and Development:⁷⁴

Perception versus experience of corruption



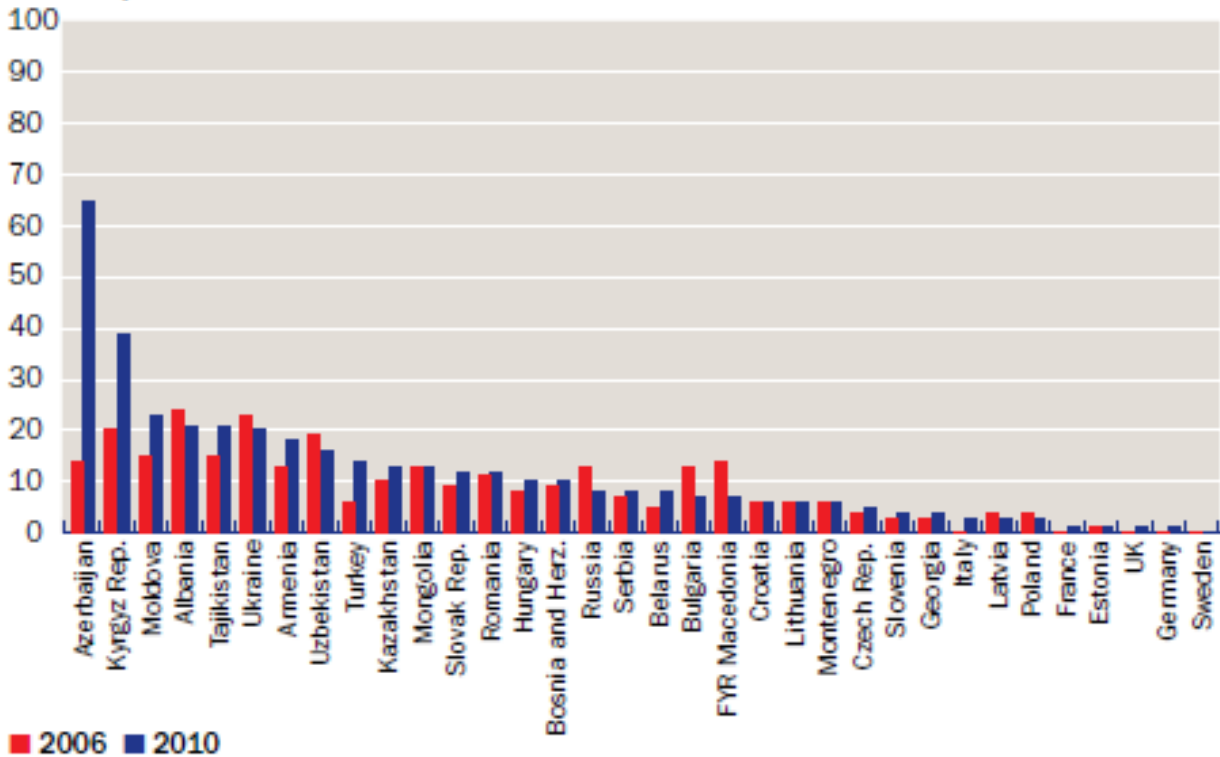
Source: LiTS II (2010).

Note: "Average perception" refers to the proportion of respondents who say people like themselves usually or always have to make unofficial payments or gifts averaged across all public services covered by the survey. "Average experience" refers to the proportion of respondents who say they or a member of their household have made an unofficial payments or a gift in the past 12 months averaged across all public services covered by the survey.

⁷⁴ European Bank for Reconstruction and Development, "Life in Transition Survey" (2010), p. 39, www.ebrd.com/downloads/research/surveys/LiTS2e_web.pdf.

Average level of perceived necessity of unofficial payments or gifts for public services, by country

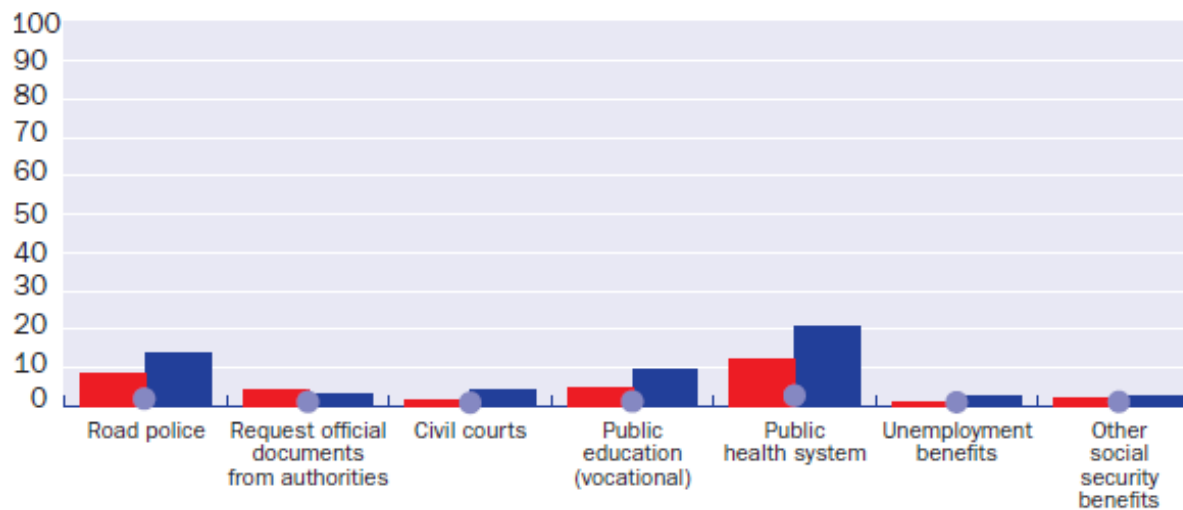
% of respondents



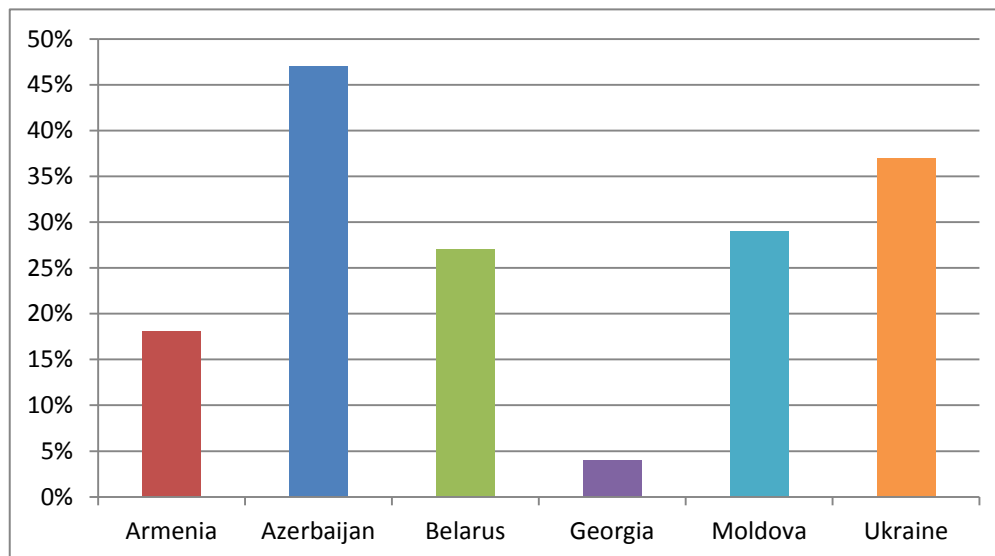
Source: LITS I (2006), LITS II (2010).

Note: "Perception of unofficial payments" refers to the proportion of respondents who say people like themselves usually or always have to make unofficial payments or gifts averaged across all public services covered by the survey.

The same survey looks into the bribes perceived to be necessary in the different sectors:

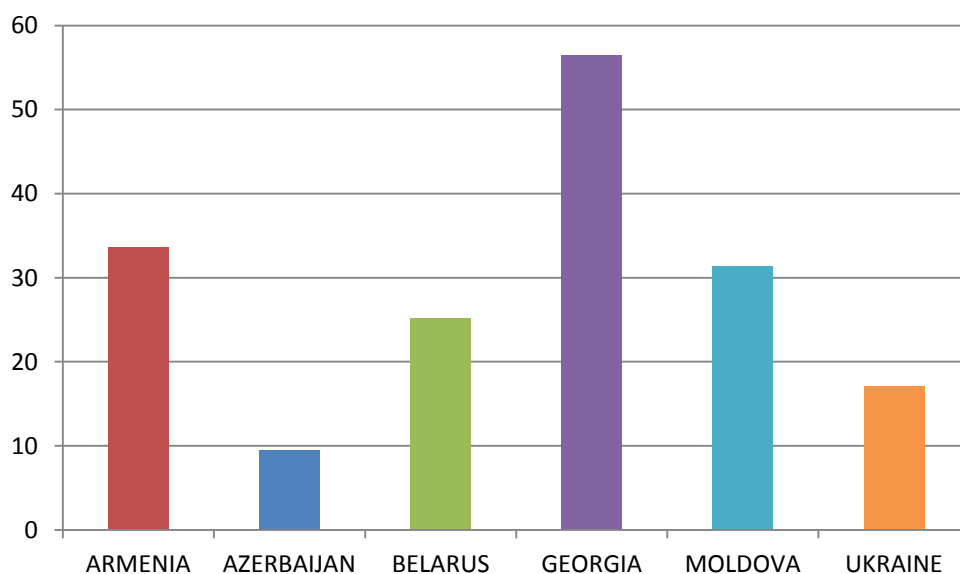


Other experience-based indicators **looking not only at bribes but at corruption in general** place Belarus closer to regional average of EaP countries as it scores generally better than Azerbaijan and Ukraine, somewhat similar to Moldova and below Armenia and Georgia). **Transparency International's** Global Corruption Barometer 2010/2013 captures the “percentage of users paying a bribe to receive attention from at least one of eight/nine different service providers in the past 12 months”⁷⁵:



(Above chart shows mainly results from the 2013 survey; for Azerbaijan and Belarus, results only from the 2010 survey are available and shown; the results for the other four EaP countries for 2010 are: AM 22%, GE 3%, MD 37%, UA 34%)

This experience-based ratings are mirrored by the **World Bank's** Control of Corruption Indicator 2011 (percentile rank 0-100), which “captures perceptions of the extent to which public power is exercised for private gain, including both petty and grand forms of corruption, as well as ‘capture’ of the state by elites and private interests”⁷⁶ – the higher the rank, the lesser corruption exists:



⁷⁵ <http://www.transparency.org/research/gcb/overview>.

⁷⁶ 2011 is the latest available edition, <http://info.worldbank.org/governance/wqi/resources.htm>.

13 ETHICAL FRAMEWORK

13.1 Laws

13.1.1 System of regulations

Four layers of regulation determine the ethical framework of the public service in Belarus:

- Law No. 204-3 of 14 June 2003 “On **Public Service** in the Republic of Belarus”⁷⁷ – hereafter “Public Service Law”.
- **Sector specific** laws, such as Law No. 263-3 of 17 July 2007 “On Internal Affairs Bodies of the Republic of Belarus”⁷⁸ and Law No. 220-3 of 8 May 2007 “On the Prosecutor’s Office of the Republic of Belarus”⁷⁹.
- Law No. 165 of 20 July 2006 “On the **Fight against Corruption**” (in force since January 2007),⁸⁰ as amended by Law No. 332 of 22 December 2011 (in force since April 2012⁸¹ and approved by decision of the Constitutional Court⁸²) – hereafter “Anti-corruption Law”.
- Several **codes of ethics** that exist for some sectors, such as Code of Honour for Customs Officers,⁸³ the Code of Professional Ethics for Employees of the National Bank⁸⁴, the Code of Honour for Judges,⁸⁵ the Rules of Professional Ethics of Employees of General Courts⁸⁶, and the Code of Honour for Prosecutors.⁸⁷

Violations of the codes of conduct could attract liability under Article 56 of the Public Service Law, which contains a general provision envisaging disciplinary, administrative, criminal and other liability for violations in the public service. Pursuant to Article 40, conduct which is inconsistent with the status of a civil servant justifies dismissal from state service.

In addition, the Criminal Code, the Code of Administrative violations, and the Labor Code, provide further aspects on sanctions including procedures.

13.1.2 Conflict of Interest

Regulation

Under the amended Article 1 par. 10 of the Anti-corruption Law, a conflict of interest is **defined** as follows:

“a situation in which the personal interests of the public official, his spouse (wife), a close relative or cousin-in-law affect or may affect the proper performance of the

⁷⁷ <http://pravo.by/main.aspx?guid=3871&p0=H10300204&p2={NRPA}> (Russian).

⁷⁸ <http://www.pravo.by/main.aspx?guid=3871&p0=h10700263&p2={NRPA}> (Russian)

⁷⁹ <http://www.pravo.by/main.aspx?guid=3871&p0=H10700220&p2={NRPA}> (Russian)

⁸⁰ http://mogbiz.by/modules.php?name=Downloads&d_op=viewdownload&lid=64 (Russian).

⁸¹ http://continent-online.com/Document/?doc_id=31108188.

⁸² Judgment of the Constitutional Court of 19 December 2011 No D-655/2011,

<http://www.kc.gov.by/en/main.aspx?guid=25943> (English).

⁸³ Decision of the Board of the State Customs Committee of 25 July 2013, promulgated by Order № 302-OD of the Chairman of the State Customs Committee of 8 August 2013.

⁸⁴ Approved by Regulation No.107 of the Board of Directors of the National Bank of 8 April 2003.

⁸⁵ Adopted by the Decision of the Congress of Judges of Belarus on 5 December 1997.

⁸⁶ Approved by Regulation No. 3 of the Ministry of Justice of Belarus of 27 January 2010.

⁸⁷ Adopted on 22 December 2007 at a Joint Session of the Board of the Prosecutor General’s Office of Belarus and the Presidium of the Belarusian Association of prosecutors.

public official's duties when making a decision or participating in the decision making or other actions in the service (work)."

Article 22 of the Public Service Law provides a list of restrictions, which apply to public officials and can prevent *inter alia* the occurrence of conflict of interest situations. The prohibited types of conduct include:

- engaging in **entrepreneurial** activities directly or through third persons, assist close relatives in carrying out entrepreneurial activities in connection with his/her official duties,
- participating in the **management** of profit-making organisations,
- holding **other public offices** (unless permitted by law) or carry out other paid activities (subject to certain exceptions), accept rewards from natural and legal persons in connection with his/her duties,
- opening accounts in **foreign banks**.
- holding **shares** (for the period of performing their duties in the state service, civil servants shall transfer their shares, i.e. stocks, rights, in the statutory fund of a profit-making organisation to the state's trust on security).

Civil servants who violate the aforementioned requirements are to be dismissed from the state service.

Article 17 of the Anti-corruption Law contains similar restrictions as Article 22 Public Service Law. According to Article 16 all public officials and persons applying for such posts, as a preventive measure, must sign a personal **declaration** to comply with the restrictions included in Article 17. Failure to sign the undertaking will result in the refusal to register/appoint a candidate to the post or in an automatic dismissal in accordance with the law.

Article 18-1 of the Anti-corruption Law foresees the "procedure for the prevention and settlement of conflicts of interest in connection with the performance the duties of a public official". The official has to notify in writing his/her superior in the immediate chain of command as soon as he/she becomes aware that there is a conflict of interest or the possibility of its occurrence. He can then declare to abstain from the decision-making in question, causing or likely to cause a conflict interests (still the superior has the right to reject the abstention and demand that the official continues with the task). Moreover the immediate superior shall inform the head of the respective agency about the conflict of interest and the way it was resolved.

If the head of the state body learns about an actual or possible conflict of interest, he/she may:

- give a public official a written recommendation on the measures to prevent or resolve conflicts of interest;
- remove a public official from acting in the service (operation), causing or likely to cause a conflict of interest;
- transfer the public official in accordance with the foreseen procedures to another equivalent position;
- entrust the public official with the execution of the previous duties in a new workplace or change, if only temporarily, the duties of the public official;
- in order to prevent conflicts of interest and the possibility of their occurrence, take other measures as foreseen by law.

It would appear necessary to apply the third to fifth of above mentioned measures only if no measure less intrusive to the public official would be an effective remedy.

Implementation

The process of submitting the declarations on ethical compliance is currently being concluded. Public servants seem to be aware of the rules and reportedly rather follow them than risk losing a secure job with the benefits of being a public servant. On the level of favouritism (“calling a friend in public administration”), the application of rules does not always seem to be so strict and making use of one’s influences in public administration still seems to be a rather commonly useable option. As is the case in probably many other countries, this pattern also benefits from inherent difficulties to detect violations. As for guidance on conflicts of interest cases, see below at 13.2.2.

13.1.3 Gifts

Regulation

The acceptance of gifts is regulated by the following two laws:

- Public Service Law (disciplinary aspect)
- Anti-corruption Law (family members, criminal aspect)

According to Article 22 par. 1.8 Public Service Law, public servants are prohibited

“to accept property (gifts) or receive other benefits in the form of services in connection with the performance of official duties, except for souvenirs, handed to them during protocol and other official events. Souvenirs, which are received by public servants during protocol and other official events, and the cost of which exceeds five basic units, are transferred to the state to the hands of the relevant commission created by the head of the public authority to which the public servant holds a public office.”

Thus, any gift is prohibited, except for official souvenirs up to five basic values (one basic unit = 130.000 BYR), equalling about €52.⁸⁸ This exception seems to be in line with Article 18 par. 1 phrase 2 of the Council of Europe Model Code of Conduct (“This [prohibition of gifts] does not include conventional hospitality or minor gifts”).⁸⁹

The Anti-corruption Law in Article 24 extends the restriction on gift acceptance to family members and similar close persons. They are prohibited to accept property or services, including travel for holidays or other purposes, from persons who depend on the public official in relation to the service. Any illegally acquired gift by the official or the members of his/her family are to be handed over to the state.

On the level of corruption offences, the Anti-corruption Law in Article 21 defines the acceptance of gifts and services in exchange for an official act by the public servant. However, the Supreme Court has issued an opinion, according to which a gift is not a bribe if received during protocol and other official events, or for birthday and holidays, if there is no intent of influencing the official actions of the public servant.⁹⁰

⁸⁸ One basic unit is set at 130.000 BYR, about €10.40, by Decision of the Council of Ministers of 26 September 2013, No. 842.

⁸⁹ <https://wcd.coe.int/ViewDoc.jsp?id=353945&Site=CM>; see also the Explanatory note to the Model Code, para. 84: “It is for each country to establish the criteria to differentiate between what is acceptable and the gifts which fall within the general prohibition rule.”

⁹⁰ Section 20, Resolution of the Plenum of the Supreme Court of the Republic of Belarus of 26 June 2003, No. 6, <http://www.pravo.by/main.aspx?guid=3871&p0=S20300006&p2={NRPA}>.

The Supreme Court Decision probably concerns only the criminal law question of whether it would not be a bribe to present a public servant for Christmas with a watch worth €100. It would also raise the question, from which value on a gift provided would presume the intent of influencing the official's actions. It seems, as if a clear value limit would make the handling of the bribery offence easier.

On the other hand, public servants are subject to disciplinary liability including dismissal from their job for any acceptance of gifts, unless it is a souvenir received during protocol events. So they should not consider the value of the gift when deciding on the possible acceptance; this would then rather be a question for the human resource department, as to whether to forward a case of gift acceptance to the prosecutor.

The distinction between a mere gift acceptance as a disciplinary violation, and as a gift being a bribe is known to many, if not most legal systems.

Implementation

None of the published data or interviews suggests that acceptance of gifts is any major problem in the general public administration, as public servants are aware of the rules and in general are afraid of losing their position in case of violation. There seem to be still some challenges with gift giving practice in some sectors, such as health and education. Small gifts on some occasions (such as teacher's day) are culturally still accepted in some parts. It raises the question as to whether they are "souvenirs within protocol and other official events" in the sense of Article 22 Public Service Law, which is probably not the case, and whether the acceptance violates criminal law provisions (such as Article 433, acceptance of illegal benefit by employees of state bodies who are not public officials). Doctors and teachers are not civil servants, but, to some extent, are equated with public officials since they have the authority to make certain decisions with legally relevant consequences (civil servants and public officials being different concepts in the Belarusian legislation). Still, they are public employees and their ethical and disciplinary obligations should be similar to those of (formal) public servants. Codes of conduct could provide the necessary guidance for both kinds of employees as well as citizens (see below 13.1.5).

13.1.4 Asset declarations

Regulation

Among countries in the Eastern Partnership region, Belarus has the oldest system of income and asset declarations.⁹¹ It was established in 1997 and is currently regulated by Law No. 174-W of 4 January 2003 on Declaration of Income and Assets by Physical Persons⁹² as well as Article 23 of the Public Service Law.

Income and asset declarations are mainly a corruption prevention tool. Thus, declaring income and assets is essentially not a question of ethical conduct. However, income and asset declarations also play a role in detecting possible conflicts of interest, which can arise, for example, from certain property in business of the public official or a family member.

Implementation

⁹¹ OECD, Asset Declarations for Public Officials – A Tool To Prevent Corruption (2011), p. 23, table 1.1, www.oecd.org/dataoecd/40/6/47489446.pdf; for Moldova see Centre for the Analysis and Prevention of Corruption, "Declaration of assets and income of state dignitaries, judges, prosecutors, public servants and persons holding managerial positions: challenges and solutions for Moldova" (2009), www.capc.md/docs/Study_declaration_of_assets_and_income.pdf.

⁹² <http://zakon.by/main.aspx?guid=3871&p0=H10300174&p2=%7BNRPA%7D> (Russian)

Checks are done by the human resource departments in the respective public institution. Additional checks on financial information are carried out by the tax authorities. The general impression obtained during the mission was that checks of the truthfulness of the provided information were the main focus of controlling bodies. However, according to information by the state authorities, verification of declarations includes also the identification of possible conflicts of interest arising out of income and asset positions.

13.1.5 Model code of conduct/sector specific codes

Several **codes of ethics** exist already for some sectors (see above 13.1.1). Most sectors do not fall under any code yet. There are basically three options on the table for closing this gap:

- The Institute of Public Administration has developed a Model Code of Conduct, containing general rules applicable to public servants in all sectors. This Code could be amended with the specifics necessary in each sector. It would have the status of a non-binding recommendation.
- The National Centre of Legislation and Legal Research drafted a new Public Service Law which would contain a provision calling upon sectors to draft code of conducts and laying out the basic principles and topics to be addressed by the code. The Law would create a legal obligation for sectors to establish codes of conduct.
- Sectors could also simply adopt codes of conduct no matter whether a Model Code of Conduct or a Public Service Law would call upon them to do so.

Some interviewees have expressed certain scepticism as to the added value of a code of conduct; they pointed to the comprehensive legislation in place already defining conflicts of interest and gift receiving. However, all interviewees have confirmed the usefulness of having such a code in place if it would serve one or more of the following purposes:

- showing in one document what is expected from public servants;
- avoiding unjustified disciplinary action as a way of improperly “disciplining” subordinated public servants;
- helping public servants avoid trouble by providing more clarity on what to do in critical situations (as for example in cases of gift offers);
- helping defend public servants against improper reproaches;
- improving the public image;
- avoiding losing time on correcting bad management decisions, and dealing with complaints;
- stressing the difference of the public service from other jobs;
- providing a solid basis for employee training;
- triggering a process of value reflection and formation among public servants and the public at large;
- supporting equal treatment of public servants by their employer in cases of (alleged) violations.

Which of the three above mentioned options or any other would be the most suitable and effective, will be a policy question of the Belarusian government. The added value and potential of rolling out codes of conduct in the whole administration seem to be apparent. Involving representatives of the society and expert groups on corruption prevention (such as e.g. Transparency International), as has been done in the past, would seem to ensure public awareness and ownership of this issue.

There is ample literature available on this issue from international institutes and authors, for example:

- Council of Europe, Ethics for the Prevention of Corruption in Turkey, Academic researches on public ethics, Volume 1 and 2⁹³
- World Bank, Ethics codes and codes of conduct as tools for promoting an ethical and professional public service: Comparative Successes and Lessons, by Stuart C. Gilman, 2005⁹⁴
- OECD, Ethics Codes and Codes of Conduct in OECD Countries⁹⁵
- Quentin Reed, Regulating conflicts of interest in challenging environments: The case of Azerbaijan, U4 Issue 2010:2⁹⁶
- Jolanta Palidauskaite, Codes of Conduct for Public Servants in Eastern and Central European Countries: Comparative Perspective⁹⁷
- Beyond the Code of Conduct: Building ethical competence in public officials, U4 Brief 2009:19⁹⁸

13.2 Institutions

13.2.1 Human resource departments

Human resource departments play the following roles with regards to ethics implementation:

- Collection, handling and verification of income and asset declarations in coordination with other authorities; provision of counselling and oversight;
- Collection and oversight of submission of personal declarations of compliance (Article 16 of the Anti-corruption Law);
- Oversight of compliance with restrictions applicable to public servants;
- Record keeping.

13.2.2 Managers

Public servants with managerial functions have to respond to conflicts of interest declarations of their subordinates. None of the interviewees remembered a situation where a subordinate would ask for a clarification in an uncertain situation, for example, when the wording of the law would not cover a situation, but its spirit might do so. The reason provided in interviews was that all employees were thoroughly informed about all regulations at the time of recruitment, and all had signed declarations of compliance. In addition, it was pointed out that the law contained a clear definition in line with international standards.

⁹³ <http://www.coe.int/t/dghl/cooperation/economiccrime/corruption/projects/TYEC/1062-TYEC-Academic%20Researches%20on%20Public%20Ethics%20Volume%201.pdf>;
<http://www.coe.int/t/dghl/cooperation/economiccrime/corruption/projects/TYEC/1062-TYEC-Academic%20Researches%20on%20Public%20Ethics%20Volume%202.pdf>;
http://www.coe.int/t/dghl/cooperation/economiccrime/corruption/projects/TYEC/TYEC_en.asp.

⁹⁴ www.oecd.org/mena/governance/35521418.pdf.

⁹⁵ <http://www.oecd.org/gov/ethics/ethicscodesandcodesofconductinoecdcountries.htm>.

⁹⁶ <http://www.u4.no/publications/regulating-conflicts-of-interest-in-challenging-environments-the-case-of-azerbaijan/>.

⁹⁷ www.oecd.org/mena/governance/35521438.pdf.

⁹⁸ www.u4.no/publications/beyond-the-code-of-conduct-building-ethical-competence-in-public-officials/downloadasset/151.

This “law-abiding” approach seems in fact to have significant impact on the ethical conduct of public servants, and seems to fit to the apparent regulation-oriented practice of public servants. Internationally, there is growing consensus, though, that ethical confidence of public servants profits a great deal from a culture in administration, where questions are openly discussed and uncertainty about a regulation is not a sign of incompetence, but of ethical awareness:

“To resolve a specific conflict, it is necessary to establish relevant facts, apply the relevant law and policy, and distinguish between ‘actual’, ‘apparent’, ‘real’, and ‘potential’ conflict situations. This requires technical skill and an understanding of the many issues which are usually involved.”⁹⁹

“Ethics trainings are not only about delivering knowledge, but also about shaping attitudes and teaching skills for resolving ethical dilemmas.”¹⁰⁰

In this context, one should probably also be aware of the taboo that is often observed in connection with conflicts of interest. This taboo stems from the misconception that a conflict of interest in itself is already corruption. However, this is not the case; it is only the wrong handling of the conflict, for example, in a non-transparent way that can amount to corruption:

“The emphasis in discourse on preventing conflicts of interest rather than managing them [...] sometimes appears to assume that conflict of interest itself constitutes corruption. [...] While many conflicts of interest may be prevented, any official with important powers or authority to make or participate in decisions is likely to encounter situations in which s/he is subject to a conflict of interest.”¹⁰¹

Future training and awareness measures should ensure that this aspect is taken into account.

13.2.3 Intra-institutional units

Many state bodies have established Corruption Prevention Commissions. The function of such Commissions is focused on the analysis of corruption risks and possible counter-measures; it does not cover advice on a case by case basis for ethical dilemmas, though.

Some countries have nominated ethical commissioners in each administrative body, to ensure ethical awareness and uniform application of ethics principles. In addition, there are sometimes national ethical bodies, such as an ethics commission, which serve as a focal point for ethics commissioners, render advice and publish case “law” on ethics. It might be an option worth considering also for Belarus, but is obviously only one out of several options.

⁹⁹ OECD, Managing Conflict of Interest in the Public Sector, page 7, www.oecd.org/gov/ethics/49107986.pdf.

¹⁰⁰ OECD, Ethics Training for Public Officials, page 68, www.oecd.org/corruption/acn/library/EthicsTrainingforPublicOfficialsBrochureEN.pdf.

¹⁰¹ Quentin Reed, Regulating conflicts of interest in challenging environments: The case of Azerbaijan, U4 ISSUE 2010:2, page 14 (see above note 96).

13.3 Implementation

13.3.1 Training and awareness

The Academy of Public Administration under the President of the Republic of Belarus is a leading institution of higher education and the lead agency in the education system of supplementary training for adults. The Academy of Public Administration enrolls leading cadres, persons included in the reserve of leading cadres, public servants and other persons. Annually over 4,500 public servants take part in the Academy's education programs. The Academy internationally cooperates in the field of training, retraining and advanced training in the field of management.

Vocational training

Trainings related to ethics are not based on theoretical lectures, but include modules among others on:

- Stress management
- Ethical dilemmas
- Management conflicts
- Professional communication

Methods include personal self-assessments and psycho-diagnostics, case scenarios, role play. Examples of ethical dilemmas are taken from real life. Ethics and etiquette are a compulsory component of the vocational training for higher public servants and includes lectures and analysis of concrete cases. The standard group size is 25 people, which regularly divides into 2 subgroups of 12-13 people with one teacher for each. Role play, value discussions, and case scenario are part of those trainings. Thus, the trainings delivered at the Academy apparently apply modern and advanced standards of ethics training which are not practiced yet in all countries.

Some state bodies have their own training institutions, such as for example the State Committee on Customs. In addition to trainings, other tools are used for individual educational and preventive work with groups of officers that require special attention (after disciplinary action or citizen complaints), for example, the presentation of a video-recorded interview with a regretful former customs official in prison serving time for a corruption offence. In general, it will probably be important in this context to continue to keep in mind that ethical dilemmas in practice cannot always be solved by a simple solution:

*"The value-based approach does not assume that all participants reach consensus regarding the cases under discussion. Ethical dilemmas often have contextual nuances and one seemingly similar situation may have several possible solutions. Instead of finding 'one right' solution, the aim of the training [is] [...] to develop the competence to recognise ethically problematic situations and to systematically analyse them based on public service values."*¹⁰²

Recruitment training and awareness

Public servants are made aware of ethics-related rules prior to recruitment. Knowledge of the rules is quizzed by standard questions used for recruitment examinations.¹⁰³ These include questions such as:

¹⁰² OECD, Ethics Training for Public Officials, page 40,

www.oecd.org/corruption/acn/library/EthicsTrainingforPublicOfficialsBrochureEN.pdf.

¹⁰³ See: Академия управления при Президенте Республики Беларусь (2011), Пособие по подготовке к сдаче квалификационного экзамена для лиц, впервые поступающих на государственную службу [Academy of Public Administration under the President, Handbook on the qualification exam for first-time entering government service, edition 2011].

- Rights and duties of a public servant; restrictions related to the public service;
- Procedure for the declaration of income and assets of a public servant.
- Liability of the public servant for violations of legislation on the public service;
- Grounds and procedure for the termination of the public service.

The questions mostly expect the potential public servants to memorize provisions of laws.

In addition, public servants have to sign a declaration upon entering the service on their compliance with ethical rules (see above 13.1.2).

13.3.2 Disciplinary proceedings

According to information by the interviewees on singular cases, disciplinary violations are followed-upon swiftly and without hesitation to use the full range of sanctions. Sanctions are apparently not only imposed upon lower level public servants, but also higher levels. However, statistics and compilations (case law) of the disciplinary practice are not published and therefore these observations remain anecdotal.

In addition, there is a range of administrative sanctions available, imposed following an administrative procedure. This option apparently is frequently used as well although the violations do not seem to be defined specifically with the public service in focus (rather they relate to issues such as failure to comply with accounting requirements or provide statistical information).¹⁰⁴

If statistical data on violations and disciplinary proceedings were available centrally or regionally, this would probably help policy makers to draw conclusions for possible legislative, organisational or training measures. For example, a state body with a function of revenue collection and cash transactions typically prone to corruption, with no disciplinary proceedings should raise a question mark. The General Prosecutor's Office might be a suitable body for collecting such data, as it is already regularly receiving reports from all anti-corruption commissions in state bodies. However, one also needs to make sure that the collection of data does not create adverse incentives: state bodies might perceive the data collection as an incentive to either not report such cases, or even suppress opening of cases in order to "look good" statistically; at the same time, the contrary effect might take place – state bodies might feel the need to show a "strong arm" and thus increase the number of disciplinary cases, which would only be good, as long as the disciplinary cases are merited. Periodical review and comprehensive analysis of such data should help identify any adverse patterns.

13.3.3 Internal and external complaints

According to a presidential decree, all government websites compulsorily have to provide information for citizens on where to complain in cases of legal violations or bad service. Authorities assert that complaints are followed up and all administrative decisions can be appealed against in the court. Anonymous complaints are inadmissible, but are looked into if repeated or substantiated information points towards a concrete incident, problematic unit or official. It should be mentioned in this context that many countries have benefited from the establishment of an independent ombudsman institution. Such an institution could inquire into complaints from clients of the administration and support also wider public awareness and ownership of ethics.

¹⁰⁴ See for example: "Review Information on Typical Violations Found in Checks on Financial-Economical Activity of Organisations of the System of the Ministry of Agriculture and Food in 2012", <http://mshp.minsk.by/about/podrazd/vkontr/reviz/e126804f15ea2135.html>.

As with disciplinary proceedings, statistical data on complaints and their follow-up centrally or regionally collected, would allow for a more targeted review of weak spots in administration. For example, a state body with a high frequency of contacts, but almost no reported complaints, should raise a question mark. The General Prosecutor's Office might be a suitable body for collecting such data, as stated above. However, the same risks of adverse effects of such obligation to report data as with disciplinary proceedings apply also to data on complaints.

13.3.4 E-governance

The President's Decree "About measures on the improvement of the usage of the national network segment of the Internet"¹⁰⁵ aims among others to improve the quality and accessibility of information about public agencies' activities and their online services for both citizens and companies.¹⁰⁶ According to this decree, all public agencies and organizations shall present online-information about themselves. Every website has to include a minimum set of information about its owners and access to it should be free of charge. The "National automated information system" (NAIS) is a project for integrating the information resources of public agencies and delivering public online services.¹⁰⁷ On 1 January 2011, a national e-government services portal was launched which offers more than 60 online services.¹⁰⁸

13.3.5 Public awareness

Ethical regulations, as far as available, are put online on the state bodies' websites, and are posted in the entrance halls, according to information provided by the authorities. The media seem to focus rather on criminal corruption violations, than on cases of non-criminal ethical violations. One interviewee stressed the need for more active public discussion of ethical questions via the media, in order to raise the awareness of the topic among the public but also among public servants.

13.4 Policy

The "Belarus Program on Combating Crime and Corruption 2010-2012" contained the action of reviewing "the feasibility of an approved code of ethics for public servants" (action 1.6). Several proposals and viewpoints are on the table regarding this topic (see above 13.1.5).

The new draft "Belarus State Program on Combating Crime and Corruption 2013-2015"¹⁰⁹ has been approved by the central coordination meeting, but is not yet formally enacted. It does not relate specifically to ethics, but contains related actions:

- *"Annual monitoring of public opinion on corruption in the law enforcement and regulatory agencies, and in the courts, in order to use the results to improve the efficiency of these agencies and the degree of trust among the population"* (Action 49.1),
- *"Coverage in the media of activities of the law enforcement and regulatory agencies to combat crime and corruption, the protection of life, health, honour, dignity, rights, freedoms and legitimate interests of citizens in order to create an atmosphere of public condemnation of corruption in all its forms and systematic awareness raising in the society"*

¹⁰⁵ No. 60, 1 February 2010, <http://pravo.by/main.aspx?guid=3871&p0=P31000060&p2={NRPA}>.

¹⁰⁶ Dzmitry Marushka, Maria Ablameyko, E-Government Start-Up in Belarus - Case of Public Online Services Portal Implementation, International Journal of Public Information Systems, vol 2012:1, page 1 f., www.ijpis.net.

¹⁰⁷ <http://www.agat.by/en/products/integrated-information-systems/implemented-projects/nais-rb/>.

¹⁰⁸ <http://portal.gov.by/>.

¹⁰⁹ Yet unpublished.

of the state anti-crime (anti-corruption) policies, including facts about perpetrators made accountable for corruption offenses” (Action 49.4),

- *“Organize the production and demonstration on central or regional TV channels of social advertising clips aimed at legal education and the formation of the active attitude of citizens in terms of intolerance of unlawful behaviour” (Action 51).*

From the point of view of further development of the institutional framework, the action 47 is important as it envisages analysis of the experience of anti-corruption commissions and possible measures to improve their effectiveness.

14 ETHICAL WEAKNESSES

14.1 Occurrence

There is no statistical data available on the number and categories of ethical violations. Information from all interviews points towards patterns typical for other European countries, with occasional flaws in the service culture, obtaining of advantages through favouritism (“calling a friend in public administration”), and bribe and gift taking. As far as bribery and gift giving is concerned, the level is comparatively low, and lower than for example Romania and Lithuania according to the experience-based “Life in Transition Survey” (LiTS) by the European Bank for Reconstruction and Development; the World Bank’s Control of Corruption Indicator 2011, however, still ranks Belarus lower than Moldova and Armenia (see above 12).

Ethical performance with regards to service delivery to citizens on the local level would often be somewhat lower than in central authorities. This phenomenon is known in many other countries and is related to the qualification level of employees and to a lesser reach of training and other implementation measures from central institutions. In this context, it should be noted that a lack of “esprit de corps at the level of regions, cities and regions” of Belarus has recently been pointed out.¹¹⁰

14.2 Possible explanations

The following reasons are possible for occurrences of ethical violations in the public sector:

- Sometimes ethical attitudes will be probably a leftover of **soviet standards** of treating clients as subordinate subjects;
- The “law-abiding aspect” of ethics seems to be very strong, whereas the “**value and aspiration aspect**” of ethics might not have reached all public servants. In other words: there is a difference, whether public servants just obey the law or whether ethics is part of their self-image and self-understanding which they are willing to defend irrespective of whether it is ordered by the law and state;
- **Treatment of requests for advice** by lower-level public servants sometimes might prompt intolerance as against signs of incompetence. On some occasions, this may lead to committing wrong steps, which could have been easily prevented;
- **Public confidence** in reporting violations of ethics would seem to have potential of further growth;
- There seems to be an inclination to perceive a **reporting** on ethical violations in public administration as “washing dirty linen in public.”

¹¹⁰ Press statement of 1 August 2013 on a presidential speech, <http://president.gov.by/press146294.html>.

15 RECOMMENDATIONS

Based on the interviews and documents provided, it seems as if the ethical potential could be used more fully and further enhanced by considering the following measures:

- providing guidance for public servants through codes of conduct in all sectors of public administration, including regional and local level, and continuing to include representatives of civil society, expert groups and all concerned public officials in discussing, drafting and enhancement of such rules based on an assessment of the risks and needs specific to each sector;
- reviewing the feasibility and added value of one or several intra-institutional or extra-institutional bodies entrusted with overseeing and advising on the implementation of ethical codes and on ethical challenges in the daily practices of public servants; this function may also be carried out by existing entities;
- continued keeping in mind for all trainings carried out that ethical awareness not only consist of following rules but also of the ability to reflect and question these rules in unforeseen dilemmas;
- developing of online multi-media quizzes similar in their plots to the situational games used in trainings at the Academy of Public Administration, which could be made available to all public servants even when they are not enrolled in training;
- involving the public in the further evolvement of ethical rules and values through publicising not only criminal cases of corruption violations, but also presenting cases and questions of non-criminal ethical challenges;
- collecting and analysing data centrally or regionally on disciplinary proceedings and on complaints in order to ensure the identification of entities with possible weak practices.

16 ANNEX: INTERVIEWS

The institutions to be interviewed were chosen by the Council of Europe experts in coordination with the General Prosecutor's Office. All meetings with state institutions involved several representatives from different departments related to the issue and proceeded as semi-structured interviews.

Tuesday, 10 September 2013, Minsk
<ul style="list-style-type: none">- Council of Europe Information Point in Belarus- Delegation of the European Union to the Republic of Belarus- Transparency International – Belarus National Contact- Ministry of Justice- Ministry of Education
Wednesday, 11 September 2013, Minsk
<ul style="list-style-type: none">- Academy of Public Administration<ul style="list-style-type: none">o Research Institute of Theory and Practiceo Department of Psychology of the Institute of Public Service Management- State Committee on Customs- Ministry of Agriculture and Food
Thursday, 12 September 2013, Minsk
<ul style="list-style-type: none">- National Centre of Legislation and Legal Research- General Prosecutor's Office

Request made by the experts to UNDP and two organisations of civil society representation for interviews remained unanswered.

Technical Paper
Country risk assessment – Georgia

“Prosecution Services”

prepared by
Tilman Hoppe, Project Long-Term Adviser
with input from José Igreja Matos,
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December 2013

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17 SUMMARY

This Study is the result of a desk review of reports and legislation and a four-day field mission to Tbilisi (23-26 September 2013) interviewing different stakeholders.

Given previous and planned future assessments on the prosecution services, in particular the upcoming 4th Round Evaluation by GRECO on – among other – the status of prosecutors, and given the very little relevance of bribery in Georgia and its Prosecution Services, this risk assessment focuses mainly on prosecutorial discretion and prosecutorial misconduct (“abuse of power”). Based on the interviews and on the data available, the following observations can be made:

Several mechanisms are in place for countering cases of abuse of power in the Prosecution Services. Particular strong points seem to be a functioning and dedicated General Inspection system as well as intensive trainings on legal topics.

The most outstanding fields where serious cases of abuse of office apparently occurred at least in the recent past, and where substantial risks for such abuses still exist and have not been countered yet, are plea bargaining and the adversarial system newly transplanted into Georgian criminal procedure (entailing a weakened position of judges, victims, and lawyers). In addition, a lack of any performance appraisal system combined with discretionary bonus payments, and a lack of ethics trainings are points to be noted.

In particular, the Prosecution Services would benefit from the following further improvements with regard to:

1. Plea bargaining
 - Ensuring a more far reaching written documentation of the whole plea bargaining procedure, the reasoning of the judge why he/she would consider the content of the plea deal “corroborated” and “just” (Article 213 par. 3 CPC), and, in particular, how he/she has verified any confession by the defendant and what additional evidence contradicts and supports the confession. In other words, the plea bargain should rather resemble a “mini-trial” of three equal stakeholders (judge, prosecutor, defence) on the merits of the case, than a contract agreement on the guilt and sentence accompanied only by instructions on the rights.
 - Establish an incentive for ensuring exact and wide implementation of requirements for proper plea bargaining such as adding violation of all procedural relevant rules of plea bargains as an absolute ground for appeal (if not dutifully counteracted already by the judge of 1st instance); this would include violations of essential procedural safeguards such as violation of proper documentation of the plea and procedure, lack of verification of confession, lack of instructing the defendant properly on the procedure, lack of documented replicable calculation of the agreed fine, etc.
 - Providing judges with the power to raise or decrease plea sentences.
 - Review possibilities for formulating agreements with defendants on future cooperation in a clear wording making it an enforceable contract leaving no discretion; ensure that the courts and not the prosecution services has the last decision on whether the defendant was sufficiently cooperating; make unclear wording of agreements with defendants on future cooperation grounds for appeal.

- Make it compulsory to calculate agreed and proportional fines based on objective criteria and on the principle of compensation of victims, and to document the reasoning behind the calculation.
 - Ensure the availability of statistical data and case material for research and analysis of plea bargaining cases including support of work by NGOs, academics, and other interested parties from society at large.
 - Consider interim measures including immediate suspension of plea bargaining until further reform of the system and until defendants have a real choice of alternatives (this includes but is not limited to cases of less minor crimes).
 - Consider permanently limiting plea bargaining in cases of less minor crimes (such as cases where a prison sanction would be expected), inter alia by extending the inquisitorial role of the judge into a summary evidence procedure, and by having the judge reviewing the substance of the confession.
2. Ensure that all prosecutorial decisions – as basically any other state measure – are subject to judicial review (whenever they affect essential interests of a victim), balancing the need for prosecutorial discretion with the need of oversight and accountability, and with the gravity of the crime; this would require to consider including measures such as non-opening of procedures, plea bargaining, dropping charges, investigative measures, opening investigations.
 3. Make interactive ethical trainings part of the regular trainings of prosecutors, using case scenarios on ethical dilemmas based on real life cases in Georgia. Among the objectives of the trainings should be to counteract a culture of “scoring high numbers of convictions at any prize”. Trainings should also include joint trainings involving judges and members of the bar in order to establish a common mentality of values in the criminal procedure system in Georgia.
 4. Complement the legislative transplantation of the adversarial system into (continental based) Georgian Criminal Procedure by awareness raising and research on risks and real life cases of prosecutorial misconduct typical for countries with a long standing tradition of adversarial systems.
 5. Introduce a system of performance appraisal for prosecutors based to a substantial extent on qualitative criteria; the system should ensure that it would counteract adverse incentives of the past (“scoring high numbers of convictions”) and would reward prosecutors who in appropriate cases safeguard essential procedural rights of defendants or counteract procedural violations. Similarly, bonus payments, if admissible in law-enforcement at all, must continue to represent a small percentage of the salary and must be based on objective and transparent criteria and decisions.
 6. Revise high minimum sentences foreseen in the Criminal Code that would seem to exert problematic pressure upon any suspect to submit to a plea proposal, or would reduce a judge’s discretion and role in the process disproportionately.
 7. Transparency
 - a. Review the possibility of improvements with regards to making key indicators and statistical data public and to engage in a more active reporting to the public.
 - b. Publication of complaints and disciplinary statistics might provide food for a negative image in the public and for sensational reporting in the media. On the other hand, showing disciplinary action to the public and presenting it in the right way could counteract a perception of impunity and inertia.

- c. Ensure the availability of statistical data and case material for research and analysis of cases of prosecutorial misconduct including support of work by NGOs, academics, and other stakeholders.
 - d. With regard to above Recommendation 2, as an intermediary measure, create full transparency on all decisions concerning the non-prosecution of especially debated cases, such as case of abuse by the police, the prosecution services, or complaints on events such as law enforcement against religious minorities or the Tbilisi gay parade 2013.
- 8. Disciplinary sentences should include also reasoning on sentences handed down, as only this would allow de facto for the necessary appeal option in all cases.
- 9. Adversarial system
 - a. Monitor and evaluate whether there are benefits of transplanting the adversarial system into Georgian Criminal Procedure and whether they outweigh the additional risks and disadvantages with regards to risks of abuse of power. It would probably seem too far reaching for an assessment of this size and means to suggest reversing the whole criminal law reform introducing the adversarial system into Georgia, and reversing everything back to an inquisitorial system would put the legal sector again through a costly transformation process. However, continuing to transplant this alien concept into Georgian justice and society as a whole will entail risks of abuse for years to come; it is thus recommended to at least carefully review the shortcomings of this reform, the potentials for abuse, and to make use of the findings for ensuring the availability of sufficiently empowered defence for citizens of all “classes” and regions, for vocational training, educational curricula, and for awareness measures towards society.
 - b. Foster a culture where even during trials prosecutors will not stick to the “accusatory direction” should there be a certain degree of reasonable doubts about the guilt of the defendant.
- 10. Active outreach to vulnerable minorities (such as for religious reasons or because of sexual orientation), for example by designating a contact officer or commissioner, seems worth considering. Such an officer could also counteract biases within the services and protect the rights of victims in cases where a legal remedy would not be available or feasible.
- 11. Given the overly strong role of prosecutors in the former Soviet Union, and later on, in post-Soviet countries, it seems worth considering a form of participatory control for the prosecution services; such a measure might also improve the perception and understanding of the work of prosecutors by other sectors and the public at large.

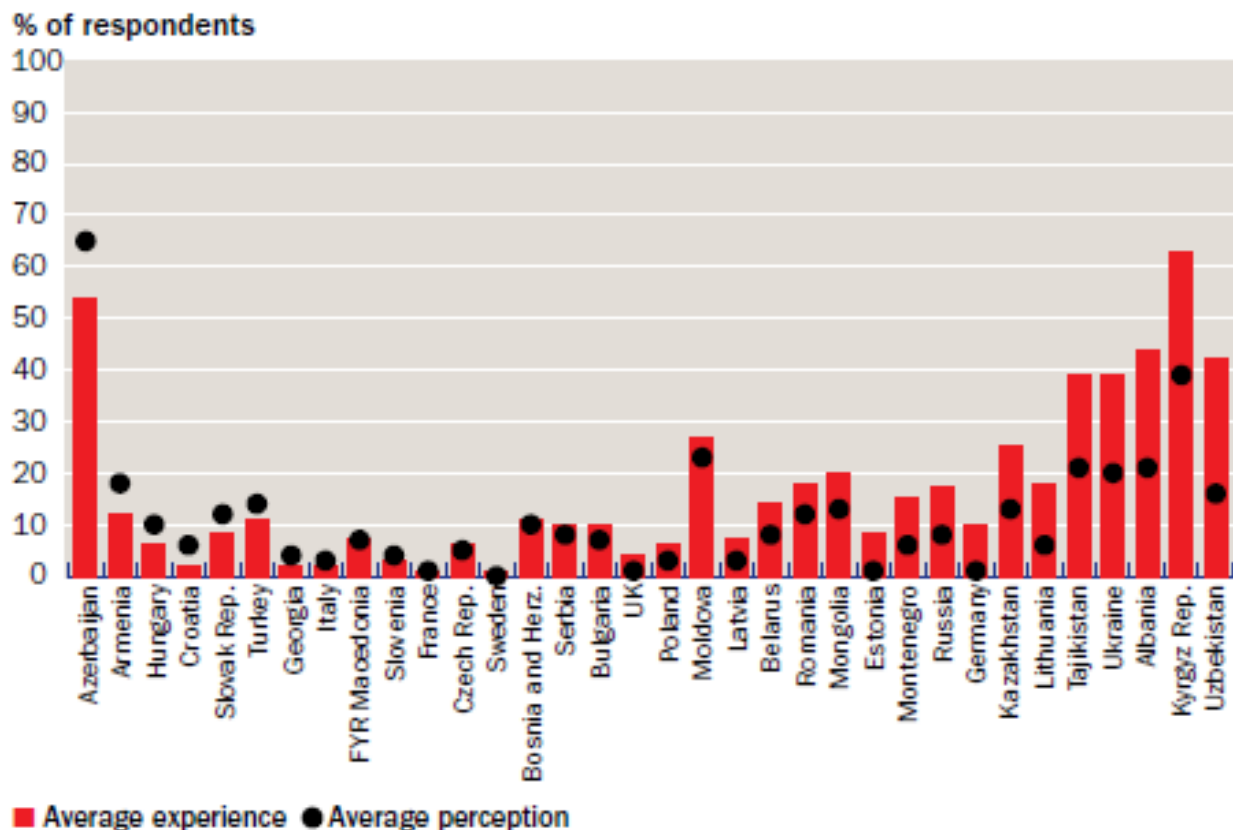
18 RELEVANCE OF THE TOPIC

18.1 Corruption and corruption perception

18.1.1 Georgia

Georgia's anti-corruption reforms have shown success that is well known and documented,¹¹¹ as for example by the following survey on perceived and experienced administrative bribery:

Perception versus experience of corruption



Source: LITS II (2010).

Note: "Average perception" refers to the proportion of respondents who say people like themselves usually or always have to make unofficial payments or gifts averaged across all public services covered by the survey. "Average experience" refers to the proportion of respondents who say they or a member of their household have made an unofficial payments or a gift in the past 12 months averaged across all public services covered by the survey.

The statistics conducted by the European show that Georgia ranks better than several European Union countries. This risk assessment hence focuses less on bribery in the prosecution services, than on abuse of power.

¹¹¹ See for example The World Bank, Fighting Corruption in Public Services Chronicling Georgia's Reforms, 2012, 104 pages, <https://openknowledge.worldbank.org/handle/10986/2234>.

18.1.2 Region

There is little data available specifically on prosecution services in the EaP region. However, data on perception of corruption ranks the judiciary and police among the most corrupt sectors in post soviet countries.¹¹² In addition, surveys in EaP countries confirm that the prosecution sectors are viewed as the most corrupt.¹¹³

18.2 Recent and future assessments on Georgia

There have been several assessments conducted recently, which either focused or touched upon critical operational aspects of the prosecution services in Georgia:

- International Bar Association's Human Rights Institute (IBAHRI), Strengthening the Rule of Law: Challenges and Opportunities for the Georgian Bar, December 2012¹¹⁴
- Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ), The [Judicial] Integrity Scan conducted in Georgia in 2012, November 2012¹¹⁵
- Transparency International, Plea Bargaining in Georgia: Negotiated Justice, December 2010¹¹⁶
- Report by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, following his visit to Georgia from 18 to 20 April 2011¹¹⁷
- Transparency International, National Integrity System Report – Georgia, 2012¹¹⁸
- Georgian Young Lawyers' Association (GYLA), Legal Analysis of Cases of Criminal and Administrative Offences with Alleged Political Motive, 2012¹¹⁹
- OECD, ACN 3rd Round of Monitoring, Georgia, September 2013¹²⁰
- EU, Joint Staff Working Document, Implementation of the European Neighbourhood Policy in Georgia, Progress in 2012 and recommendations for action, March 2013¹²¹

All above reports more or less criticise the plea bargaining system and the prosecution service's lack of independence, excessive discretionary power, and insufficient judicial control over its activities.

¹¹² Transparency International's Global Corruption Barometer (GCB), 2013, page 35, http://www.transparency.org/policy_research/surveys_indices/gcb.

¹¹³ See for example for Armenia: 2010 Armenia Corruption Survey of Households (USAID), page 4, http://old.crrc.am/store/files/corruption/2010_Corruption_Household_Survey_Report_English.pdf; Moldova, Evolution of the Perception regarding Corruption Phenomenon in the Republic of Moldova 2005 – 2009 (Council of Europe), page 11, www.coe.int/t/dghl/cooperation/economiccrime/MoneyLaundering/Projects/MOLICO/912_MOLICO_surveyreport2009.pdf

¹¹⁴ <http://www.ibanet.org/Article/Detail.aspx?ArticleUid=c5afab14-f29d-4fe5-af88-42d46a478515>.

¹¹⁵ Not yet available online.

¹¹⁶ <http://transparency.ge/en/node/1061>.

¹¹⁷ https://wcd.coe.int/ViewDoc.jsp?id=1809789#P297_63271.

¹¹⁸ At page 61, http://transparency.ge/sites/transparency.ge.nis/files/TIGeorgia_NISReport_en.pdf.

¹¹⁹

http://gyla.ge/uploads/publications/2012/legal_analysis_of_cases_of_criminal_and_administrative_offences_with_alleged_political_motive.pdf.

¹²⁰ Not yet available online.

¹²¹ SWD(2013) 90 final, pages 5 f.

http://ec.europa.eu/world/enp/docs/2013_enp_pack/2013_progress_report_georgia_en.pdf.

This report does not intend to double above efforts and will rely on previous analysis and findings insofar they apply to this risk assessment. However, this risk assessment will deepen the analysis of abuse of discretionary power and intends to add additional value.

In addition, there is the Council of Europe Project report on Enhancing Judicial Reform in the Eastern Partnership Countries, Working Group on “Efficient Judicial Systems”, March 2013¹²²; however, it only focuses on the status, budget and salary of prosecutors, but does not cover operational aspects.

In its 4th Evaluation Round, GRECO will focus on prevention of corruption in respect of inter alia prosecutors with regards to: ethical principles and rules of conduct; conflict of interest; prohibition or restriction of certain activities; declaration of assets, income, liabilities and interests; enforcement of the rules regarding conflicts of interest; and awareness.¹²³ The Evaluation is scheduled to take place not before 2015. This risk assessment will try to avoid anticipating the GRECO evaluation. It will give, however, basic information on integrity and prevention of corruption in the prosecution services as well, in order to provide a full picture. There will be no recommendations in such fields, though.

18.3 Limited international research and standards

Given the outstanding rank of the prosecution sector as one of the sectors as perceived to be most corrupt not only in the EaP region, it is astonishing that there is internationally almost no study or risk assessment on prosecution services available. In fact, a working paper in “Justice&Development” seems to be the only overview available on corruption risks in the prosecution sector published so far.¹²⁴ This risk assessment intends to enlarge the documentation available on corruption risks in the prosecution sector.

The scarcity of research is mirrored by a scarcity of international standards; however, the Council of Europe seems to have taken a leading role in setting the few standards available:

- Recommendation Rec(2000)19 of the Committee of Ministers to member states on the role of public prosecution in the criminal justice system.¹²⁵
- The Consultative Council of European Prosecutors (CCPE): The Council has not yet rendered any opinion related to ethics or corruption risks. This stands in contrast with at least one opinion by the Consultative Council of European Judges (CCJE), which touches on ethical and corruption related issues.¹²⁶

¹²² http://www.coe.int/t/DGHL/COOPERATION/CAPACITYBUILDING/projects/aep_en.asp.

¹²³ http://www.coe.int/t/dghl/monitoring/greco/evaluations/index_en.asp; the Questionnaire is available at: [http://www.coe.int/t/dghl/monitoring/greco/source/Greco%20\(2012\)%2022E%20Questionnaire%20Eval%20IV%20REVIS ED.doc](http://www.coe.int/t/dghl/monitoring/greco/source/Greco%20(2012)%2022E%20Questionnaire%20Eval%20IV%20REVIS ED.doc).

¹²⁴ The World Bank, Heike Gramckow, Preventing Corruption in Prosecution Offices: Understanding and Managing for Integrity, Working Paper Series, No. 15/2011, page 11, http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2011/11/09/000333038_20111109024044/Rendered/PDF/655100WP0JOD0150110Box361565B00PUBLIC0.pdf.

¹²⁵ Adopted by the Committee of Ministers on 6 October 2000, <https://wcd.coe.int/ViewDoc.jsp?id=376859&Site=CM>.

¹²⁶ http://www.coe.int/t/dghl/cooperation/ccje/textes/Avis_en.asp: Opinion N° 3 (2002) on ethics and liability of judges; see also Opinion N° 1 (2001) on standards concerning the independence of the judiciary and the irremovability of judges.

- Venice Commission, Report on European Standards as Regards the Independence of the Judicial System: Part II – The Prosecution Service, January 2011.¹²⁷

Apart from that, only Article 11 “Measures relating to the judiciary and prosecution services” of the United Nations Convention against Corruption (UNCAC) is relevant:

1. Bearing in mind the independence of the judiciary and its crucial role in combating corruption, each State Party shall, in accordance with the fundamental principles of its legal system and without prejudice to judicial independence, take measures to strengthen integrity and to prevent opportunities for corruption among members of the judiciary. Such measures may include rules with respect to the conduct of members of the judiciary.

2. Measures to the same effect as those taken pursuant to paragraph 1 of this article may be introduced and applied within the prosecution service in those States Parties where it does not form part of the judiciary but enjoys independence similar to that of the judicial service.

Neither the Council of Europe Criminal Law Convention on Corruption nor the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions specifically address corruption prevention at the prosecution sector. Some national guidelines on ethics of prosecutors are available, though, such as the American Bar Association’s Model Rules of Professional Conduct, Rule 3.8 Special Responsibilities of a Prosecutor.¹²⁸

19 SCOPE OF THE ASSIGNMENT

This Paper is part of the Project’s regional Activity 1.4 “Risk Assessment: Typologies of underlying causes of corruption”. The aim of this activity is to analyse causes and risks of corruption, and identify weaknesses in countermeasures and need for action in integrity systems of the Eastern Partnership countries, by addressing a specific sector in each country. For Georgia, the “Prosecution Services” have been chosen as a topic.

Given previous and planned future assessments on the prosecution services, in particular the 4th Round Evaluation by GRECO, and given the little relevance of bribery in Georgia, this risk assessment focuses mainly on prosecutorial discretion. Illegitimate use of discretion will generally constitute the corruption offence of “Abuse of power” (Article 332 Criminal Code Georgia) or “Abuse of official authority” (Article 333 Criminal Code Georgia), or will be a disciplinary infraction.

The prosecution services are intrinsically intertwined with the other stakeholders of criminal procedure (judges, lawyers, defendants, victims). Therefore, it would be theoretically necessary to assess their role and system in detail. However, the means allocated for this exercise would not allow for such a broad “criminal procedure” assessment, and, furthermore, this assessment was only confirmed by the Georgian authorities on rather short notice towards the end of this Project. This assessment will thus include other stakeholders to the extent necessary and by making use of existing assessments without being able to provide a full assessment.

¹²⁷ www.coe.int/t/dghl/cooperation/capacitybuilding/Source/judic_reform/europeanStandards_en.pdf.

¹²⁸

http://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_3_8_special_responsibilities_of_a_prosecutor.html.

20 BACKGROUND

20.1 Legal framework

The status and work of the prosecution services is based in particular on the following laws:

- Constitution.
- Law on prosecution services.
- Criminal procedure code.
- Law on Public Service.
- Law on Conflict of Interest and Corruption in Public Service.
- Prosecutorial Code of Conduct.

20.2 Functions

The two main functions of the Prosecution Service are:

- Prosecutions;
- Conducting and supervising pretrial investigations.

Supervising pretrial investigation means that decisions on investigative steps are taken by the prosecutor, whereas oversight on disciplinary responsibility remains fully with the Ministry of Interior as the main investigative unit.

In addition, the Prosecution Services supervise the work of the operative-intelligence agencies and procedures of deprivation of liberty (pre-trial detention etc.).

20.3 Staff and organisation

The Prosecution Service currently employs about 430 prosecutors. About 65% are men, about 35% are women.

Year	Prosecutors and investigators	Other staff
2011	387	279
2012	481	223
2013	522	320

(Chart based on information provided by the Prosecution Service)

The Office of the Chief Prosecutor is divided in the following departments:¹²⁹

- Administration of the Office of the Chief Prosecutor;
- Investigative Division;
- Department of Human Recourse Management and Development Department of Legal Affairs;

¹²⁹ <http://pog.gov.ge/eng/about/departments>.

- Department of Procedural Administration of Investigation in the General Inspection of the Ministry of Internal Affairs of Georgia, the Criminal and Patrol Police Departments and at the Unit for Fighting against Illegal Drugs Circulation of the Special Operative Department;
- Department of Supervision over Prosecutorial Activities in Regional Territorial Authorities of the Ministry of Internal Affairs of Georgia;
- Department of Procedural Guidance of Investigation and Operational Investigative Activities Supervision in Public Security Service, Special State Security Service and Intelligence Service of the Ministry of Internal Affairs
- Department of Procedural Supervision of Investigation in the Ministry of Finance and the Ministry of Environment and Natural Resources of Georgia and for Prosecution of the legalization of Illegal Incomes;
- Department of the Procedural Guidance of Investigation in the Ministry of Finance;
- Department of the Procedural Guidance of Investigation in the Ministry of Defense and Ministry of Corrections and Legal Assistance;
- Division of Human Rights Protection;
- General Inspection;
- Public and Media Relations Department;
- Economic Department.

20.4 Main reforms

The main reforms affecting the Prosecution Service are:

- Independence: amendments to the Law on Prosecution Services of May 2013 (see below 21.1);
- Reform of the Criminal Procedure Code introducing plea bargaining in 2006 following largely the American model (see below 24.4.1);
- Reform of the Criminal Procedure Code introducing the adversarial system following largely the American model (see below 24.3.2).

21 INDEPENDENCE

21.1 External

Previous monitoring reports on Georgia criticised the fact that under Georgian legislation the Minister of Justice had the power to intervene in prosecution of individual cases under Article 8 of the Law on Prosecution Service.¹³⁰ It included the following power:

“c) In case of commitment of a crime, according to the rules prescribed by law conducts criminal prosecution of the President of Georgia, member of the Parliament of Georgia, Chairman of the Supreme Court of Georgia, Judges of the Common Courts of Georgia, Chairman and member of the Constitutional Court of Georgia, Member of the Government, Public Defender of Georgia, the Auditor General, Chairman and the Member of the Board of the National Bank of Georgia,

¹³⁰ See OECD ACN 3rd Round of Monitoring, Draft Report on Georgia 2013, page 35 – final version not yet published.

Ambassador of Georgia and envoy, high ranking military official or an official with a special rank or a person with an equal status; [...]

k) abolishes unlawful orders, instructions and directives issued by the subordinate prosecutors”.

In 2013, the government initiated amendments to the Law on Prosecution Service abolishing inter alia the power of the Minister to interfere in individual cases. The amendments entered into force on 24 June 2013 and transferred prosecutorial powers of the Minister of Justice to the Chief Prosecutor of Georgia. As a result, the Minister of Justice will only have the authority to define general criminal justice policy and issue respective guidelines.¹³¹

The amendments also exclude the Minister of Justice from the definition of “prosecutor”, thus excluding him from the prosecutorial hierarchy. As a consequence, the Minister of Justice is not a superior prosecutor anymore who may overrule decisions of subordinate prosecutors.

Appointment and dismissal of the Chief Prosecutor are done by the President upon proposal of the Ministry of Justice. No grounds for dismissal of the Chief Prosecutor are provided in the law. In 2009, the Venice Commission in its 2009 Opinion on four constitutional laws criticized the procedure for appointment and dismissal of the Chief Prosecutor.¹³²

The OECD, ACN 3rd Round of Monitoring Draft Report on Georgia also points to the following:

“The Minister of Justice also retains extensive powers with regard to internal structure, budgeting and remuneration of the prosecutor’s office and prosecutors. While most of relevant powers are to be executed in co-ordination with the Chief Prosecutor, they still indirectly provide for significant influence of the Minister on the prosecution service. Overall, it can be recommended that most of these issues should be decided not by a politically appointed member of the Government, but by a body of prosecutor’s self-governance, similar to the one for judges.”¹³³

The idea of a Council of the Prosecution Service was raised earlier in 2010, but was dropped later on: “In order to ensure the effectiveness of the prosecution service system management and to increase the level of monitoring over the prosecution service by the society an independent body – Council of the Prosecution Service – will be established within the same system. The Council will be staffed with the representatives of bodies of the executive and the legislative powers, the prosecution service representatives and members of the academy and non-governmental organisations. The basic function of the Council of the Prosecution Service will be organising competitions for the candidates for prosecutors, further assisting the Chief Prosecutor of Georgia in effective management of the prosecution service system.”¹³⁴ Given the overly strong role of prosecutors in the former Soviet Union, and later on, in post-Soviet countries, it is regrettable that this form of control and participation was dropped.

As for the subordinates of the Chief Prosecutor, Article 35 of the Law on elaborates on “the Legal Protection of the Employee of the Prosecution Service”:

¹³¹ See OECD ACN 3rd Round of Monitoring, Draft Report on Georgia, page 35 – final version not yet published.

¹³² Available at [www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2009\)017rev-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2009)017rev-e)

¹³³ See OECD ACN 3rd Round of Monitoring, Draft Report on Georgia, page 36 – final version not yet published.

¹³⁴ http://www.justice.gov.ge/index.php?lang_id=ENG&sec_id=371#sthash.2xDaroMw.dpuf.

1. *In his/her activities the employee of the Prosecution Service shall be independent. She/he cannot be resigned or dismissed from the position apart from the cases envisaged by this law and established rules.*
2. *The encroachment on the employee of the Prosecution Service during the performance of office duties, humiliation of his/her dignity, threat against him/her, resistance, violence, infringement of life, health and property of the employee of the Prosecution Service results in the responsibility envisaged by law. In case of receiving announcement or information on the encroachment of health or property of the employee of the Prosecution Office or his/her family member the State bodies are obliged to take measures envisaged by law in order to protect their personal and estate security.*

21.2 Internal

Internal independence in this context would describe the degree to which prosecutors can base the exercise of their discretion on the individualities of the case and on their legal and ethical obligations. As for the legal level of independence, basically above mentioned Article 35 of the Law on Prosecution Service applies. As for implementation of this internal independence, several interview partners from the state and non-state side have asserted that it is hard for prosecutors if not impossible to divert from the questionable practice of plea bargaining and from the practice of obtaining a high conviction rate (see below at 24.4.2). Related to internal independence, the distribution of bonus payments should also be noted (see below at 22.2).

22 CAREER

22.1 Appointment

The Prosecution Office announces vacancies through the website www.hr.gov.ge, which is managed by the Civil Service Bureau. Candidates sit for two written tests regarding general intelligence and regarding professional skills, and they have to attend a personal interview. From about 1,000 candidates, about 20-25 are chosen to serve as temporary interns for one year in order to test their performance in practice. Almost all of the interns will be acceded to permanent appointment after the internship.

The relevant provision of the Law on Prosecution Services reads as follows:

“Article 31 the Requirements to be met by the candidate to hold the position of Prosecutor and Investigator of the Prosecution Service

1) The citizen of Georgia may be assigned as a prosecutor or an investigator in the Prosecution Service, who has the high legal education, possesses the language of the legal proceedings, has passed internship in the Prosecution Service for the period from 6 (six) month up to 1(one) year, has passed the qualifying examination to the Qualifying Examination Commission in the following subjects: constitutional law, international human rights law, criminal law, criminal procedure law, penitentiary law and the basics of the operative-investigation activity, has taken the prosecution service employee oath and by his/her working and moral qualities, state of her/his health is capable to perform the duties of the prosecutor, or the investigator of the Prosecution Service. [...]”

22.2 Status and salary

Prosecutors are (lifetime) civil servants enjoying all benefits granted under the Public Service Law. Additionally, social care is explicitly guaranteed by Article 40 of the Law on Prosecution Services. The salary of a deputy head prosecutor averages about 2,450 GEL/month (before taxes), equalling about 1,020 €. ¹³⁵ Article 41 of the Law on Prosecution Services regulates the “Salary of the Employee of the Prosecution Service” as follows:

1. *The salary of the employee of the Prosecution Service is contained of official salary, premium and other bonuses envisaged by the legislation of Georgia.*
2. *The official salary of the prosecutor and investigator of the Chief Prosecution Service shall be no less than 500 GEL. The prosecutors and investigators of the Prosecution Services of the Autonomous Republics of Adjara and Abkhazia, Tbilisi Prosecution Service, District Prosecution Services, Regional Prosecution Services and Specialized Prosecution Services envisaged by Article 1 §3 of this law shall have no less than 400 GEL as a salary.*

The bonus payments are allocated more or less quarterly on a case-by-case basis and in practice in one year for example roughly amounted to about 2-5% of the monthly salary. There is neither criteria available for attribution of the premiums, nor a general practice of written assessments for basing on the premiums. Bonus payments are thus based on the “impression” of the subordinate by the superior.

22.3 Appraisal and promotion

There is no appraisal system in place yet, but is currently prepared to be introduced until end of 2013. It will be based on quantitative and qualitative criteria. In this context it should be noted that a high conviction rate was reportedly regarded as a feature of good performance, and a lost trial as a feature of bad performance. Such an assumption conflicts with the impartiality of the prosecutor (Article 4 lit. d Law on Prosecution services), which is reflected in several provisions of the Criminal Procedure Code, such as Article 22 par. 2 “Initiation of Criminal Proceeding”: “The investigation of a criminal matter shall not be carried out one-sidedly, in the accusatory direction only.” A critical media report on wrongful convictions caused by prosecutorial misconduct in the United States noted in this context: “Federal prosecutors are supposed to seek justice, not merely score convictions.”¹³⁶

22.4 Dismissal

According to Article 34 of the Law on Prosecution Services, a prosecutor may be discharged from office related to the following ethical incidents:

- [...]
- d) *Non-fulfillment or improper performance of office duties;*
 - e) *Non-fulfillment or improper performance of the requirements envisaged by the contract;*
 - f) *Office incompatibility;*
 - g) *Violation of office discipline roughly or systematically;*
 - i) *In case of election or appointment at legislative, executive, judicial branches of authority or local self-government and in other cases of office incompatibility;*

¹³⁵ http://pog.gov.ge/eng/news?info_id=339.

¹³⁶ http://usatoday30.usatoday.com/news/washington/judicial/2010-09-22-federal-prosecutors-reform_N.htm.

- j) *In case of breaking the oath, revealing professional secret or committing a behaviour improper to the employee of the Prosecution Service;*
- k) *On the basis of the conviction being in force;”*

In a few sporadic cases, prosecutors have been dismissed in the past, either due to repeatedly failing vocational trainings and exams, because of ethical violations (violating conflicts of interest rules), or for committing crimes (acceptance of bribery).

23 INTEGRITY

23.1 General legal framework

The integrity framework in the Prosecution is mainly determined by the following laws:

- Constitution.
- Law on Prosecution Services.
- Law on Public Service.
- Law on Conflict of Interest and Corruption in Public Service.
- Prosecutorial Code of Conduct.

23.2 Conflicts of interest

Conflict of interest is comprehensively regulated in Article 13 of the Law on Conflict of Interest and Corruption in Public Service:

“2. An official has no right to implement any kind of paid work except scientific, pedagogical or creative or to hold any position in any other treasury establishment or treasury enterprise or to implement any kind of paid work or to hold a position in the agency or institution of a foreign country.

3. An official, or a member of his/her family has no right to hold a position or implement any kind of work in an enterprise registered in Georgia, the control of which is conducted by an official or falls under his/her capacity.

4. An official has no right to hold any position in an enterprise.

5. An official, or a member of his/her family has no right to own shares or part of a stock in an enterprise where the control of which is implemented by an official or falls under his/her capacity.

6. An official has no right to be a representative of a natural or legal person or commissary or represent or defend in criminal, civil or administrative offences cases against the Treasury establishment except in a case when she/he is a trustee of the natural person.

7. A close relative of an official cannot be appointed to the position of a public servant except by the competition, which is under the supervision of an official.

8. An official, or a member of his/her family is obliged to retire from a incompatible position or to terminate incompatible work within 10 days after the appointment on the position if the Constitution of Georgia or the present Law does not prescribe anything else.

9. An official shall present documents certifying the eradication of his/her or a member of his/her family's incompatibility to his/her direct superior official (agency), also to the corresponding staff agency."

In addition, Article 26 par. 5 of the Constitution requires that "a person who is [...] designated as a judge or a prosecutor shall cease his/her membership of any political association." This incompatibility is reflected in Article 31 par. 9 and 10 of the Law on Prosecution Services:

"9) The position of the employee of the Prosecution Service shall not be compatible with any position of state and local self-government, also with entrepreneur or paid job except for the scientific and pedagogical activities. The employee of the Prosecution Service shall have the right to perform other paid job or/and hold other position simultaneously at the Prosecution Service.

10) The employee of the Prosecution Service cannot be a member of political union or involved in the political activities."

None of the interviews conducted during this risk assessment has lead to information that there was a substantial implementation gap with regards to conflicts of interest legislation.

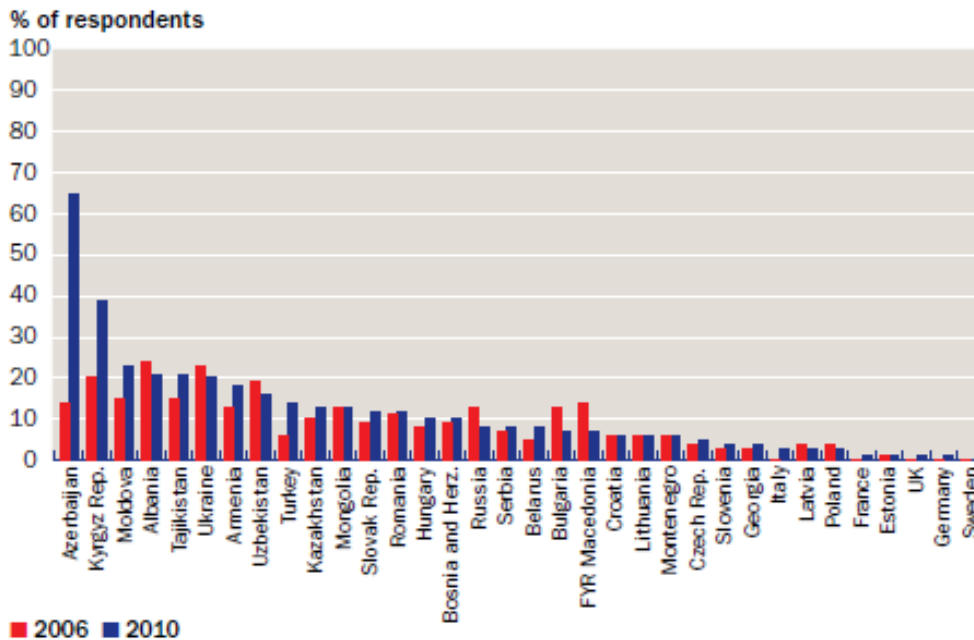
23.3 Gifts

Gifts are regulated in the Law on Conflict of Interest and Corruption in Public Service. Not only gifts given during the performance of duties, but gifts given to public officials at any moment are covered. The overall limit of gifts given to an official or a member of his/her family is 1,000 GEL (about 500 €) per year. Gifts going above this limit have to be declared.

Gift giving would normally not be a practice to be expected and common in the law enforcement services and probably even more so in the prosecution sector. The level of gift giving in Georgia is vanishingly low anyhow in the public sector according to international surveys.¹³⁷

¹³⁷ European Bank for Reconstruction and Development, "Life in Transition Survey" (2010), p. 39, www.ebrd.com/downloads/research/surveys/LITS2e_web.pdf.

Average level of perceived necessity of unofficial payments or gifts for public services, by country



Source: LITS I (2006), LITS II (2010).

Note: "Perception of unofficial payments" refers to the proportion of respondents who say people like themselves usually or always have to make unofficial payments or gifts averaged across all public services covered by the survey.

23.4 Asset declarations

Under Chapter IV of the Law on Conflict of Interest and Corruption in Public Service, all senior public officials have to submit asset declarations to the Civil Service Bureau upon entry and annually thereafter. The submission is done electronically. Declarations of public officials of higher levels are published online: <http://csb.gov.ge/en/asset-declarations>. Declarations of mid and lower level officials are available under freedom of information legislation. Until today, the Civil Service Bureau has relied on public scrutiny for verifying the content of the declarations. There are plans underway and steps ongoing for establishing a verification mechanism until end of 2014 as is in place in many other countries.¹³⁸ As Georgia does not have a systemic bribery or embezzlement problem, a central question in establishing this system will probably be to either target the right risk group or the right sample with the verification procedures.

23.5 Code of Conduct

The Prosecutorial Code of Conduct was adopted in 2006. It is contained in Annex 29.3. It seems to address all major ethical issues. However, it is striking to note that trainings on prosecutorial ethics and ethical dilemmas in daily work are not part of the intensive training programme implemented within the prosecution service (see below at Chapter 27).

24 OPERATIONAL DISCRETION: RISKS OF ABUSE

¹³⁸ See for example Council of Europe EaP Project Technical Papers on asset declarations in Armenia and Ukraine, http://www.coe.int/t/DGHL/cooperation/economiccrime/corruption/Projects/EaP-CoE%20Facility/EaP_TP_default_en.asp.

Prosecutors in Georgia enjoy discretion in their operations as do probably all prosecution services of this World. The discretion is necessary to adapt investigative and trial measures and manoeuvres to the particularities of each case. However, discretion without sufficient checks and balances is a corruption risk by itself. The following are the main possible entry points for abuse of prosecutorial discretion.

24.1 Opening of proceedings

According to Article 22 of the Criminal Procedure Code, Prosecutors have to initiate a criminal proceeding “upon existence of the elements of a crime”. Article 28 allows to “refuse to initiate criminal proceedings” or suspend them, if, among other, “the criminal event or act provided by criminal law is missing”. Whereas victims used to have the right to appeal to a court for reviewing the decision by the prosecutor to not open an investigation or to not prosecute a case, this option has been abolished in 2006 with the introduction of the adversarial system.

Several state and non-state stakeholders have pointed in the interviews to cases of abusive criminal investigations based on little evidence, aimed from the beginning at obtaining a plea bargain (or conviction) that would allow the prosecution to forfeit the defendant’s wealth to the state budget. The main protection against such abusive investigations should lie with a safe plea bargaining and trial system. In addition, investigations might be abusive just by discrediting and harassing a suspect. In most legal systems, there is no specific opportunity for a citizen to appeal against the opening of a criminal investigation. However, citizens should always have the possibility to challenge any executive decision in court, including the (abusive) opening of a criminal investigation. It is recommended to review whether the Georgian Criminal Procedure Code provides for such comprehensive judicial review of prosecutorial decisions. For example, in Germany, in addition to several legal remedies foreseen against specific investigative measures, the procedural law foresees a backup remedy for all cases not covered by other legal remedies.¹³⁹ Thus, for example, a general provision providing court protection against measures for achieving comprehensive protection of citizens would prevent and facilitate rectification of any possible abuse.

24.2 Investigative measures

Discretion and the risk of abuse also exist with regards to investigative measures (searches, wiretapping, abusive questioning of witnesses, etc.). However, approval by a judge is necessary in several cases, such as house search (Article 112 CPC). This risk assessment did not conduct a full analysis of legal protection provided to subjects of investigative measures. However, there are certain safeguards in place for ensuring the rights of persons concerned by investigative measures, such as right to damages in case of unlawful search (Article 38(11) 92 CPC).

24.3 Trial

Whereas in many legal systems in continental Europe, prosecutors have to also safeguard the interests of the defendant, prosecutors in Georgia during the trial stage only follow the adversarial interest of obtaining a conviction of the defendant. Only during the investigative stage they are bound to look for evidence in favour of the defendant, Article 37 par. 2 Criminal Procedure Code:

¹³⁹ Article 23a Einführungsgesetz zum Gerichtsverfassungsgesetz (EGGVG): In case of absence of any other special remedy, courts decide upon application over the legality of any decision by the judicial authorities, <http://www.gesetze-im-internet.de/gvgeg/BJNR000770877.html>.

“The investigator shall be obliged to conduct investigation thoroughly, completely and impartially”.

Still or yet, even in an adversarial system, manifold possibilities of illegal abuse exist during the trial. In addition, it should be clear from the procedural law that even during trials prosecutors have to abandon the “accusatory direction” should there be a certain degree of reasonable doubts about the guilt of the defendant.

24.3.1 Weak role and independence of judges

Almost all interview partners pointed to the problem that judges at least in the past would follow the requests of prosecutors while motions by defense lawyers were often refused. Already in 2011, the Commissioner for Human Rights of the Council of Europe noted “perceptions that judges are prone to influence by prosecutors aimed at ensuring convictions in all cases brought to court.”¹⁴⁰ In addition, judges would be not feel comfortable to resist the “directions” of prosecutors; in one case it was reported, a judge resisted a plea bargain proposed by the prosecution services, and was retaliated against by being transferred against his will to unfavourable court locations. Most interview partners described the collaboration of prosecutors and judges in the past as being so strong that many prosecutors were actually not used anymore being challenged by a judge and are now in need of building up their “adversarial” capacity.

The strong position of the prosecution in criminal trials could be also deducted from a conviction rate of 99.99% between 2007 and 2010.¹⁴¹ In 2011, the acquittal rate is reported to be (less than) 2.5 %.¹⁴² By contrast, the international average of conviction rates ranges rather between 50-60%.¹⁴³ Reportedly, the conviction rate has recently dropped slightly, opening de facto a small but possible window of actually obtaining an acquittal in a criminal trial.

Several interviewees from state and non-state sectors attribute the slight increase in the number of acquittals to the fact that most judges had been appointed by the previous government. In most cases, these judges, including senior key figures of the judiciary, would be loyal to the previous government and would be eager to dismiss cases concerning political affiliates of the previous government, thus providing also a setback to prosecution efforts by the new government. Whereas the increase in the number of acquittals is to be welcomed, it would not be a sign of an independent judiciary if those perceptions are true.

Another aspect of weakening the role of judges is the minimum imprisonment terms prescribed in the Criminal Code for several crimes. For example, passive bribery and money laundering carry a minimum punishment of “6 years” of imprisonment. Given the outstandingly low bribery rates in Georgia, such minimum sanctions would seem excessive and thus reduce the discretion of a judge while also “forcing” a high number of cases onto the plea agreement track, where sentences below the minimum threshold are possible (see also below at Chapter 24.4.2).

¹⁴⁰ Report by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, following his visit to Georgia from 18 to 20 April 2011, at par. 28, https://wcd.coe.int/ViewDoc.jsp?id=1809789#P297_63271.

¹⁴¹ Transparency International, Plea Bargaining in Georgia: Negotiated Justice, December 2010, page 12 (see above Chapter 18.2).

¹⁴² GIZ, The [Judicial] Integrity Scan conducted in Georgia in 2012, November 2012, page 16 (see above Chapter 18.2).

¹⁴³ European Institute for Crime Prevention and Control, Affiliated With the United Nations, International Statistics on Crime and Justice, 2010, p. 92, <https://www.ncjrs.gov/app/publications/Abstract.aspx?id=252824>, www.unodc.org/documents/data-and-analysis/Crime-statistics/International_Statistics_on_Crime_and_Justice.pdf; for Canada (66%), see <http://www.statcan.gc.ca/pub/85-002-x/2010002/article/11293-eng.htm>.

24.3.2 Adversarial system

None of the interview partners could explain for what policy reason the adversarial system was introduced into Georgian criminal procedure. This finding already raises a red flag. In fact, one interview partner recalled that even American partners of technical assistance would question the feasibility and reasonableness of such a transplant into Georgian criminal procedure. One of the reasons for introducing the adversarial system seems to be the option of doing “quick justice” through far-reaching plea bargaining. However, the introduction of the adversarial system into a system with a continental tradition entails in particular the following risks for abuse:

- In the United States or the United Kingdom the adversarial system is a legal tradition grown over centuries supported by a rich body of case law, legal teaching, and absorption into society at large. In Georgia, the adversarial system has no tradition at all. The legal uncertainty and absence of professionalism and grown structures surrounding the adversarial system carry the risk of abuse during such procedures.
- Several interview partners questioned whether lawyers in Georgia were already sufficiently prepared for providing a strong counterbalance to prosecutors in adversarial procedures. In addition, there are serious doubts about the independence and readiness of judges to ensure a proper “equality of arms”.
- Whereas information from the interviews showed that impartiality did not always seem to be a key quality of prosecutors in the past, the adversarial system by nature would only strengthen this tendency.
- In comparison to the inquisitorial system, the adversarial system takes two stakeholders out of the system of checks and balances: the judge and the prosecutor. The role of the judge is confined to arbitrating procedural questions, whereas the establishment of facts is left to the remaining two stakeholders, the prosecution and the defense. As for prosecutors, they would often during the trial also have an obligation to safeguard the rights of a defendant in an inquisitorial proceeding. It is probably fair to say that this reduction of stakeholders in the trial procedure can be seen as a risk factor in itself by reducing safeguards against abuses in essence to one stakeholder, the defense lawyer.
- In addition, during the interviews, it was conspicuous how little if at all any awareness existed about the typical forms and risks of misconduct encountered in the United States related to the adversarial system. Whereas in the United States the media, NGOs and the society at large monitor risks related to the adversarial system,¹⁴⁴ it seems unclear to what extent this capacity is already available in Georgia.

Given its limited means, this risk assessment could not produce enough data to establish a representative overview of prosecutorial misconduct in Georgia. Typical risks, as known from the adversarial system in the United States would be:

- Withholding evidence and facts (Knowingly using perjured testimony, not disclosing immunity to witnesses or co-defendants, not disclosing deals with witnesses, not disclosing witnesses having criminal records, etc.);

¹⁴⁴ See for example: California Innocence Project (CIP), “Prosecutorial Misconduct”, <http://californiainnocenceproject.org/issues-we-face/prosecutorial-misconduct>; USA Today, 23 September 2010, “Prosecutors’ conduct can tip justice scales”, http://usatoday30.usatoday.com/news/washington/judicial/2010-09-22-federal-prosecutors-reform_N.htm; USA Today, 27 December 2010, “Statement from the Justice Department”, http://usatoday30.usatoday.com/news/washington/judicial/2010-12-27-prosdoj_N.htm.

- Misstating the law or evidence (Knowingly misstating the law, knowingly presenting false evidence);
- Abusive motions.

Based on information from the interviews, above risks have practical relevance in Georgia. They are the “conflict of interest” trap prosecutors might fall into, in particular if scoring a high conviction rate is part of a success mentality, if this is induced by bonus payments, and if there is a lack of an ethical awareness, training, and culture.

24.3.3 Balance of powers: lawyers

The interviews produced at least a mixed, if not negative picture of the capacity of lawyers to provide in all cases a sufficient “adversarial counterbalance” to the prosecution. International assessments point in a similar direction.¹⁴⁵ In addition, past reports pointed to allegations

“that lawyers have encountered difficulties in exercising their profession freely, and that there have been instances of harassment, abusive prosecutions and other forms of pressure on them. Such pressure seriously impairs defence rights and prevents lawyers from effectively serving the cause of justice. In this regard, the Commissioner stressed that defence lawyers must be allowed to operate without impediments and in full confidentiality when providing legal assistance to their clients.”¹⁴⁶

24.3.4 Jury trials

Jury trials have been introduced in Georgia in 2006. However, there have been only five trials altogether ever since. It is obviously questionable how a criminal justice system and the society at large will build up enough capacity for conducting jury trials in a professional manner, based on such a tiny case record. Whereas in the United States jury trials are a legal tradition grown over centuries (and are still questioned by many in their effectiveness of delivering justice), jury trials have no tradition in Georgia at all. The legal uncertainty and absence of professionalism surrounding jury trials, especially on the defence side, carries the risk of abuse during such procedures. Georgia successfully reformed its tax code about 10 years ago in order to reduce corruption risks from the lack of legal clarity of the former tax code. One could ask, whether the introduction of jury trials would not be a step in the opposite direction in the field of criminal law. In addition, the regular absence of a jury in Georgia questions whether the adversarial system is functional at all. Whereas many civil and criminal trials in the United States would be conducted without a jury (and still in an adversarial manner so), the percentage of jury trials (and thus the society control of the adversarial play) in the United States and in Georgia is without comparison.¹⁴⁷

¹⁴⁵ GIZ, The [Judicial] Integrity Scan conducted in Georgia in 2012, November 2012, page 16; IBAHRI, Strengthening the Rule of Law: Challenges and Opportunities for the Georgian Bar, December 2012, page 28 (for both reports, see above Chapter 18.2).

¹⁴⁶ Report by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, following his visit to Georgia from 18 to 20 April 2011, par. III; see also IBAHRI, Strengthening the Rule of Law: Challenges and Opportunities for the Georgian Bar, December 2012, page 51 (for both reports, see above Chapter 18.2).

¹⁴⁷ 66 percent of all criminal trials are jury trials (47 percent felony crimes plus 19 percent misdemeanor crimes), whereas this percentage in Georgia would be well below 0.1 percent. See eJournal USA, July 2009, “Anatomy of a Jury Trial”, <http://iipdigital.usembassy.gov/st/english/publication/2009/07/20090706162635ebyeessedo5.389911e-02.html>.

24.4 Plea bargaining

Improper plea deals raise questions of criminal procedure standards. The following observations consider also criminal procedure standards, but mainly take the perspective of corruption prevention, in this case, preventing the abuse of (prosecutorial) power.

- International Bar Association's Human Rights Institute (IBAHRI), Strengthening the Rule of Law: Challenges and Opportunities for the Georgian Bar, December 2012¹⁴⁸
- Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ), The [Judicial] Integrity Scan conducted in Georgia in 2012, November 2012¹⁴⁹
- Transparency International, Plea Bargaining in Georgia: Negotiated Justice, December 2010¹⁵⁰

24.4.1 Overview

Plea bargaining was introduced to the Georgian criminal procedure in 2004. A report by Transparency International of 2010 describes the system in detail.¹⁵¹ The key features of the plea bargaining system are:

- The judge is not allowed to lessen the severity of the sentence.
- The judge is only allowed to introduce changes if all parties agree.
- The victim has no right to appeal the agreement or resist it, but only has the right to file a civil suit.
- In cases, where cooperation with the investigation is required by the defendant, it is only the prosecutor's decision whether the defendant is sufficiently cooperating.
- There is no legal guideline on how the punishment is calculated for the plea bargain.
- The requirements of verifying a confession and the key facts of the case, as well as documenting this verification are rather vague.
- The defendant has no right to an appeal for the same/similar reasons he/she could appeal a judgement of first instance (see Article 215 Criminal Procedure Code).

The two key provisions in the Criminal Procedure Code are the following:

"Article 679-2. Form of Petition for Rendering Sentence by Court without Hearing Case on Merits

1. A petition for rendering a sentence by the court without hearing a case on the merits shall indicate:

a) the full name, the day, month and year of birth of the accused;

b) the wording of a sentence, that is a description of the alleged wrongful action with the indication of the place, time, means or tool of its committal, as well as the outcome thereof;

c) the evidence that are sufficient for a reasoned assumption that the person has committed the given offence;

¹⁴⁸ <http://www.ibanet.org/Article/Detail.aspx?ArticleUid=c5afab14-f29d-4fe5-af88-42d46a478515>.

¹⁴⁹ Not yet available online.

¹⁵⁰ <http://transparency.ge/en/node/1061>.

¹⁵¹ See above at Chapter 18.2.

d) the article, section and subsection of article of the Criminal Code providing for the offence;

e) the measure of punishment which the procuracy requests; in case of a fine – its amount.

2. A written statement of the accused to be signed by the accused or his legal representative and advocate shall indicate that the accused has voluntarily consented to the rendering by the court of a sentence without hearing the case on the merits following the receipt of legal aid from his advocate. At the same time, the accused shall comprehensively understand the petition's content and legal consequences of the expected sentence.

3. If the procurator and the accused's advocate have agreed on collaboration, the procurator shall draw up a petition indicating the content of the arrangement. The procurator, the accused's advocate and the accused shall sign the petition.

4. The content of a petition prescribed by section 3 of this article is confidential and only the signatories and the court shall have the right to consult it.

Article 679-3. Considering Procurator's Petition for Rendering Sentence by Court without Hearing Case on Merits

1. A procedural arrangement shall be made in writing and approved in an open court session, except for the cases when essential grounds exist for holding a closed court session. The procedural arrangement shall be reflected in the court-rendered sentence.

2. Prior to the approval of a procedural arrangement, the court shall make sure that:

a) the accused is fully conscious of the nature of offence of which he is being charged;

b) the accused is fully conscious of the penalty envisaged for the offence which committal he pleads;

c) The accused is aware of all the requirements with regard to the plea of guilt envisaged by law in connection with the procedural arrangement;

d) the accused is fully conscious that the court is authorized to disregard the procurator's petition for the commutation of a penalty or mitigation of a sentence submitted on the basis of a procedural arrangement;

e) the accused is conscious that he has the following constitutional rights:

ea.) of defense;

eb) of waiving the arrangement for pleading guilty;

ec) the right to the hearing of a case on the merits by the court;

f) the procedural arrangement is not as result of the accused person's duress, intimidation or such a promise which goes beyond the limits of the procedural arrangement;

g) the accused consents to the factual basis of the procedural arrangement concerning the plea of guilty.

3. *The judge decides on a procedural arrangement on the basis of inner conviction and is not obliged to take account of the arrangement conditions achieved between the procurator and the accused.*”

Statistics on criminal proceedings versus plea agreements:

2011		Cases	%	Persons	%
Judgments of the Court of First Instance		14,353	100.0	17,680	100.0
Plea agreements		12,693	88.4	15,516	87.8
Regular proceedings		1,660	11.6	2,164	12.2
<i>out of which</i>	<i>Convictions</i>	1,612	97.1	2,104	97.2
	Acquittals	43	2.6	52	2.4
	<i>Partial acquittals</i>	5	0.3	8	0.4
Judgments of the Court of Appeal		1,178	100.0	1,522	100.0
Regular proceedings		787	66.8	1,012	66.5
Plea agreements		391	33.2	510	33.5
Fines imposed by the plea agreements (First Instance/Appeal)		108 283 495 GEL (46,430,000 €)			

2012		Cases	%	Persons	%
Judgments of the Court of First Instance		8,992	100.0	11,043	100.0
Plea agreements		7,897	87.8	9,711	87.9
Regular proceedings		1,095	12.2	1,332	12.1
<i>out of which</i>	<i>Convictions</i>	991	90.5	1,198	89.9
	Acquittals	90	8.2	117	8.8
	<i>Partial acquittals</i>	14	1.3	17	1.3
Fines imposed by the plea agreements (first 6 months)		20,898,600 GEL (8,960,000 €)			
Projected onto 12 months		41,797,200 GEL (17,920,000 €)			
2013 (first 8 months)		Cases	%	Persons	%
Judgments of the Court of First Instance		7,559	100.0	8,850	100.0
Plea agreements		6,878	91.0	8,016	90.6
Regular proceedings		681	9.0	834	9.4
<i>out of which</i>	<i>Convictions</i>	638	93.7	770	92.3
	Acquittals	24	3.5	41	4.9
	<i>Partial acquittals</i>	19	2.8	23	2.8
Fines imposed by the plea agreement (first 6 months)		9,353,750 GEL (4,000,000 €)			
Projected onto 12 months		18,707,500 GEL (8,000,000 €)			

Data provided by the Prosecution Services based for the years 2012-2013 mainly on data provided by the Supreme Court (www.supremecourt.ge).

24.4.2 Freedom of choice

Abuse of power by prosecutors in plea bargaining can be only excluded if defendants have a real choice between the plea, and a fair criminal trial. A conviction rate of 99.99% or anywhere in that neighbourhood de facto gives the suspect the only choice between a conviction or a plea bargain. One might even argue that a conviction rate of 99.99% is an abuse of power per se. As mentioned earlier,¹⁵² the international average of conviction rates ranges rather between 50-60%.

This obviously does not mean that Georgian courts would have to meet this average as a target; one cannot use any such numbers as benchmarks because all countries are different. There are countries such as Finland with a very high conviction rate, but which do not receive any comparable criticism by international observers as did Georgia in the recent past. The above chart shows to what extent there is currently a change of trend. In any case, if only the perception of an unfair conviction rate remained in Georgia, it would raise the question as to whether defendants are in the position of choosing freely between the plea bargain and other viable alternatives. In the words of a recent decision by the German Constitutional Court on plea bargaining: “[T]he defendant has to be in a position to decide under no constraints and independently whether and if so, to which degree he or she participates in the criminal trial.”¹⁵³ In addition, “resort to pre-trial detention is virtually systematic, and decisions to impose this measure tend to lack individualised

¹⁵² See above footnote 143.

¹⁵³ Federal Constitutional Court - Press office -, Press release no. 17/2013 of 19 March 2013, Judgment of 19 March 2013, 2 BvR 2628/10, <http://www.bundesverfassungsgericht.de/en/press/bvg13-017en.html>.

reasoning based on each case”,¹⁵⁴ causing additional pressure on the defendant to “succumb” to the plea offer.

Even though the conviction rate has dropped slightly, serious doubts remain, whether under international constitutional standards, the current practice plea bargaining would not have had already to be suspended immediately until further reform and until, in reality, innocent defendants in general have a realistic chance of acquittal.

The above mentioned (Chapter 24.3.1) high minimum sentences for several crimes would also seem to exert problematic pressure upon any suspect. For example, passive bribery and money laundering carry a minimum punishment of “6 years” of imprisonment. Given the outstandingly low bribery rates in Georgia, such minimum sanctions would seem excessive and thus put unfair pressure on the defendant to submit to a plea proposal as the only way out of such minimum sentences.

24.4.3 Separation of powers: the judiciary

Several state and non-state stakeholders have confirmed what has been documented already in previous international reports: judges have at least in the past mainly taken a role of “rubber stamp”-approval in many if not most cases of approving plea deals. This would seem to be mainly a problem of proper implementation of the legislation. The relevant provision of the Criminal Procedure Code reads as follows:

Article 679-4. Court Decision on Rendering Sentence without Hearing Case on Merits

1. In the cases provided for in this chapter the court is authorised to render a decision on the rendering of a sentence without hearing the case on the merits or referral of the matter back to the procurator for settling the indictment.

2. A respective court according to criminal procedure jurisdiction shall hear a matter on the rendering of a sentence without hearing the case on the merits.

3. Based on the case materials, the court shall examine whether the charge is corroborated and whether the petition-indicated penalty is just, also – how voluntarily the plea of guilty has been effected.

4. If the court considers factual and legal assessment of the procuracy to be correct and the requested penalty to be just, its hall render an indictment within one month from filing of the procurator’s petition. The judge hearing the case (the court panel) shall sign the indictment.

5. If the court decides on the lack of sufficient proof of the charge or establishes that a petition for rendering by the court of a sentence without hearing the case on the merits has been submitted in violation of the requirements of Article 679 of this Code, it shall return the case to the procuracy for settling the issue of indictment.

6. If the court considers the procurator-requested penalty to be strict, it shall be authorised to mitigate it.

¹⁵⁴ Report by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, following his visit to Georgia from 18 to 20 April 2011, at par. 10 https://wcd.coe.int/ViewDoc.jsp?id=1809789#P76_14021.

7. *The accused has the right at any time prior to adjudication to waive the arrangement concerning the admission of his guilt. The announcement of a waiver does not require the advocate's consent. A waiver of the arrangement after the adjudication is inadmissible*".

There is probably still room for improving the legislation, especially with regards to the documentation of the plea bargaining procedure, the documented reasoning of the judge why he/she would consider the content of the plea deal "correct and just", and, in particular, how he/she has verified any confession by the defendant. In this context one might mention that the German Constitutional Court recently overturned a conviction "because the Regional Court sentenced the complainant [defendant] largely on the basis of a formal confession that had not been verified."¹⁵⁵ Other constitutional court decisions in Europe support this perspective.¹⁵⁶

Each and every step and aspect of the plea procedure would actually need to be recorded in writing in order to enable the defendant to potentially appeal against any procedural violation. An effective incentive for ensuring exact and broad implementation of requirements for proper plea bargaining would be to make any violation of procedural rules of plea bargains an absolute ground for appeal.

In addition, it is noteworthy that in Georgia the judge currently has no power to reduce or raise a plea sentence (for the other rights of a judge in this context see Article 213 CPC); this deprives the criminal justice system of one possibility to check and limit abuse of powers in favour of certain defendants, for example in case of political affiliation. In the past, though, judges did not necessarily make much use of that option either. Out of several thousands of plea proposals in 2010-2012 each, in less than 20 cases judges refused to accept the proposal. This would be problematic in light of complaints by many interview partners that plea bargaining was abused for siphoning off money from defendants by calculating fines based on their overall wealth, or by forcing defendants into debts.

The European Court of Human Rights has recently rendered a decision to declare admissible a case concerning a plea bargain deal in Georgia for possible violations of Article 6 (fair trial) of the Convention.¹⁵⁷

24.4.4 Checks and balance: the defendant and his/her lawyer

¹⁵⁵ Federal Constitutional Court - Press office -, Press release no. 17/2013 of 19 March 2013, Judgment of 19 March 2013, 2 BvR 2628/10, <http://www.bundesverfassungsgericht.de/en/press/bvg13-017en.html>.

¹⁵⁶ See for example France, Conseil constitutionnel on February 2, 1995, punishment decided by prosecution confuses the roles of prosecutors and judges ("Considérant qu'en vertu de l'article 9 de la Déclaration des droits de l'homme et du citoyen, tout homme est présumé innocent jusqu'à ce qu'il ait été déclaré coupable ; qu'en vertu de l'article 66 de la Constitution, l'autorité judiciaire est gardienne de la liberté individuelle ; que le principe du respect des droits de la défense constitue un des principes fondamentaux reconnus par les lois de la République réaffirmés par le Préambule de la Constitution du 27 octobre 1946, auquel se réfère le Préambule de la Constitution de 1958 ; qu'il implique, notamment en matière pénale, l'existence d'une procédure juste et équitable garantissant l'équilibre des droits des parties ; qu'en matière de délits et de crimes, la séparation des autorités chargées de l'action publique et des autorités de jugement concourt à la sauvegarde de la liberté individuelle"), <http://www.conseil-constitutionnel.fr/conseil-constitutionnel/francais/les-decisions/depuis-1958/decisions-par-date/1995/95-360-dc/decision-n-95-360-dc-du-02-fevrier-1995.10620.html>.

¹⁵⁷ Decision of 25 June 2013, Application no. 9043/05, Amiran NATSVLISHVILI and Rusudan TOGONIDZE against Georgia, <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-122692>.

The presence of independent and competent attorneys could reduce the risk of abuse of power to some extent, but would obviously depend also on independent judges backing up justified motions by attorneys. There are two factors substantially weakening the position of lawyers: First, it was questioned whether a sufficient number of adequately competent lawyers was available in Georgia. Secondly, both state and non-state interview partners confirmed that attorneys who really tried to protect client's interests would tend to be shut out of the process. To that end, prosecutors would "recommend" certain attorneys to suspects and would often offer more attractive deals to defendants represented by "cooperative" attorneys. In some cases, it is claimed, that the removal of a particular attorney's from the case was part of the plea bargaining agreement itself.¹⁵⁸

24.4.5 Accountability to the victims

A further way of reducing abuse of plea bargains, in particular by releasing the defendant from criminal liability to easily or by agreeing on too lenient sentences, is to strengthen the role of the victim in the procedure. This could be for example proper documentation of the victim's position in the plea bargain agreement and inclusion of the victim not only in cases against human life (see Article 697-1 par. 1 lit. h Criminal Procedure Code). In that sense, the plea bargain system could become less of a tool for "funding the state budget", but also a tool for ensuring compensation and redress of the victim (by including compensation into the deal whenever appropriate).

24.4.6 Transparency: sanctions

Whereas a judgement would, or at least should show the reasoning behind a sentence, such a reasoning is absent in plea agreements. Guidelines on calculating fines are not available. In addition, in certain cases cooperation of the defendant with the investigation is required. On the one hand, it is necessary that such cooperation agreements are formulated in a clear wording making it an enforceable contract. On the other hand it should be ensured that a judge and not the prosecution services decide whether the defendant was sufficiently cooperating. Transparency International noted in this context:

"However, in practice, the prosecutor gets to determine what constitutes cooperation. With personal gain in mind, the prosecutor can subjectively decide whether to conclude a plea bargaining agreement and what type of cooperation to request in return. Consequently, to limit subjectivity and better control prosecutors, the legislation must offer a more specific definition of cooperation."¹⁵⁹

24.4.7 Appeal options

The options for appealing a plea agreement are worded in an outstandingly narrow manner:

Article 679-6. Appealing against Court Ruling for Invalidating Procedural Arrangement

A court ruling for invalidating a procedural arrangement may be appealed against with a higher court if:

- a) the procedural arrangement has been made by fraud;*
- b) the accused person's right to receive qualified legal aid has been restricted;*
- c) the procedural arrangement has been made under duress.*

¹⁵⁸ TI on plea bargain

¹⁵⁹ See above footnote 150, at page 17.

It would be necessary to include violation of essential procedural safeguards into the (absolute) grounds for appeal, such as violation of proper documentation of the plea and procedure, lack of verification of confession, lack of instructing the defendant properly on the procedure, lack of documented replicable calculation of the agreed fine, etc. This would not only provide an incentive against for fully implementing what is written in the law, but seems to be taken not serious in practice; it would also simply ensure that violation of human rights (fair trial etc.) could be remedied and would not be dispatched through a contractual deal.

24.5 Release from criminal liability

According to Article 22 Criminal Procedure Code, Prosecutors have to initiate a criminal proceeding “upon existence of the elements of a crime”. Article 28 allows to “refuse to initiate criminal proceedings” or suspend them, if, among other, “the criminal event or act provided by criminal law is missing”. Whereas victims used to have the right to appeal to a court for reviewing the decision by the prosecutor to not open an investigation or to not prosecute a case, this option has been abolished in 2006 with the introduction of the adversarial system. Several interview partners argued that the right to an appeal by the victim would contradict the adversarial system and the possibility of plea bargaining. There are however two substantial objections to this position:

- In a state of law, any executive measure has to be subject to judicial control if it aggrieves a citizen (see in this context Council of Europe Recommendation Rec(2000)19 on the role of public prosecution in the criminal justice system, adopted by the Committee of Ministers on 6 October 2000, par. 34: “Interested parties of recognised or identifiable status, in particular victims, should be able to challenge decisions of public prosecutors not to prosecute; such a challenge may be made, where appropriate after an hierarchical review, either by way of judicial review, or by authorising parties to engage private prosecution.”;¹⁶⁰ Article 6 European Convention on Human Rights, Article 47 European Union Charter of Fundamental Rights; see also for example jurisprudence by the German Constitutional Court: option for victim for proceedings to compel public charges fulfils the obligation of the State to protect human dignity.¹⁶¹
- Appeals by citizens would not necessarily need to limit the necessary discretion of prosecutors in initiating proceedings or striking a deal, but would only need to aim at abuse of such discretion (as for example in cases of pure inertia of prosecutors).

Some interview partners, as an example, have referred to the prosecution of violence connected to the 2013 gay parade in Tbilisi. As recorded by national and international media,¹⁶² clerical representatives and non-clerical offenders were involved in the violent breach of public peace. Given the stark resentment in overall society against gays and the strong position of the church, prima facie, victims of the violence would expect the prosecution “having” to treat priests and non-clerical offenders rather favourably. The mere presence of a legal remedy allowing victims to challenge in court any possible or perceived inertia or abusive leniency by the prosecution service would have the following effects:

- Preventing possible abuses in the prosecution service;
- Lowering the perception of corruption by taking away a feeling of powerlessness towards the prosecution services.

¹⁶⁰ <https://wcd.coe.int/ViewDoc.jsp?id=376859&Site=CM>.

¹⁶¹ Decision of 28 March 2002, 2 BvR 2104/01, par. 23,

http://www.bverfg.de/entscheidungen/rk20020328_2bvr210401.html (in German), with regards to Article 172 German Criminal Procedure Code, http://www.gesetze-im-internet.de/englisch_stpo/englisch_stpo.html#p1420 (English).

¹⁶² See for example <http://www.bbc.co.uk/news/world-europe-22571216>.

25 SUPERVISION OF OTHER AGENCIES

This risk assessment did not examine in detail how the Prosecution Services carry out their obligation of supervising the investigations carried out by intelligence agencies and of detention issues. However, it is obvious that the same risk factors concerning control of prosecutorial power by the judiciary and to some lesser extent by attorneys seem to apply to both areas. In particular, it would not be explicable how “resort to pre-trial detention” could be “virtually systematic”, and how decisions to impose this measure would “tend to lack individualised reasoning based on each case”.¹⁶³ In addition, some interview partners have pointed to cases of police torture in the past. Only by investigating such accusations in a proper and transparent way could the perception of possible co-accountability of prosecution services be clarified.

26 OVERSIGHT

Internal oversight would include questions such as document management system and supervision of the work by superiors.

26.1 Complaints management

Complaints are submitted directly to the General Inspection, to the General Prosecutor, or to other state structures receiving complaints and forwarding them to the General Prosecutor. Complaints can be made anonymous and are followed up by the General Inspection in the same way as open complaints. Complaints come mainly from citizens, in addition from media reports. There are some occasions where judges or prosecutors would also lodge a complaint; this would be a rather rare case though: judges have other means of rectifying prosecutorial misconduct during a trial, whereas prosecutors normally would keep a corps spirit where complaining about each other would be perceived as “ratting”. As for lawyers, state and non-state stakeholders reported that complaints were not common during the last years, as “uncooperative” lawyers would be retaliated against by being for example excluded from the “list” of preferred plea bargaining lawyers.

Information on complaints is not published regularly or systematically. There was no data made available to the experts of this risk assessment.

26.2 Inspection

The General Inspection of the Prosecution Services is directly accountable to the Chief Prosecutor. It becomes active upon individual complaints from within the Prosecution Services or from without.

In addition, the Inspection conducts also systematic inspections on different topics such as discipline or murder cases, and conducts trial monitoring. Findings of the inspections are documented and subsequently reported to the Chief Prosecutor including a recommendation on further action. In case of mere procedural violations, normally the relevant head of division will be informed. In case of disciplinary violations, the General Inspection will recommend that the Chief Prosecutor will hand down a disciplinary sanction.

With the further separation of the Prosecution Services from the Ministry of Justice, financial audits are not anymore carried out by the Ministry of Justice, but by the General Inspection of the

¹⁶³ Report by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, following his visit to Georgia from 18 to 20 April 2011, at par. 10 https://wcd.coe.int/ViewDoc.jsp?id=1809789#P76_14021.

Prosecution Services. The General Inspection is in the process of establishing procedures for this new task.

There was no data made available to the experts of this risk assessment.

26.3 Disciplinary enforcement

In most cases, the Chief Prosecutor follows the recommendation of the General Inspection of handing down a disciplinary sanction. The recommendation by the General Inspection does not include the type and gravity of the sanction, which is chosen by the Chief Prosecutor. It is interesting to note that there is no reasoning provided for the choice of sanction.

There was no data made available to the experts of this risk assessment.

26.4 Whistleblowers

Amendments to the Public Service Law of 2009 (Article 73-5 par. 4) oblige all public servants to report to their superior evidence or grounded suspicions of illegal activities of another public servant (or to a law enforcement authority, in case there is no superior). These amendments also provide that the superior in question will not reveal the entity of the whistleblower, will not damage his/her reputation and will protect him/her. In addition, amendments to the Law on Conflict of Interest and Corruption in Public Service (Chapter V¹) entered into force on 1 June 2009, which stipulate that whistleblowers reporting illegal activities (or conduct contrary to that which is required of public employees) in good faith are not to be discriminated against, intimidated, threatened and may not be dismissed or temporarily discharged of their duties for the duration of the investigation. Furthermore, no disciplinary, civil, administrative or criminal proceedings may be instigated against whistleblowers (unless the public institution can prove that there is no relation to the act of whistle blowing). In 2011, GRECO has assessed these amendments as satisfactory.¹⁶⁴ The Ministry of Justice has prepared a draft law in order to broaden the scope of the whistleblower protection. The draft law is subject to a separate Technical Paper prepared within this Project.¹⁶⁵

26.5 Prosecutorial Council

A Prosecutorial Council including representatives from diverse sectors of the State might be an option to increase oversight of the Prosecution Services in Georgia. However, this would be only one out of several other options of doing so. The Venice Commission has stated in 2010 on this subject matter:

“A Prosecutorial Council is becoming increasingly widespread in the political systems of individual states. A number of countries have established prosecutorial councils⁶ but there is no standard to do so.”¹⁶⁶

¹⁶⁴ Second Evaluation Round, Addendum to the Compliance Report on Georgia, 27 May 2011, Greco RC-II (2008) 9E, par. 23 f., [www.coe.int/t/dghl/monitoring/greco/evaluations/round2/GrecoRC2\(2008\)9_Add_Georgia_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round2/GrecoRC2(2008)9_Add_Georgia_EN.pdf).

¹⁶⁵ Of September 2013, to be published at:
http://www.coe.int/t/DGHL/cooperation/economiccrime/corruption/Projects/EaP-CoE%20Facility/EaP_TP_default_en.asp.

¹⁶⁶ Venice Commission, Report on European Standards as Regards the Independence of the Judicial System: Part II – The Prosecution Service, January 2011, par. 42,
www.coe.int/t/dghl/cooperation/capacitybuilding/Source/judic_reform/europeanStandards_en.pdf.

Similarly, the Consultative Council of European Prosecutors (CCPE)¹⁶⁷ has not formulated any standard on this topic. However, its President has recently stated:

*“[A]ll the national systems within the Council of Europe enjoy full legitimacy: no single public prosecution model can be defined, even as a preference or guideline”.*¹⁶⁸

As mentioned earlier (see above 21.1), given the overly strong role of prosecutors in the former Soviet Union, and later on, in post-Soviet countries, it seems worth considering a form of participatory control for the prosecution services.

26.6 Transparency and public awareness

Until today, there is no case statistics available on the website of the Chief Prosecutor, including the number plea-bargains, a conviction rate (broken down to plea bargain agreement and trial procedures). Some statistical data is provided to the Statistical Agency to be included in the yearly report of Georgia. Given the widespread public perception of abusive conviction rates and plea agreements, it would seem recommendable for the Prosecution Services to engage in a more active reporting to the public. It would show an attitude of public accountability and openness and would allow interested parties such as NGOs to monitor how key indicators develop over time.

Similar observations can be made about complaints and disciplinary statistics. As for disciplinary sanctions, some interview partners from within the Prosecution Services raised concern that their publication would provide food for a negative image in the public and for sensational reporting in the media. On the other hand, showing disciplinary action to the public and presenting it in the right way could counteract a perception of impunity and inertia.

NGOs have faced difficulties in the past, in particular with certain courts, in reviewing cases of plea bargaining. The courts reportedly had difficulties in identifying cases settled through plea bargaining. If this was true it would raise serious doubts about whether courts maintain a sufficient system of case management, statistics, and oversight. Transparency International concluded in 2010:

*“No comprehensive research has yet been conducted on the functioning of the plea bargaining in Georgia and general information is not readily accessible to the public. Taking this into consideration, we believe the courts should facilitate the implementation of such initiatives. Transparency of the courts is a necessary condition for the study of legal practices and for public oversight of the judicial system.”*¹⁶⁹

The Public Defender (Ombudsman) of Georgia has also complained about a lack of data with regards to the Prosecution Services:

¹⁶⁷ http://www.coe.int/t/dghl/cooperation/ccpe/opinions/default_en.asp.

¹⁶⁸ 18th IAP Conference - Plenary 4: “Essential ethical standards for prosecutors – How to assure integrity”, Antonio Mura, President of the Consultative Council of European Prosecutors (CCPE), Deputy Prosecutor General at the Italian Supreme Court, Council of Europe Standards on Public Prosecutors, Moscow (Russia), 12th September 2013, <http://www.coe.int/t/dghl/cooperation/ccpe/conferences/2013/Mura%20-%20Moscow%20130903.pdf>.

¹⁶⁹ Transparency International, Plea Bargaining in Georgia: Negotiated Justice, December 2010, page 14, <http://transparency.ge/en/node/1061>.

“The requested information neither on the number of plea-bargains nor on the number of preliminary investigations terminated (indicating the reasons of termination), had been provided by the Chief Prosecutor’s Office.”¹⁷⁰

Given the apparent public perception of an abusive plea bargaining in Georgia it would seem indispensable to support efforts by NGOs, academia, and other interested stakeholders in researching and analysing cases; thus, further risk factors could be identified and eliminated for the future.

27 TRAININGS, ASSESSMENTS, AND AWARENESS

Prosecutors undergo 60-64 hours of training per year. The trainings focus in particular on new legal developments such as law amendments. All trainings finish with an exam, which can be retaken in case of failure. However, should a prosecutor fail the same exam two times, he/she would normally be dismissed for lack of professional qualification. As stated earlier, ethics and ethical dilemmas in daily work are not part of the training curricula at all. This is a quite striking finding as prosecutors walk a particularly fine line in ethics in their daily work, which is arguably among the most challenging professional situations: should they act too strict trying to “score a conviction” they risk violating the human rights of the suspects, defendants or witnesses; should they act too lenient they risk letting a guilty murderer walk free.

The General Inspection reported that it was regularly informing the Chief Prosecutor about possible risk areas by using data from trial monitoring, investigations, and pre-planned inspections.

The Prosecution Service is currently finishing a new web-presence. A victim coordinator explains proceedings to victims. In addition, prosecutors reportedly have been trained on how to communicate to the public.

Research on and awareness of risks and real life cases of prosecutorial misconduct seems to be in the early stages of development and far from a critical review, public understanding, and cross-cutting control as would be the case in countries with a long standing tradition of adversarial systems. As stated earlier, it was conspicuous how little if at all any awareness existed during the interviews about the typical forms and risks of misconduct encountered in the United States related to the adversarial system.¹⁷¹

In addition, active outreach to vulnerable minorities (for religious reasons or because of sexual orientation), for example by designating a contact officer or commissioner, seems worth considering. Such an officer could also counteract biases within the services and protect the rights of victims in cases where a legal remedy would not be available or feasible.¹⁷² An example of such a case would be the following as reported by Transparency International:

“[T]he Prosecutor’s Office released a statement, alleging that a former high-level official of the Ministry of Defence’s Military Police department secretly filmed gay men, some of them figures of public life, while having sex. The Prosecutor’s office

¹⁷⁰ Public Defender of Georgia, Annual Report 2011, page 232, www.ombudsman.ge/files/downloads/en/hcqkqyhblwldxcayqiwg.pdf.

¹⁷¹ See above at Chapter 24.3.2, note 144.

¹⁷² See for example the New York County District Attorney’s Office’s “Liaison to the Gay and Lesbian Community”: “The liaison serves as an advocate for Gay-Lesbian-Bisexual-Transgender crime victims and as a point of contact for individuals or organizations seeking information about specific criminal cases or broader issues related to the criminal justice system”, <http://manhattanda.org/contact-us>.

alleged that the videos were then used by the official to blackmail prominent individuals into publicly supporting the previous government led by the United National Movement party and to coerce payments from the victims. The authorities released some of the secretly recording videos of men having intercourse to media outlets without altering the sound, only pixeling the faces and bodies of the persons depicted. A number of television and online outlets aired the videos and posted them on Youtube, which, in the opinion of various civil society groups, disregarded the privacy rights and dignity of the individuals in these videos, whose voices might be identified by their friends and relatives. LGBT Georgia, an organisation fighting against homophobia, has expressed its deep concern over the release of the videos. Questions remain about with what reason the Prosecutor's Office released the videos to the public, as the authorities appeared to have sufficient evidence to fully investigate the case. In our opinion, there is no public interest in seeing these secretly recorded videos, while there is a strong interest of the people affected by this case to have their privacy protected.”¹⁷³

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<http://transparency.ge/en/post/general-announcement/ti-georgia-calls-prosecutor-s-office-and-media-outlets-to-respect-privacy>.

28 RECOMMENDATIONS

Several mechanisms are in place for countering cases of abuse of power in the Prosecution Services. Particular strong points seem to be a functioning and dedicated General Inspection system as well as intensive trainings on legal topics. The Prosecution Services would probably benefit from considering the following points:

1. Plea bargaining
 - a. Ensuring a more far reaching written documentation of the whole plea bargaining procedure, the reasoning of the judge why he/she would consider the content of the plea deal “corroborated” and “just” (Article 213 par. 3 CPC), and, in particular, how he/she has verified any confession by the defendant and what additional evidence contradicts and supports the confession. In other words, the plea bargain should rather resemble a “mini-trial” of three equal stakeholders (judge, prosecutor, defence) on the merits of the case, than a contract agreement on the guilt and sentence accompanied only by instructions on the rights.
 - b. Establish an incentive for ensuring exact and wide implementation of requirements for proper plea bargaining such as adding violation of all procedural relevant rules of plea bargains as an absolute ground for appeal (if not dutifully counteracted already by the judge of 1st instance); this would include violations of essential procedural safeguards such as violation of proper documentation of the plea and procedure, lack of verification of confession, lack of instructing the defendant properly on the procedure, lack of documented replicable calculation of the agreed fine, etc.
 - c. Providing judges with the power to raise or decrease plea sentences.
 - d. Review possibilities for formulating agreements with defendants on future cooperation in a clear wording making it an enforceable contract leaving no discretion; ensure that the courts and not the prosecution services has the last decision on whether the defendant was sufficiently cooperating; make unclear wording of agreements with defendants on future cooperation grounds for appeal.
 - e. Make it compulsory to calculate agreed and proportional fines based on objective criteria and on the principle of compensation of victims, and to document the reasoning behind the calculation.
 - f. Ensure the availability of statistical data and case material for research and analysis of plea bargaining cases including support of work by NGOs, academics, and other interested parties from society at large.
 - g. Consider interim measures including immediate suspension of plea bargaining until further reform of the system and until defendants have a real choice of alternatives (this includes but is not limited to cases of less minor crimes).
 - h. Consider permanently limiting plea bargaining in cases of less minor crimes (such as cases where a prison sanction would be expected), inter alia by extending the inquisitorial role of the judge into a summary evidence procedure, and by having the judge reviewing the substance of the confession.
2. Ensure that all prosecutorial decisions – as basically any other state measure – are subject to judicial review (whenever they affect essential interests of a victim), balancing the need for prosecutorial discretion with the need of oversight and accountability, and with the gravity of the crime; this would require to consider including measures such as non-opening

of procedures, plea bargaining, dropping charges, investigative measures, opening investigations.

3. Make interactive ethical trainings part of the regular trainings of prosecutors, using case scenarios on ethical dilemmas based on real life cases in Georgia. Among the objectives of the trainings should be to counteract a culture of “scoring high numbers of convictions at any prize”. Trainings should also include joint trainings involving judges and members of the bar in order to establish a common mentality of values in the criminal procedure system in Georgia.
4. Complement the legislative transplanted of the adversarial system into (continental based) Georgian Criminal Procedure by awareness raising and research on risks and real life cases of prosecutorial misconduct typical for countries with a long standing tradition of adversarial systems.
5. Introduce a system of performance appraisal for prosecutors based to a substantial extent on qualitative criteria; the system should ensure that it would counteract adverse incentives of the past (“scoring high numbers of convictions”) and would reward prosecutors who in appropriate cases safeguard essential procedural rights of defendants or counteract procedural violations. Similarly, bonus payments, if admissible in law-enforcement at all, must continue to represent a small percentage of the salary and must be based on objective and transparent criteria and decisions.
6. Revise high minimum sentences foreseen in the Criminal Code that would seem to exert problematic pressure upon any suspect to submit to a plea proposal, or would reduce a judge’s discretion and role in the process disproportionately.
7. Transparency
 - a. Review the possibility of improvements with regards to making key indicators and statistical data public and to engage in a more active reporting to the public.
 - b. Publication of complaints and disciplinary statistics might provide food for a negative image in the public and for sensational reporting in the media. On the other hand, showing disciplinary action to the public and presenting it in the right way could counteract a perception of impunity and inertia.
 - c. Ensure the availability of statistical data and case material for research and analysis of cases of prosecutorial misconduct including support of work by NGOs, academics, and other stakeholders.
 - d. With regard to above Recommendation 2, as an intermediary measure, create full transparency on all decisions concerning the non-prosecution of especially debated cases, such as case of abuse by the police, the prosecution services, or complaints on events such as law enforcement against religious minorities or the Tbilisi gay parade 2013.
8. Disciplinary sentences should include also reasoning on sentences handed down, as only this would allow de facto for the necessary appeal option in all cases.
9. Adversarial system
 - e. Monitor and evaluate whether there are benefits of transplanting the adversarial system into Georgian Criminal Procedure and whether they outweigh the additional risks and disadvantages with regards to risks of abuse of power. It would probably seem too far reaching for an assessment of this size and means to suggest reversing the whole criminal law reform introducing the adversarial system into Georgia, and reversing everything back to an inquisitorial system would put the

legal sector again through a costly transformation process. However, continuing to transplant this alien concept into Georgian justice and society as a whole will entail risks of abuse for years to come; it is thus recommended to at least carefully review the shortcomings of this reform, the potentials for abuse, and to make use of the findings for ensuring the availability of sufficiently empowered defence for citizens of all “classes” and regions, for vocational training, educational curricula, and for awareness measures towards society.

- f. Foster a culture where even during trials prosecutors will not stick to the “accusatory direction” should there be a certain degree of reasonable doubts about the guilt of the defendant.
10. Active outreach to vulnerable minorities (such as for religious reasons or because of sexual orientation), for example by designating a contact officer or commissioner, seems worth considering. Such an officer could also counteract biases within the services and protect the rights of victims in cases where a legal remedy would not be available or feasible.
 11. Given the overly strong role of prosecutors in the former Soviet Union, and later on, in post-Soviet countries, it seems worth considering a form of participatory control for the prosecution services; such a measure might also improve the perception and understanding of the work of prosecutors by other sectors and the public at large.

29 ANNEX

29.1 Interviews

Monday, 23 September 2013, Tbilisi
<ul style="list-style-type: none">- Ministry of Justice- Transparency International Georgia- Bar Association- Young Lawyers Association
Tuesday, 24 September 2013, Tbilisi
<ul style="list-style-type: none">- Prosecution Services<ul style="list-style-type: none">o Department of the Procedural Administration of Investigation and the Supervision over the Criminal Intelligence Actions in the Public Security Agencies of the Ministry of Internal Affairs of Georgia, Special State Protection Service, Intelligence Serviceo General Inspectiono Investigation Divisiono Department of Human Resource Management and Development
Wednesday, 25 September 2013, Tbilisi
<ul style="list-style-type: none">- Prosecutor's Office<ul style="list-style-type: none">o Division of statistics, analysis and innovative projectso Department of Supervision over Prosecutorial Conduct in Regional Territorial Authorities of the Ministry of Internal Affairs of Georgia- GIZ, Advice on Legal and Judicial Reform Project- High Council of Justice
Thursday, 26 September 2013, Tbilisi
<ul style="list-style-type: none">- Prosecution Services and Ministry of Justice (debriefing)

A request for a meeting with one NGO remained unanswered; a scheduled meeting with another NGO was cancelled on short notice due to conflicting obligations and schedules by that NGO.

29.2 Law on Prosecution Services (as of 30 May 2013)

(Version including amendments as of 30 May 2013; unofficial translation provided by the Georgian authorities)¹⁷⁴

The Law of Georgia on the Prosecution Service

Chapter I

General Provisions

Article 1

The Prosecution Service of Georgia

1. The Prosecution Service of Georgia (*hereinafter – the Prosecution Service*) is the state subordinated authority within the system of the Ministry of Justice of Georgia which exercises its powers in compliance with the legislation of Georgia.
2. The establishment of special or extraordinary *Prosecution Service* is prohibited.
3. The Minister of Justice of Georgia (Hereinafter- the Minister of Justice) upon the proposal of the Chief Prosecutor of Georgia (Hereinafter- the Chief Prosecutor) has a power to set up *ad hoc* specialized Prosecution Service within the common jurisdiction determined by the Georgian legislation and under the rule established by law define its powers and the term of activities.

Article 2

Definition of Terms

The terms referred to in this law shall have the following meanings:

- a) Prosecutor – the Chief prosecutor, his/her first deputy prosecutor and other deputy prosecutors, the prosecutors of the Autonomous Republics of Abkhazia and Adjara, the prosecutor of Tbilisi City, the district prosecutor, the regional prosecutor, the prosecutor of specialized prosecutor's office, the prosecutor of the cases of extraordinary significance, the senior prosecutor, the prosecutor, the prosecutor – criminalist, the prosecutor - intern, as well as the heads and deputy heads of departments, units, divisions and their equal structural divisions of the prosecution service who are directly performing the functions foreseen by the criminal procedure legislation of Georgia, and in some cases the employee of the Prosecution Service, who directly does not fulfill the functions of the criminal procedure legislation of Georgia, but who have passed the qualifying examination of the employees of the prosecution service and has been granted the Prosecutor's authority in accordance with the Chief Prosecutor's decision;
- b) The Investigator of the Prosecution Service – Senior Investigator of Extraordinary Cases, Investigator of Extraordinary Cases, Senior Investigator, Investigator, Intern-Investigator;
- c) The employee of the Prosecution Service – Prosecutor, the Investigator of the Prosecution Service, the Legal Advisor of the Prosecution Service, the Intern of the Prosecution Service, the Assistant Employee of the Prosecution Service, the Supernumerary Officer of the Prosecution Service;
- d) Intern of the prosecution service – a person with a higher Legal Education assigned by the Chief Prosecutor according to the rule prescribed by the law as an intern on the position of the prosecutor of the structural unit, the senior investigator and the investigator or without

¹⁷⁴ Georgian version: www.laws.codexserver.com/3512.DOC.

this positions, at the Chief Prosecutor's Office of Georgia, at the prosecutor's offices of the Autonomous Republics of Abkhazia and Adjara, at the prosecutor's office of Tbilisi City, at the district prosecutor's offices, at the regional prosecutor's offices, at the specialized prosecutor's offices, who has passed the qualifying exam of the employees of Prosecution Service;

- e) The Legal Advisor of the Prosecution Service – a person who is appointed at the position envisaged by the staff of the Department, Unit, Division and the Structural Unit equal to them and whose function is not to carry out the competencies provided for in the Criminal Procedure Legislation. The Legal Advisor has not the same functions as carried out by the assistant employee or supernumerary officer;
- f) The Assistant Employee of the Prosecution Service – technical employee who is hired with the labor contract to the position of assistant employee of the Prosecution Service envisaged by the staff;
- g) The Supernumerary Officer – the person who is received for a certain period by appointment or labor contract to the Prosecution Service in order to fulfill inconstant tasks.

Article 3 Tasks of the Prosecution Service

1. In accordance with the rule established by the law the Prosecution Service:

- a) Carries out prosecution;
- b) In order to exercise prosecution carries out procedural supervision at the stage of preliminary investigation;
- c) Conducts full preliminary investigation in the cases envisaged by law;
- d) Supervises the precise and homogenous observance of the legal requirements in the work of the operative-intelligence agencies;
- e) Verifies the facts of the violation of the rights of the persons who are deprived of their liberty and carries out procedural duties at the places of detention, pre-trial detention and also where the freedom is restricted and at other institutions executing the penitentiary functions or any other punishment measure imposed by court;
- f) Participates in the court hearings of the criminal case as a party and supports state prosecution;
- g) Coordinates the fight against criminality;
- h) In the name of the State participates as a plaintiff in the discussion of the cases to be examined under the rules of civil litigation concerning the racketeering group, racketeer, official, the member of the realm of thief-in-law, human trafficker, the promoter of drug diffusion, also regarding the submission of illegal, undocumented and racketeering property of the person convicted under Article 194 §3 (c) of the Criminal Code of Georgia to the State;
- i) Implements operative-criminal activities under the rules established by the legislation of Georgia.

2. The obligations which are not envisaged by the Constitution, the given law or other legislative acts shall not be imposed on the Prosecution Service.

Article 4 Principles of the Activities of the Prosecution Service

The principles of the activities of the Prosecution Service are:

- a) legality;
- b) the protection and respect of the rights and freedoms of natural entity and the rights of legal person;

- c) professionalism and competency;
- d) objectivity and impartiality;
- e) Unity and centralization, subordination of all subordinate prosecutors and other employees of the Prosecution Service to the Chief Prosecutor;
- f) political neutrality;

Article 5 Legal Basis of the Activities of the Prosecution Service

The legal bases of the activities of the Prosecution Service are: the Constitution of Georgia, the International Treaties and Agreements of Georgia, the given law and other legal acts.

Article 6 the International Obligations of the Prosecution Service

The prosecution service, within its competence, participates in resolving the issues related to the International treaties and agreements of Georgia.

Chapter II

The System and Organization of the Prosecution Service

Article 7 System of the Prosecution Service

1. The system of the Prosecution Service is made of: the Office of the Chief Prosecutor of Georgia (*Chief Prosecutor*) the Prosecution Services of the Autonomous Republics of Adjara and Abkhazia, Tbilisi Prosecution Service, District Prosecution Services, Regional Prosecution Services, also Specialized Prosecution Services envisaged by Article 1 §3 of the same law. The term of the authorization of the Prosecutors of the Specialized Prosecution Service is determined by the term of the authorization of the Specialized Prosecution Service.
2. The structure of the prosecution service bodies, the staff positions and the number of the positions are approved by the Minister of Justice upon the proposal of the Chief Prosecutor.

Article 8 the Competence of the Ministry of Justice

1. The Minister of Justice for the purposes of this Law:
 - a) Upon the proposal of the Chief Prosecutor creates and abolishes bodies of the prosecution service, determines territory of their activity and defines competencies of the structural units;
 - b) Based on the Law and for its implementation issues the normative and individual legal acts – orders, instructions and directives;
 - c) With regard to priority of the human rights and freedoms, upon the proposal of the Chief Prosecutor, approves the guideline principles of the criminal policy;
 - d) Upon the proposal of the Chief Prosecutor approves the regulations of the bodies of the prosecution service and their structural units and the rule of internship in the bodies of prosecution service;
 - e) Upon the proposal of the Chief Prosecutor approves the Code of Ethics for the employees of the prosecution service;
 - f) Upon the proposal of the Chief Prosecutor approves the amount of remuneration of the employees of the prosecution service, within the framework of the allocated salary fund;
 - g) Upon the proposal of the Chief Prosecutor elaborates the proposals for the financing and material-technical maintenance of the prosecution service;

- h) Requests the materials of respective criminal case from the body of the Prosecution Service at the European Court of Human rights and at other international courts, tribunals and arbitrages, within the limits of the State Representation of Georgia;
 - i) Considers within its competence the complaints and applications of natural and legal entities;
 - j) Fulfills other authorities assigned to him/her in accordance with the legislation of Georgia;
2. The Minister of Justice does not interfere in the decisions made and actions performed by the Prosecution Service related to certain criminal cases investigations and/or criminal prosecution.
 3. In case of absence the Minister of Justice or termination of authority the powers foreseen by the first Paragraph of this Article shall be implemented by the first deputy of the Minister of Justice and in case of absence or termination of authorities of the first deputy of the Minister of Justice– one of the deputies of the Minister of Justice.
 4. Order or any other act of the Minister of Justice may be appealed in the court based on the motive of irrelevance to the Constitution of Georgia or the Law.

Article 9 the Chief Prosecutor's Office

1. Chief Prosecutor's office is headed by the Chief Prosecutor who is appointed to and dismissed from the position by the President of Georgia upon the proposal of the Minister of Justice.
2. Chief Prosecutor has the first deputy and other deputies who are appointed to and dismissed from the position by the Chief Prosecutor.
3. The Chief Prosecutor:
 - a) Organizes and manages the activity of the Prosecution Service s/he is responsible for the activities of the Prosecution Service;
 - b) Appoints to and dismiss from the positions of the prosecutors of the Autonomous Republics of Abkhazia and Adjara, the district prosecutors and the prosecutors of Tbilisi City and the subordinate prosecutors, investigators and other employees of the Prosecution Service;
 - c) Determines the functional duties of his/her first deputy, and the deputies, also the functional duties of the bodies of the Prosecution Service and their structural divisions;
 - d) Carries out prosecution according to the rule prescribed by the Law against the President of Georgia, the member of the Parliament of Georgia, the Chairperson of the Supreme Court of Georgia, the judge of the common courts of Georgia, the Chairman and member of the Constitutional Court of Georgia, the member of the Government of Georgia, the Public Defender of Georgia, the Auditor General, the President of the National Bank of Georgia, the council member of the National Bank of Georgia, Ambassador Extraordinary and Plenipotentiary of Georgia and Envoy, the supreme military person holding an office or officer having the higher special ranks or the equivalent person, the prosecutor, the investigator of the Prosecution Service or the advisor of the Prosecution Service, in case of commission of a crime by them;
 - e) Assigns a specially authorized prosecutor, who according to "the Law of Georgia on Counterintelligence Activities" shall review the applications of the special service implementing the counterintelligence activities and the Counter-terrorist Center of the Ministry of Internal Affairs of Georgia on the issue of the implementation of the operative –technical measures;
 - f) Assigns a specially authorized prosecutor, who files an application to the court on the recognition of an organization as a terrorist organization;
 - g) Represents the Prosecution Service at the supreme bodies of the State Authority and with respect to the international organizations and other State law enforcement bodies;
 - h) Based on Law and for its implementation issues the individual legal acts – orders, instructions and directives;
 - i) Abolishes the illegal orders, instructions and directives issued by the subordinated prosecutors;
 - j) Determines the issue of applying the disciplinary sanction towards the employees of the Prosecution Service;
 - k) Submits the guideline principles of the criminal policy for approval to the Minister of Justice;

- l) Submits to the Minister of Justice the drafts of legal acts on creation and abolishment of the bodies of Prosecution Service, determination of the territory of their activity and establishment of competences of the structural units;
 - m) Submits to the Minister of Justice for approval the regulations of the bodies of the Prosecution Service and their structural divisions and the rules of internship at the bodies of Prosecution Service;
 - n) Submits to the Minister of Justice for approval the Code of Ethics of the employees of the Prosecution Service;
 - o) Submits for approval to the Minister of Justice the amount of the remuneration within the allocated salary fund;
 - p) According to the rule prescribed by the Law and within the limits of own competences assigns to and deprives from the employees of the Prosecution Service the State special ranks;
 - q) Elaborates the proposals on the financing and material-technical maintenance of the Prosecution Service and submits them to the Minister of Justice ;
 - r) Elaborates relevant measures with respect to the informational security;
 - s) Provides statistical reports, organizes the generalization and improvement of prosecutorial and investigative practices, dissemination and implementation in practice of the advanced experience and scientific-technical means;
 - t) Creates the consultation councils for supporting the activities of the Prosecution Service;
 - u) Reviews the complaints and applications of the legal and natural persons;
 - v) Fulfills other authorities assigned to him/her in accordance with the legislation of Georgia;
4. In case of absence or termination of authority of the Chief Prosecutor his/ her duties shall be fulfilled by the first deputy of the Chief Prosecutor and in case of absence or termination of the authorities of the first deputy of the Chief prosecutor—one of the deputies determined by the Chief prosecutor.
5. The order or other act of the Chief Prosecutor may be appealed in the court based on the motive of its irrelevance with the Constitution of Georgia or the Law.
6. In the Chief Prosecutor's Office are departments, units and other structural divisions and subunits which have the heads and may have the deputy heads of the structural units (subunits), the prosecutors of the cases of an extraordinary importance, the senior prosecutors, the prosecutor-criminalists, the prosecutors, the senior investigators of the cases of an extraordinary importance, the investigators of the cases of an extraordinary importance, the advisors and specialists.

Article 10 the Prosecutor's Offices of the Abkhazia and Adjara Autonomous Republics

1. The Prosecution Services of the Autonomous Republics of Adjara and Abkhazia are headed by the Prosecutors of the Autonomous Republics of Adjara and Abkhazia respectively who are appointed and dismissed from the offices by the Chief Prosecutor.
2. The prosecutors of the Abkhazia and Adjara Autonomous Republics have their deputies, who are appointed to and dismissed from the offices by the Chief Prosecutor.
3. In the Prosecutor's Offices of the Abkhazia and Adjara Autonomous Republics are the divisions and other structural divisions which have their heads and may have the deputies of the structural divisions, the senior prosecutors and the prosecutor-criminalists, the prosecutors, the senior investigators, the investigators, the advisers and specialists.
4. The Chief Prosecutor assigns to and dismisses from the positions of the employees of the Prosecutor's Offices of the Abkhazia and Adjara Autonomous Republics;
5. The prosecutors of the Abkhazia and Adjara Autonomous Republics within the limits of their competences issue the individual legal acts – orders, implementation of which is mandatory for the subordinate prosecutors and other employees of the Prosecution Service.

Article 11 the Prosecutor's Office of the Tbilisi City and the Regional Prosecutor's Offices

1. Tbilisi Prosecution Service and Regional Prosecution Service are headed respectively by Tbilisi Prosecutor and the Regional Prosecutor who are appointed and dismissed from their positions by the Chief Prosecutor.
2. Regional Prosecution Service is established due to the territorial units. The territory under the jurisdiction of the Regional Prosecution Service shall be determined by the Minister of Justice upon the proposal of the Chief Prosecutor.
3. Tbilisi and Regional Prosecutors shall have their deputy prosecutors who shall be appointed and dismissed from their positions by the Chief Prosecutor.
4. Tbilisi Prosecution Service and Regional Prosecution Service shall include the Departments and other structural divisions which shall have heads and may also have deputy heads of the structural divisions, senior prosecutors, criminalist-prosecutors, prosecutors, senior investigators, investigators, advisors and specialists.
5. The employees of the Prosecutor's Office of Tbilisi City and the regional prosecutor's offices are appointed to and dismissed from the positions by the Chief Prosecutor.
6. The prosecutor of Tbilisi City and the regional prosecutors issue the individual legal acts within the limits of their competences –orders, implementation of which is mandatory for the employees of their subordinate prosecutor's offices.“

Article 12 District Prosecution Services

1. District Prosecution Services are headed by the District Prosecutors who shall be appointed and dismissed from their positions by the Chief Prosecutor.
2. The District Prosecution Service is established due to the territorial units. The territory under the jurisdiction of the District Prosecution Service shall be determined by the Minister of Justice upon the proposal of the Chief Prosecutor.
3. The District Prosecutors may have their deputies who shall be appointed and dismissed from their positions by the Chief Prosecutor.
4. The District Prosecution Services shall have prosecutors, office managers and may have special employees who are appointed and dismissed from their positions by the Chief Prosecutor.
5. The District Prosecutors within its competency shall issue individual legal acts – orders that shall be executed by the subordinate employees of the respective Prosecution Service.

Article 13 Forms of Subordination of the Subordinate Prosecutor to the Supervising Prosecutor

1. The subordination of the subordinate prosecutor to the supervising prosecutor shall have the following meanings:
 - a) The compulsiveness of the execution of supervising prosecutor's instructions given to the subordinated prosecutor concerning the organization of the Prosecution Service and regarding the issues related to its activities;
 - b) The duty of the subordinated prosecutor to report to the supervising prosecutor in the course of performing their office duties;
 - c) In case of necessity the fulfillment of the duties of the subordinated prosecutor by the supervising prosecutor or imposing his/her certain authorizations on the subordinated prosecutor;
 - d) The supervising prosecutor shall abolish and amend the acts and decisions of the subordinated prosecutor or replace them with other decisions and acts;

- e) The supervising prosecutor shall examine the appeals on the decisions and acts of the subordinated prosecutor;
 - f) The subordinated prosecutor shall submit the report on his/her activities, information, cases and materials to the supervising prosecutor;
2. The Chief Prosecutor has the right to impose other forms of subordination of the subordinated prosecutor to the superior prosecutor, which are not inconsistent with the Constitution of Georgia or the Law.
 3. The subordinated prosecutor and other employees of the Prosecution Service are obliged to fulfill all lawful requirements and instruction of the supervising prosecutor.

Chapter III

The Trends of the Activities of the Prosecution Service

Article 14 the Implementation of Prosecution

1. The Prosecution Service implements the prosecution according to the rules and within the frames established by the Legislation of the Criminal Procedure Law.
2. The Prosecution Service in order to provide prosecution does procedural supervision at the stage of the investigation;

Article 15 Investigation

The Prosecution Service carries out comprehensively the investigation and may conduct operative-criminal activities in the cases envisaged by the Procedure Legislation and within the established rules concerning criminal and other illegal acts.

Article 16 Supervision over the precise and homogenous realization of the activities of the Operative Counter Criminal Agencies

1. The prosecutor during the activities of the Operative Counter Criminal Agencies supervises over the operative counter criminal measures taken by the Operative Counter Criminal Agencies and the legality of their decisions within this process in order to provide the precise and homogenous realization of the requirements set by the Legislation on the Activities of the Operative Counter Criminal Agencies.
2. The legitimacy and validity of the order issued by the judge concerning the authorization, continuation and suspension of the operative counter criminal measures is not the subject of the prosecutor's surveillance.
3. The data of the person who renders and rendered classified assistance to the Operative Counter Criminal Agency, cooperates or cooperated with it, also the tactic of obtaining operative counter criminal information, organization, operative processing and the classified part of the operative counter criminal registration of the cases are not the subject of the prosecutor's surveillance.
4. The right of access to the secret documents of the cases of operative processing and the cases of operative-investigative registration have the Chief Prosecutor, his/her first deputy and deputies, the heads of structural divisions of the chief prosecutor's office and their deputies, the prosecutors of Abkhazia and Adjara Autonomous Republics and their deputies, the district prosecutors and their deputies, the prosecutor of Tbilisi City and his/her deputies and the district prosecutors with respect to their own activity territories, as well as other prosecutors determined by the Chief Prosecutor, his/her first deputy and

deputies, prosecutors of the Abkhazia and Adjara Autonomous Republics, the district prosecutors, the prosecutor of Tbilisi City and the regional prosecutors.

Article 17 Protection of Individual Rights and Performing Procedural Duties at the institutions executing arrest, pre-trial detention, deprivation or the restriction of liberty

1. Prosecutor shall have the following rights:

- a) In order to comply with the law to inspect the institutions executing arrest, pre-trial detention, deprivation or the restriction of liberty and other penitentiaries where the penalties and constraining measures of the court are executed;
- b) In order to exercise the authorizations envisaged by this Article (a) to enter the appropriate institutions at any time;
- c) To inquire the persons who are detained, arrested, convicted and the ones sentenced constraining measures;
- d) To get familiarized with the documents under which the persons are detained and arrested, serve sentence or constraining measures are applied against them;
- e) To take immediate measure in order to release the person who is illegally detained, arrested or being under the constraining measures;

2. The Prosecutor exercises other authorizations envisaged by the legislation of Georgia.

Article 18 Prosecutor Prosecuting on behalf of State

1. Prosecutor shall appear before the court of first instance on behalf of state. S/he is obliged to prove accusation.
2. Prosecutor shall have the right to reject accusation completely or partially if the obtained evidences fail to prove the charge. The rejection of the prosecutor on the accusation shall be grounded.
3. At the trial stage of a case the prosecutor has right to file a motion and require withdrawal; to present evidences; to participate in the discussion concerning the issue of admissibility of evidences, termination of the criminal prosecution or/and investigation, suspension of the criminal prosecution, management of a case at the court and other issues.
4. Prosecutor is obliged to take part in the discussion of the case related to the public accusation to the court of the first instance and at the stage of appellate processing. S/he can exercise the following rights: to file motion and challenge; submit evidences; participate in the examination of the evidences represented by the defense party; express his/her opinion regarding the questions arisen during the court discussion; take part in the debate of the parties and introduce his/her attitude to the court concerning the affirmation of accusation, the criminal qualification of the act, liability of the convicted person, the form of penalty, appointment of measure, criminal responsibility and releasing from the punishment.
5. Prosecutor supports his/her complaint or expresses his/her opinion as a party concerning the complaints filed by other parties of the litigation at the stage of the cassation.

Article 19 Coordination of the Fight against Criminality

1. Prosecution Service coordinates the fight against criminality and mutual cooperation of the law enforcement agencies in order to reveal crime timely, investigate, open, constrain and

avoid the offence, also evade the development of the criminal situation, eradicate the causes and facilitating conditions of crime.

2. The rule of coordination of the fighting against crime is determined by the regulation which is approved by the Government of Georgia.

Article 20 Civil Action of the Prosecutor on the submission of illegal, undocumented and racketeering property to the State

The prosecutor in accordance with the rule prescribed by the civil procedure legislation of Georgia and within the defined limits, initiates an action on the issue of officials, members of the criminal underworld, human traffickers, people who are participating in the spread of narcotics or on the issue of deprivation and transferring to the State the property and the racketeering property of convicted persons in accordance with subparagraph "c" of the third part of the Article 194 of the Criminal Code of Georgia.

Chapter IV Prosecutorial Acts

Article 21 the System of Prosecutorial Acts

The Prosecutor during exercising his/her powers, within its competence, and in accordance with the rule prescribed by the legislation of Georgia, drafts the following acts: request, submission, objection, decree, consent, instruction, complaint, and information.

Article 22 Request

1. Prosecutor shall have the power to request:
 - a) The inspection of financial-commercial activities of the enterprise, organization, institution in the criminal case;
 - b) The allocation of specialist in order to solve the questions arisen during the exercise of the duties envisaged by law;
 - c) The introduction of the documents, materials, case files, data and other information in order to conduct supervision or procedural administration.
2. The requested information shall be submitted to the Prosecutor within 10 days despite the particularity of this information.
3. The documents and other information can be checked upon the request of the prosecutor at their location by the prosecutor or by the specialist, expert or any other person under the commission of the prosecutor.
4. The document and other information shall be submitted to the place indicated by the prosecutor under his/her request.
5. Prosecutor is obliged to protect State or any other classified data contained by the requested information in the cases envisaged by the legislation of Georgia.
6. The interference in the competency of the court and request of any materials or case file are forbidden beside the cases envisaged by the Criminal Procedure Legislation.

Article 23 Submission

1. The prosecutor within limits of his/her own competences and according to the rule prescribed by the legislation of Georgia submits the representation for elimination of violation of the legislation, its causes and facilitating conditions, to the participants of the legal relationships pointed out in the Articles 14 and 17 of this Law, who have obligation to inform the prosecutor on the implemented measures within 10(ten) days time period.
2. Prosecutor shall be informed about the date of the examination of the submission. S/he shall have the right to participate in the examination.

Article 24 Objection

1. Prosecutor submits written objection on the non-compliance with the Law the acts and actions of the persons specified in the Articles 16 and 17 of this Law and in cases provided under the Code of Administrative Offences.
2. Prosecutor may request the following under objection:
 - a) The complete or partial abolishment of illegal act or ensuring the compliance of it with the law;
 - b) The suspension of illegal act;
 - c) The restoration of violated right;
 - d) The imposition of proper responsibility measures against the wrongdoer;
3. Prosecutor submits the objection concerning the illegal act to the body which issued the act or supervising agency. The illegal act of the official shall be appealed in the same way.
4. The objection of the prosecutor shall be examined within 10 days after its receipt. The prosecutor shall be informed immediately about the outcomes of the consideration.
5. Prosecutor shall be notified regarding the date of examination of the objection. S/he has right to support the objection personally or through his representative.
6. The objection may be withdrawn by the initiating prosecutor or supervising prosecutor.
7. The supervising prosecutor shall have the power to make amendments to the objection before its examination or replace it with the new one.

Article 25 Decree

1. According to the nature of the violation of the Georgian legislation by the individual or official within the competency and rules established by law the prosecutor issues decree in the cases envisaged by the legislation of Criminal Procedure, also concerning the prosecution against administrative offence or initiating disciplinary prosecution.
2. The decree of the Prosecutor on the prosecution against administrative offence or initiating disciplinary prosecution shall be examined within 10 days after its issuance by the authorized body or official. The prosecutor shall be informed about the outcomes of the discussion.

Article 26 Consent

Prosecutor shall give written consent on the behaviors of the governmental authorities and officials in the cases envisaged by law.

Article 27 Instruction

1. Prosecutor shall have the right to give written instruction to the preliminary investigation authorities in the cases envisaged by law.

2. The instruction of the prosecutor concerning the issues of investigation shall be obligatory to be executed.

Article 28. Complaint

1. The prosecutor has right, according to the rule established by the criminal procedure legislation of Georgia:

- a) Appeal the court's decision on the criminal case at the superior court and participate in the hearing of the case as a party;
- b) Appeal the court's decision because of the newly revealed circumstances of the case and participate in the hearing of the case as a party;

2. Complaint may be withdrawn by the complainant or supervising prosecutor before the summarizing decision is made.

Article 29. Information

The prosecutor within his/her own competences provides information to the respective bodies of the State and local self governance on the state of the Law and order.

Article 30 the Appeal against the Prosecutorial Acts

1. The submission, objection, decree, instruction of the prosecutor may be appealed to the court pursuant to the rule established by law or appealed once only to the supervising prosecutor within 10 days.
2. The appeal will not suspend the implementation of the prosecutorial acts except for the cases envisaged by the legislation of Criminal Procedure.

Chapter V

The Staff of the Prosecution Service

Article 31 the Requirements to be met by the candidate to hold the position of Prosecutor and Investigator of the Prosecution Service

- 1) The citizen of Georgia may be assigned as a prosecutor or an investigator in the Prosecution Service, who has the high legal education, possesses the language of the legal proceedings, has passed internship in the Prosecution Service for the period from 6 (six) month up to 1(one) year, has passed the qualifying examination to the Qualifying Examination Commission in the following subjects: constitutional law, international human rights law, criminal law, criminal procedure law, penitentiary law and the basics of the operative-investigation activity, has taken the prosecution service employee oath and by his/her working and moral qualities, state of her/his health is capable to perform the duties of the prosecutor, or the investigator of the Prosecution Service.
- 2) The Chief Prosecutor, his/her first deputy and deputies and the person who has passed the qualifying examination for judges or who has passed the bar examination are exempted from the qualifying examination for the Prosecution Service employees. The prosecutors of Abkhazia and Adjara Autonomous Republics if they do not have passed the qualifying examination for judges or the bar examination, shall pass the qualifying examination for the employees of the Prosecution Service within 1(one) year from the date of they took the office.

- 3) From the internship at the bodies of the Prosecution Service are exempted the Chief Prosecutor, his/her first deputy and deputies and the person who satisfies one of the following requirements:
 - a) Has at least 1(one) year experience of working as a judge, investigator or defense counsel;
 - b) has passed the qualifying examination for judges;
 - c) has at least 3(three) years experience in the practice of Law.
- 4) The person who meets the requirements set by the 3rd Paragraph of this Article in order to be released from the traineeship he/she may pass the traineeship at the Prosecution Service voluntarily.
- 5) The qualifying examination for the Prosecution Service employees is conducted through the testing method. The Ministry of Justice of Georgia provides advance publication of the exam tests. Upon the proposal of the Minister of Justice the Government of Georgia approves the procedures of conducting the qualifying examination, the periodicity of the examinations and the examination program, the examination commission regulation and the commission composition. Based on the motion of the Chief Prosecutor the Prime-Minister of Georgia has right to appoint additional qualifying examination.
- 6) The persons who have at least 3(three) years experience in the practice of Law may hold the office of the prosecutor of Tbilisi City and his/her deputy, the regional prosecutors and their deputies, the district prosecutors and the prosecutors of the specialized prosecutor's office. In special cases The Chief Prosecutor based on the substantiated decision has the right to reduce the above mentioned term to 18 (eighteen) months towards the prosecutor of Tbilisi City, and his/her deputy, the regional prosecutors their deputies and to 12 (twelve) months towards the district prosecutors and the prosecutors of the specialized prosecutor's office.
- 7) The employees of the Prosecution Service once in every 3 (three) years shall pass the certification. The Minister of Justice determines the rule of certification upon the proposal of the Chief Prosecutor.
- 8) The advisors of the Prosecution Service, auxiliary personnel and supernumerary employees of the Prosecution Service shall be appointed and dismissed by the Chief Prosecutor under the rule established by the Law of Georgia on Public Service.
- 9) The position of the employee of the Prosecution Service shall not be compatible with any position of state and local self-government, also with entrepreneur or paid job except for the scientific and pedagogical activities. The employee of the Prosecution Service shall have the right to perform other paid job or/and hold other position simultaneously at the Prosecution Service.
- 10) The employee of the Prosecution Service cannot be a member of political union or involved in the political activities.
- 11) The employee of the Prosecution Service shall not be allowed to organize strikes or participate in it.

Article 31¹ Common Data base on the persons wishing to be employed at the Bodies of the Prosecution Service

1. For the purpose of ensuring the stable and effective functioning of the system of the Prosecution Service and for the purpose of recruiting the highly qualified staff, the Chief Prosecutor, if necessary, is authorized to create the common data base on the persons wishing to be employed at the bodies of the Prosecution Service.
2. The rule for creation of the common data base of the persons wishing to be employed at the bodies of the Prosecution Service is determined by the Minister of Justice upon the proposal of the Chief Prosecutor.

Article 32 the Oath of the Employee of the Prosecution Service

1. The employee of the Prosecution Service upon starting working at the bodies of the Prosecution Service makes the written oath: „I (Name, Surname) swear before God and the nation, to execute the duties of the employee of the Prosecution Service of Georgia in good faith and while executing them to obey only the Constitution and the Law of Georgia.
2. To give an oath of the employee of the Prosecution Service may be held without religious vow. The text of the oath is signed by the person who gives an oath and it is kept in his/her personal file.

Article 33 Basis for denial to recruit the person to the Prosecution Service

The following persons cannot be recruited to the Prosecution Service:

- a) Having criminal records;
- b) Alcoholic, drug addicted, solvent abuser, ill with psychical and other serious chronic disease;
- c) recognized as an incapable or with limited capacity by the court;
- d) The person who was fired from another job due to the commission of the act against the generally accepted morals.

Article 34 Discharging the employee of the Prosecution Service from the Office

The employee of the Prosecution Service may be discharged due to:

- a) personal statement;
- b) deterioration of health condition, mutilation or in case of chronic illness that disables him/her to perform office duties;
- c) Expiration of the term envisaged by the contract;
- d) Non-fulfillment or improper performance of office duties;
- e) Non-fulfillment or improper performance of the requirements envisaged by the contract;
- f) Office incompatibility;
- g) Violation of office discipline roughly or systematically;
- h) Staff reduction;
- i) In case of election or appointment at legislative, executive, judicial branches of authority or local self-government and in other cases of office incompatibility;
- j) In case of breaking the oath, revealing professional secret or committing a behavior improper to the employee of the Prosecution Service;
- k) On the basis of the conviction being in force;
- l) In cases envisaged by Article 33 (a, c) of this law;
- m) In case of losing the citizenship of Georgia;
- n) Breaking the requirements needed to recruit at an office;
- o) Retiring age.

Chapter VI

Legal Protection of the employees of the Prosecution Service

Article 35 the Legal Protection of the Employee of the Prosecution Service

3. In his/her activities the employee of the Prosecution Service shall be independent. S/he cannot be resigned or dismissed from the position apart from the cases envisaged by this law and established rules.
4. The encroachment on the employee of the Prosecution Service during the performance of office duties, humiliation of his/her dignity, threat against him/her, resistance, violence, infringement of life, health and property of the employee of the Prosecution Service results in the responsibility envisaged by law. In case of receiving announcement or information on the encroachment of health or property of the employee of the Prosecution Office or his/her family member the State bodies are obliged to take measures envisaged by law in order to protect their personal and estate security.
5. The employee of the Prosecution Service has the right to carry and retain firearms also special means of individual defense under the rules established by law.

Article 36 the Inadmissibility to interfere in the Activities of the Employee of the Prosecution Service

The interference in the activities of the employee of the Prosecution Service by the officials, social and political unions, their representatives or other persons who are not entitled under the law to interfere in the activities of the employee of the Prosecution Service or influence him/her by any form, also impeding the activities of the employee of the Prosecution Service is punishable by law.

Article 37 the Right to the Court Defense of the Employee of the Prosecution Service

The Employee of the Prosecution Service has the right to apply to the court in order to defend his/her rights and freedoms.

Article 38 the Responsibility of the Employee of the Prosecution Service

1. The employee of the Prosecution Service will be responsible for the commission of the crime and administrative infraction in compliance with the general rules.
2. The detained, arrested or convicted employee of the Prosecution Service is placed or serves sentence in isolation with special inmates.
3. On the fact of crime committed by the prosecutor, the investigator of the Prosecution Service or the advisor of the Prosecution Service, the criminal prosecution is initiated only by the Chief Prosecutor. The crime committed by the employee of the Prosecution Service is investigated only by the Chief Prosecutor's Office with respect to the investigative subordination defined by the legislation of Georgia.
4. In the course of the investigation of the case and before taking final decision the Chief Prosecutor is entitled to resign the employee of the Prosecution Service from the position under the established rules.
5. If the employee of the Prosecution Service breaks the oath, violates working discipline, commits the act improper to the employee of the Prosecution Service or/and fails to perform or executes improperly imposed obligations the following disciplinary punishment will be used against him/her:

- a) remark;
 - b) rebuke;
 - c) lowering his/her official position;
 - d) dismissal from the position;
 - e) dismissal from the Prosecution Service;
6. The disciplinary sanction is applied in case of establishing (discovering) the fact of misconduct no later than a year. The aforesaid term does not include the time of being on leave or the period when the employee of the Prosecution Service is ill. The disciplinary sanction cannot be applied if 3 years are passed since the commission of disciplinary violation. The employee of the Prosecution Service is fired from the Prosecution Service in case of intentional offence despite the term passed after its commission. If the employee of the Prosecution Service commits the crime negligently the question regarding his/her dismissal from the Prosecution Service is determined by the Chief Prosecutor regardless how much time has passed from the commission of such action, except the cases foreseen by the legislation of Georgia.
 7. The Chief Prosecutor shall have the power to apply any disciplinary sanction envisaged by 5th paragraph of this Article against the employee of the Prosecution Service.
 8. The Prosecutors of the Autonomous Republics of Adjara and Abkhazia shall have the power to apply only the following punishments: remark or rebuke
 9. If the application of disciplinary sanction, imposed only by the Chief Prosecutor within his competence, is necessary due to the misconduct committed by the employee of the Prosecution Service, the Head of the respective agency of the Prosecution Service makes proposal to the Chief Prosecutor concerning the application of the relevant disciplinary sanction.
 10. Only one disciplinary sanction may be applied against the same misconduct committed by the employee of the Prosecution Service.
 11. The Chief Prosecutor shall have the power to abolish, mitigate or aggravate the disciplinary sanction applied against the employee of the Prosecution Service.
 12. The disciplinary punishment shall be applied based on the order of the prosecutor. The employee of the Prosecution Service against whom disciplinary punishment was applied shall be familiarized with the order. The order concerning the application of disciplinary punishment shall be kept in the personal file of the employee of the Prosecution Service.
 13. The employee of the Prosecution Service shall not be considered as having disciplinary punishment if one year is passed after the application of disciplinary punishment and also new disciplinary punishment was not applied against him/her.
 14. The disciplinary punishment may be annulled earlier in the cases envisaged by Article 39 of this law. The disciplinary punishment is annulled under the appropriate order that shall be introduced to the employee of the Prosecution Service against whom disciplinary punishment was applied. The order concerning the earlier abolishment of disciplinary punishment shall be kept in the personal file of the employee of the Prosecution Service.
 15. The order issued by the prosecutor concerning the application of disciplinary punishment against the employee of the Prosecution Service may be appealed to the supervising prosecutor or to the court within 30 days.
 16. The appeal against the disciplinary punishment cannot suspend the application of the disciplinary punishment against the employee of the Prosecution Service.

Article 39 Promotion of the Employee of the Prosecution Service

In order to promote the employee of the Prosecution Service for success, excellent performance of office duties and other achievements the following measures shall be applied:

- a) express gratitude;
- b) give premium or award with valuable gift;
- c) give additional paid leave amounting to 10 calendar days;
- d) grant earlier the following special state rank;
- e) Early remove of imposed disciplinary sanction;
- f) grant the title of respectable officer of the Prosecution Service and award with respective breastplate;
- g) nominate for the state award.

Chapter VII

Social Care of the Employee of the Prosecution Service

Article 40 Social Care of the Employee of the Prosecution Service

1. The Social Care of the employee of the Prosecution Service is guaranteed by the Constitution of Georgia, this law and with other legal acts of Georgia. The State provides the social care of the employee of the Prosecution Service.
2. The employee of the Prosecution Service is subject to the compulsory state insurance on behalf of the state budget. The damage from which the employee of the Prosecution Service or his/her family members suffered in the course of performance of office duties completely will be compensated from the state budget under the rules established by law.
3. The employee of the Prosecution Service shall have the right to demand the compensation envisaged by 2nd paragraph of this Article within a year since the person has suffered damage.
4. In case of attack on the employee of the Prosecution Service during the performance of the office duties that resulted in his/her death 10 000 GEL shall be given only once to his/her family members as a kind of assistance.
5. The employee of the Prosecution Service who was attacked during the performance of the office duties that caused him/her to injure the body under which the employee was identified as a person of limited capacities s/he will receive no more than 7 000 GEL only once from the state budget as a kind of assistance.
6. The employee of the Prosecution Service may have annual paid leave amounting to 30 calendar days.
7. The prosecutor, investigator and advisor of the Prosecution Service are exercising the same privileges as the judges of the court of respective instance and the Chief Prosecutor, his/her First Deputy and Deputies are granted the same advantages as the Chairperson of the Supreme Court of Georgia and his/her Deputies respectively.

Article 41 Salary of the Employee of the Prosecution Service

1. The salary of the employee of the Prosecution Service is contained of official salary, premium and other bonuses envisaged by the legislation of Georgia.
2. The official salary of the prosecutor and investigator of the Chief Prosecution Service shall be no less than 500 GEL. The prosecutors and investigators of the Prosecution Services of the Autonomous Republics of Adjara and Abkhazia, Tbilisi Prosecution Service, District Prosecution Services, Regional Prosecution Services and Specialized Prosecution Services envisaged by Article 1 §3 of this law shall have no less than 400 GEL as a salary.

Article 42 Special State Ranks of the Employees of the Prosecution Service

1. The prosecutor, investigator and advisor of the Prosecution Service are to be granted special state ranks for his/her position, scientific degree, qualification, length of service and excellent performance of the office duties.
2. The rule of granting and seizing special state ranks is determined by the legislation of Georgia.
3. The special state ranks of the prosecutor and investigator of the Prosecution Service are equal to those special ranks which are established by the legislation of Georgia for the employees of the Military Forces and the Ministry of Internal Affairs of Georgia.

Chapter VIII

Procurement and Financing of the Prosecution Service

Article 43 Procurement and Financing of the Prosecution Service

1. The Prosecution Service is financed by the funds assigned from the State Budget. The expenses of the Prosecution Service shall be envisaged in the State Budget with the separate organizational code pursuant to the rule established by the legislation of Georgia.
2. The current expenses intended for the Prosecution Service in the State Budget in comparison to the amount of budget funds of the previous year shall only be reduced under the consent of the Minister of Justice.
3. Procurement of the Prosecution Service is centralized.
4. The plot, building and equipments being under the ownership and possession of the Prosecution Service, the movable or estate property purchased on behalf of the state budget shall be considered as the State property.
5. In order to compensate the state damage the sums seized by the Prosecution Service shall be directed to the State Budget.
6. The representative expenses of the Prosecution Service are compensated under the rules established by the Georgian legislation.

Chapter IX

Other Issues Concerning Activities and Organization of the Prosecution Service

Article 44 Raising the Level of Skills of the Employees of the Prosecution Service

1. Employees of the Prosecution Service raise the level of their skills at specific scientific and learning establishments.
2. Based on the occasions foreseen in international agreements and treaties and also various international programs, the employees of the Prosecution Service may raise the level of their skills at the learning establishments of other countries, law enforcement institutions and scientific-research centers.

Article 45 Stamp, Personal Identification Card, Uniform and Distinctive Signs

1. The Chief Office of Public Prosecutor and other organs of the Prosecution Service have a round stamp with Georgian state emblem and name of the Office of Public Prosecutor.
2. The Prime Minister of Georgia provides the Chief Prosecutor with approved pattern of the service card.
3. The Chief Prosecutor, his/her First Deputy and Deputies provides the employees of the Prosecution Service with approved pattern of the service card.

4. (Removed – 30.05.2013, N659)

Article 46 Statistical Reports

The Prosecution Service, along with other institutions elaborates united registration forms of statistical data and establishes general rule for composing statistical data in the Prosecution Service agencies.

Article 47 International Relations of the Prosecution Service

The Prosecution Service has a right to collaborate with agencies of other countries and international organizations based on Georgian legislation.

Article 48 Review of Applications and Complaints at the Prosecution Service

1. The Prosecution Service, under the rule established by law, reviews applications and complaints that fall under its competence. The Prosecution Service also conducts the process of the receipt of citizens.
2. The applications and complaints concerning the offence are reviewed immediately.

Chapter X

Control over the Activities of the Prosecution Services and its Utilization of State Budget and Expenditure

Article 49 Parliamentary Control

Parliamentary control over the activities of the Prosecution Services is executed based on the information provided by the Chief Prosecutor upon the request of the Parliament or by the Chief Prosecutor's initiative. This information shall not contain issues related to the criminal proceeding of the specific case, except for the cases expressly foreseen in Georgian legislation, and international agreements and treaties.

Article 50 Presidential and Prime-Minister Control

The President of Georgia, as the head of the state, and the Prime-Minister being the Chairman of the Government periodically consider the information provided by the Chief Prosecutor. This information shall not contain issues connected with criminal proceedings, except for the cases expressly foreseen in Georgian legislation, and international agreements and treaties.

Article 51 Judicial Control

The conduct of such procedural and investigative activities by the Prosecution Services that limit human rights and freedoms defined in the Constitution of Georgia, are allowed based on the reasoned decision of the court according to Georgian legislation.

Article 52 Control over the Usage of State Funds and Expenditure

The State Audit Service controls the expenditure and usage of state funds and other material values of state issued for the Prosecution Services.

Chapter XI Transitional Provisions

Article 53

1. The Office of Public Prosecutor shall be reorganized and formed as a state subordinated institution in the system of the Ministry of Justice.
2. The Prosecution Service of Georgia as a state subordinated institution within the jurisdiction of the Ministry of Justice of Georgia is a successor of the Prosecution Service of Georgia.
3. The Prosecution Service of Georgia a state subordinated institution within the jurisdiction of the Ministry of Justice of Georgia shall secure the completion of the cases initiated by the Prosecution Service of Georgia based on the provisions of the Code of Criminal Procedure of Georgia.
4. The Ministry of Justice of Georgia shall provide conformity of adequate legislative acts.
5. Normative acts issued by Chief Prosecutor of Georgia shall maintain their force until the activities provided in sub-paragraph 4 of the present article are implemented.
6. The government of Georgia shall ensure transmission of the banknotes issued for the Prosecution Service of Georgia to the Prosecution Service of Georgia as a state subordinated institution within the jurisdiction of the Ministry of Justice of Georgia for the day of entering into force of the current law.
7. The Ministry of Economic Development shall ensure the assignation of necessary property for functioning of (including the property placed on the balance of the Prosecution Service of Georgia) the Prosecution Service of Georgia as a state subordinated institution within the jurisdiction of the Ministry of Justice of Georgia based on the Georgian legislation.
8. Until March 1, 2009 the Ministry of Justice of Georgia shall ensure the elaboration of legislation that will define the place of the legal entity of public law - Legal Aid Service in the system of state organs, which is currently under the jurisdiction of the Ministry of Justice of Georgia.

Chapter XII Concluding Provisions

Article 54 Entry into Force of the Law

1. This legislation shall enter into force after 15 days of its publication, except for the sub-paragraphs 6 and 7 of Article 53 and Article 54.
2. Subparagraphs 6 and 7 of Article 53 and Article 54 shall enter into force on the day of the publication.

President of Georgia
Tbilisi,
21 October 2008
N 382 - IIS

Mikheil Saakashvili

29.3 Code of Prosecutorial Ethics

(Unofficial translation provided by the Georgian authorities)¹⁷⁵

Chapter 1. General Provisions

Article 1 Goal of the Code

1. Prosecutorial Code of Ethics (hereinafter referred to The Code) sets forth the standards of conduct of the employees of the Prosecution Service of Georgia in consistence with the public interest.
2. The goal of the Code is the establishment of the norms of conduct for Prosecution Service employees facilitating:
 - a) Strengthening of the position-relevant accountability and principles of justice in the activity of the employees;
 - b) Professional fulfillment of the duties of the Prosecution Service employees;
 - c) Protection of Human Rights under the universal standards;
 - d) Fair, independent and effective prosecution in due respect of human rights;
 - e) Unconditional and effective performance of law-enforcement goals and tasks;
 - f) Strict adherence to the requirements of law by the Prosecution Service employee in professional and private activities;
 - g) Maintain and enhance public confidence, strengthen public respect in regard to the Prosecution Service of Georgia;

Article 2. The Code definition

It is impossible to limit the definition of the code. Its regulations are fully applied against the conduct of the Prosecution Service employee that is not prescribed by the Code but is reflected in the principles of this Code.

Article 3. Scope of the activity of the Code

The scope of the activity of the Code equally covers the employees of the Prosecution Service of Georgia within their authorities;

Chapter 2. General Norms of Ethics

Article 4. Moral Standards

1. The employee of the Prosecution Service of Georgia should be aware that coming from the context of its own profession she/he has the public-service based ethical obligations before the society.
2. The employee of the Prosecution Service of Georgia should behave consistent with the high standards of responsibility and honesty. In his/her activities employee of the Prosecution Service of Georgia should guide the principles of culture, politeness, honor, mutual respect, trust, impartiality, justice and objectivity based on the universal norms of ethics; He/she should support the enhancement of public confidence and belief towards the Prosecution Service of Georgia.

Article 5. Protection of Human Rights and Freedoms

1. The employee of the Prosecution Service of Georgia should be aware, respect and protect the human rights and freedoms recognized by the Constitution and legislation of Georgia and international agreements. The universal principle of respecting a persons dignity and worth is compulsory for the employee of the Prosecution Service of Georgia.
2. The employee of the Prosecution Service of Georgia is obliged to support the elimination of any kind of discrimination.

¹⁷⁵ Georgian version: http://www.justice.gov.ge/index.php?lang_id=ENG&sec_id=261&lang_id=GEO.

Article 6. Public Relations

1. The employee of the Prosecution Service of Georgia should communicate with the representatives of the society with respect, express his/her own ideas tactfully while delivering the proved critics. The employee of the Prosecution Service of Georgia should respect the other persons freedom of word, opinion or expression provided the third persons freedoms and rights are not violated.
2. Its impermissible to express the opinion aiming at limiting or humiliating the person by race, color, language, sex, religion, political or other beliefs, national, ethnical or social diversities, property or rank status.

Article 7. Independence and freedom of Dominance

1. The employee of the Prosecution Service of Georgia should be free of dominance of mass media and separate persons (among them high-rank persons) and should obey only the law, court practice, interagency directions and general public interest.
2. The employee of the Prosecution Service of Georgia should be fully responsible for his/her own behavior. Its impermissible to disclaim responsibility for his/her own decision based on the indications from the superior authority person.
3. The employee of the Prosecution Service of Georgia should refrain himself from expressing his/her own attitudes publicly in respect to any political party or union. Its impermissible to obviously demonstrate the political belief; The employee of the Prosecution Service of Georgia should refrain himself/herself from obviously expressing his/her own religious belief provided these expressions violate the rights of the others.

Chapter 3. The employee of the Prosecution Service of Georgia in performing the duties

Article 8. Using the service status

1. The employee of the Prosecution Service of Georgia should use the authority only for the purposes envisaged by the law;
2. its impermissible:
 - a) To use the service status for illegal pressure on any person;
 - b) To use the work status for advertising the products or service;
 - g) To use the work time and property also the use of other employees time and property for non-service purposes (the rule does not cover the use of service transport and authorized weapon);
 - d) To use the information for private purposes that became known to him/her while performing the duties and will harm the interest of the Prosecution Service of Georgia.
 - e) To use the discounts in purchasing the products and service from the person carrying out the provision of products or services for the Prosecution Service of Georgia.

Article 9. Independence, Impartiality and Justice

1. In fulfilling the duties the employee of the Prosecution Service of Georgia should strictly obey the independence, impartiality and justice principles apart from private interests. In respect with the concrete criminal case he/she should not undergo influence of concrete persons (among them high-rank persons), mass media and public opinion. The conduct of the prosecutor should meet the standards of justice, impartiality and independence related to any criminal case.
2. The employee of the Prosecution Service of Georgia should respect the principles of the presumption of innocence and equality of the individuals in the face of the law consistent with the supreme legal values.

Article 10. Effectiveness and professionalism

1. The employee of the Prosecution Service of Georgia should fulfill the duties with the high professional level and responsibility.

2. The employee of the Prosecution Service of Georgia in performing the professional duties should articulate the respect of the justice to all of the parties;
3. The employee of the Prosecution Service of Georgia should avoid using property or resources of the Prosecution Service of Georgia for personal gain. In case the employee of the Prosecution Service of Georgia misuses the authority and is proved by the service investigation he/she should reimburse the damage imposed on the Prosecution Service pursuant to the rule prescribed by the Legislation of Georgia.

Article 11. Legal Assistance

The employee of the Prosecution Service of Georgia should refrain from providing legal consultations and assistance to any person if this contradicts the requirements of the legislation or the interests of the Prosecution Service of Georgia.

Article 12. Relations with the colleagues

1. The employee of the Prosecution Service of Georgia should guide the principle of professional solidarity while communicating with the colleagues;
2. The employee of the Prosecution Service of Georgia:
 - a) Should facilitate the establishment of mutual trust between and among colleagues and should refrain the arise and development of private of other types of conflict;
 - b) Should share the personal experience to the colleagues who are in need of such based on work experience and qualification;
 - c) Should refrain from intervening in the activity of the colleague;
 - d) Should not demand from the colleague the service that will complicate the performance of his/her own function imposed;
 - e) Should not mislead the colleague on purpose;
 - f) Should express dissatisfaction tactfully in respect with the colleague mistake or fraud;
 - g) Should take into account the other necessary principles and norms for making healthy work environment and professional solidarity;

Article 13. Confidential Information

Its impermissible to use the confidential information being at the disposal of the employee of the Prosecution Service of Georgia for private interests; The employee of the Prosecution Service of Georgia should actively work not to allow the use of confidential information for the interests of the third parties;

Article 14 Comments on Criminal Case

1. Its impermissible to comment on the criminal case being under the process of the employee of the Prosecution Service of Georgia or other employee in case this harms the interests of the investigation.
2. Its impermissible to comment on the criminal case being under the process of the employee of the Prosecution Service of Georgia or other employee in case this harms any participant of the procedure except for the case when the public interest requires the informing of the society concerning the issue or the publication of an information serves the goal of supporting State Case.
3. The employee of the Prosecution Service of Georgia should not publicly demonstrate the attitude being in contradiction with the official position of the prosecution related to concrete criminal case.

Article 15. Relationship with the participants of the criminal procedure

1. In the event of relationship with the participants of criminal procedure the employee of the Prosecution Service of Georgia should guide the Code, interagency norms and standards in order to ensure the ethical and professional conduct of the participant parties of criminal procedure.
2. The employee of the Prosecution Service of Georgia should refrain from professional and other type of relationship with the judge considering the case on pretrial or trial stage (except for the

stage of immediate trial of case), should timely appear before the court trial, adhere to the official style of clothing, refrain from humiliating behavior or statements expressing special favorable or negative attitude towards any participant of the procedure as well as from expressing the personal attitude related to the case.

Article 16. Inadequate Status

1. While fulfilling the duties, the employee of the Prosecution Service of Georgia should not be under the influence of alcohol or some other strong substance or in some other condition somehow discrediting the dignity of the employee of the Prosecution Service of Georgia
2. Alcoholic drink is accessible within the buildings of the Prosecution Bodies during official events only.

Article 17. Use of service authorized weapon and the identity card

1. The employee of the Prosecution Service of Georgia should meet the requirements of the legislation of Georgia in the event of keeping and holding the authorized weapon and service identity card;
2. The employee of the Prosecution Service of Georgia should refrain from demonstrating to public the authorized weapon and service identity card without any need;
3. The employee of the Prosecution Service of Georgia is prohibited to hand over the own authorized weapon or service identity card with that violating the rule prescribed by the law;

Chapter 4. Relation with Mass Media

Article 18. Public Statement

1. In the event of making statements through mass media or otherwise before public the official written or oral allegations should be business-like and thoroughly elaborated. The fact that the statements made may be realized as the position of the Prosecution Service of Georgia should be taken into account;
2. The employee of the Prosecution Service of Georgia while making the statements for mass media is not prohibited, envisaging the circumstances, to provide the objective amount of information to mass media being known to him by the time;

Chapter 5. Conflict of Interests

Article 19. Inadequate Activity

The employee of the Prosecution Service of Georgia should refrain from carrying out any activity that will evoke an objective suspicion of his/her independence or make an impact on his service activities;

Article 20. Conflicts of Interest

1. The employee of the Prosecution Service of Georgia should meet the requirements of the Law of Georgia On Conflicts of Interest and Corruption in Public Service;
2. The employee of the Prosecution Service of Georgia having the property or some other personal interest on the issue under the competence of the Prosecution Service of Georgia should not participate with the rule prescribed by the law in the consideration of the issue or its decision;

Article 21. Gift

1. Taking presents being prohibited by law is punishable pursuant to the criminal legislation of Georgia;
2. The employee of the Prosecution Service of Georgia should refrain from taking gifts in the event such activity is the attempt of undertaking influence either at present or in the future.
3. In case of possible conflicts of interest the employee of the Prosecution Service of Georgia should refrain from getting any kind of advantage from Juridical or physical person.

Chapter 6. Mechanisms of Code Execution

Article 22. The execution of the Code

1. Violation of the requirements of the code is considered to be the inadequate behavior for the employee of the Prosecution Service of Georgia leading to disciplinary responsibility envisaged by the Organic Law of Georgia;
2. The employee of the Prosecution Service of Georgia have the right to prove the accordance of his/her own activities with the core principles of the Code of Ethics and represent the motivation of the activity;
3. General Inspection of the Office of the Prosecutor General of Georgia conducts the service investigation related to the facts of violation of the requirements of the code and presents the material to the Prosecutor General of Georgia as well as the suggestions related to the issues of appliance of disciplinary sanction against the employee of the Prosecution Service of Georgia.

4.5 Moldova: Local governments

The Project combined the **assessment** of corruption-risks in local governments under this Activity 1.4 “Risk Assessment: Typologies of underlying causes of corruption” with drafting **strategies** for the two respective local governments under Pilot Activity 3.5 “Expertise on anti-corruption strategies for local governments”. Furthermore, based on the two policies, a **Model Integrity Plan** for Moldovan local governments was drafted as an appendix to the current National Decentralization Strategy allowing other local authorities to adopt and implement it in their districts. The following papers document the combined two activities:

	page
4.5.1 Final Report	234
4.5.2 Strategic Plan on Treatment and Prevention of Corruption Risks (Causeni).....	249
4.5.3 Strategic Plan on Treatment and Prevention of Corruption Risks (Telenesti)	308

The Model Integrity Plan is not included in the above documentation in order avoid duplication: as an abstract template derived from the two strategic plans, it basically follows their structure and methodology.

FINAL REPORT

Pilot Activity

Anti-corruption Strategies for Local Governments of the Republic of Moldova

Prepared by the Institute for Urban Development (IUD)

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1. GENERAL FRAMEWORK

This report is elaborated in accordance with the contract on provision of consultancy services under the EaP-CoE Facility Project on “Good Governance and Fight against Corruption” signed on July 6, 2012 between Action against Crime Department, DG I - Human Rights and Rule of Law, Council of Europe and the Institute for Urban Development.

The Report describes the process of conducting and evaluating the Pilot Activity “Anti-corruption Strategies for Local Governments of the Republic of Moldova”.

The activity was **aimed** at developing Local Strategic Plans to treat and prevent risks to corruption by promoting innovative, strategic and practical approaches of treating and preventing corruption in local government through a participatory strategic planning process.

The project was planned to carry out the following activities:

1. Selection of beneficiary district councils
2. Carry out working visits to each district council in order to launch the project, to identify stakeholders from inside and outside the local public authorities that will be involved in the strategic planning process and workshops preparations
3. Organise and conduct two participatory workshops of one day each for each local public authorities having as main goals:
 - a. Identify local public authorities’ areas and activities vulnerable to corruption.
 - b. Elaborate the vision and strategic objectives to be achieved in order to have an organisation less vulnerable to corruption, more transparent and accountable, more effective and efficient
4. Draft Strategic Plans, list the objectives, measures/actions for implementing them, timelines, indicators for measuring progress, and a monitoring mechanism for each district council.
5. Draft an Integrity Plan Model for Moldovan local public authorities taking into account the experience from all workshops.

All the activities planned have been entirely completed. As result of the selection contest attended by 30 district councils, the District Councils of Căușeni and Telenești were selected as beneficiaries of the project. During the period of August 17 – 31, meetings of project launch, interviews with internal and external stakeholders were held in each selected district councils and all the arrangements for workshops conduction were made too. On September 19 and 24 the first workshops were held, then on October 4 and 5 the next two workshops were carried out. During the workshops, the most vulnerable to corruption activities and services of the district councils were identified and analyzed, based on which the strategic plans for preventing and treating risks to corruption were developed. Later, based on the experience gained, the Integrity Plan Model for preventing and treating risks to corruption within the local public administrations of Moldova was completed.

The main outcomes obtained as result of implementing these activities are: (1) two district councils from the Republic of Moldova have strategic plans for preventing and treating

risks to corruption developed through a participatory and innovative strategic approach, (2) in those two district councils there are functional teams who possess the necessary knowledge and skills to develop, implement and monitor the implementation of strategic plans for preventing and treating risks to corruption, (3) the local authorities from the Republic of Moldova have a model plan for development of strategic plans for preventing and treating risks to corruption.

A detailed description of the activities performed and obtained results is presented below.

2. ACTIVITIES AND OUTPUTS

Activity 1. Selection of beneficiary district councils

The beneficiary district councils were selected by a special commission consisted of representatives from NAC (former CCECC), State Chancellery and IUD.

In order to participate in the competition, the district councils have had to complete and submit an application form in which they described:

1. General information about the structure and services of the district council
2. Willingness and ability to participate in the project implementation
3. Description of the current council's strategic activities
4. Description of project implementation experience with external financing.

In the selection process of project beneficiaries, the number of corruption cases involving officials of the district councils in the last three years was also taken into account.

30 district councils submitted application forms to the selection contest. On August 10, as result of analyzing the application forms submitted, the special committee selected by consensus the District Councils of Telenești and Căușeni as project beneficiaries.

Results:

- Contest Commission established
- Conditions for attending the contest set
- District Councils informed about the contest
- 30 contest application forms received and analyzed by the Contest Commission
- Contest for selection the district councils held
- 2 district councils selected as beneficiary.

Activity 2. Project launch and preparation of workshops

On August 17 and 20, working visits and meetings of project launch were carried out in each of the selected district council. The project goal and objectives, planned activities and expected results were presented during the meetings of project launch.

Also, during the working visits, the presidents of districts and local teams have been agreed on the proposed process and steps and were clarified roles and responsibilities of districts councils, NAC, IUD and State Chancellery. The presidents of districts were assisted at the identification of stakeholders from inside and outside the public local authorities and were determined lists of stakeholders that will be involved in the strategic planning process. Finally, together with local teams were agreed on logistical arrangements for workshops (schedule meetings, invitation of participants, catering for participants, etc.).

The Agendas of meetings of project launch and materials used were presented along with the Intermediary Report no. 1.

In the context of workshops preparation, an opinion poll of internal and external stakeholders was organised in the period of August 17 – 30. The opinion poll was carried out based on two questionnaires developed by IUD experts for the activity areas of the District Council. The analysed areas and services were taken from the legislation in force and related to the competences of the district authorities laid down in the Law on Local Public Administration no. 436-XVI as of 28.12.2006 and Law on Administrative Decentralization no. 435-XVI as of 28.12.2006. Thus, by the survey conducted was requested opinion of stakeholder regarding the degree of vulnerability to corruption and level of impact of vulnerability to corruption on 60 duties/activities of the district councils.

The results of the opinion poll were used to develop the diagnostic analysis of vulnerability to corruption.

Results:

- Informational kit box for the project launch meetings developed and published
- 2 meetings of project launch held
- Over 60 participants to meetings of project launch
- Informed participants on goal, objectives, planned activities and expected results of the project
- Roles and responsibilities of the institutions involved in the project clarified
- Internal and external stakeholders identified
- 2 local working groups made up of staff with strategic planning skills created
- Questionnaires for interviewing the internal and external stakeholders developed
- Over 120 people (stakeholders from internal and external environment) questioned
- Terms and logistics for conducting workshops set.

Activity 3. Organise and conduct participatory workshops

3.1. Workshops no. 1. “Healthy Local Governments – Corruption Diagnosis”, Telenesti, September 19 and Căuşeni, September 24, 2012

The workshops’ **objectives were:**

- Improving participants’ knowledge on strategic approach of the diagnosis, treatment and prevention of corruption in local government;
- Identifying and analysing District Councils’ activities and services most vulnerable to corruption that would have significant negative impact on quality of citizens’ life, and the image of the District Councils.

General information on the workshops is presented in the following table:

No.	Date and venue	No. of participants	Facilitators
1	19 September, city of Telenesti	27	Veaceslav Bulat, Natalia Sava

2	24 September, city of Causeni	28	Veaceslav Bulat, Hirbu Eduard, Viorica Scerbina
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In Telenești the workshop was held at the Restaurant "Dacia" and was attended by 27 participants, including 10 heads of divisions and sections, 3 deputy heads and 12 coordinator specialists of the District Council of Telenești. In Căușeni, the workshop was held at the Restaurant "Căușeni" and was attended by 28 participants, including: 2 heads of sections, 1 head of division and 23 coordinator specialists of the District Council of Căușeni.

The representatives of the Centre for Combating Economic Crimes and Corruption (Daniela Railean and Virginia Moraru) and the State Chancellery were present at workshops as observers.

In the framework of the 1st workshops, the following activities were carried out:

1. Initially the concepts underlying strategic approach in the diagnosis, treatment and prevention of corruption in local government were introduced to the participants. Thus, the notions of corruption, corruption acts, monopoly, discretion, transparency, strategic planning and diagnosis were updated.
2. Then the session on in-depth analysis of the results of the opinion poll conducted during the preparatory stage prior to the workshops took place.
3. Based on the results of the diagnostic analysis through participatory method, the participants selected priority areas and analysed in detail the activities and services identified as the most vulnerable to corruption.
4. For each of the selected areas causes of vulnerability to corruption were analysed and Problems Trees were developed.

Based on the results of the workshops a Diagnostic Report was prepared for each District Council which will serve as a basis for developing anti-corruption strategies, projects and activities during the second round of workshops.

The workshops' agendas, lists of participants, instructional materials used and diagnostic reports were presented in annexes of the Intermediary Report no. 1.

Results:

- Training materials developed and used during the workshops no.1
- 2 workshops held
- 55 participants to workshops
- Improved participants' knowledge on strategic approach of the diagnosis, treatment and prevention of risks to corruption in local government;
- Identified and analysed District Councils' activities and services most vulnerable to corruption.
- 2 Diagnostic Reports of activities and services vulnerable to corruption risks

3.2. Workshops no. 2: "Healthy Local Governments - treating and preventing corruption. Strategic Plan for treating and preventing corruption", Căușeni, October 4 and Telenești, October 5, 2012

The **Objectives** of the Workshops no. 2 were:

- Discussing and completing in-depth diagnosis carried out on the basis of results of the workshops held in September 2012, for activities identified as vulnerable to corruption
- Identifying solutions and developing the strategy to strengthen the integrity of District Councils through treating and preventing possible corruption cases;
- Enhancing knowledge on elaboration process of Strategic Plans for treating and preventing corruption in Telenești and Căușeni District Councils;

General information on the workshops is presented in the following table:

No.	Date and venue	No. of participants	Facilitators
1	4 October, Causeni	33	Veaceslav Bulat, Hirbu Eduard, Viorica Scerbina
2	5 October, Telenesti	27	Veaceslav Bulat, Natalia Sava

In Căușeni, the workshop was held at the Hotel "Căușeni" and was attended by 33 participants including Deputy President of the district, 4 heads of sections, 2 Directors of Departments and 21 coordinator specialists of the District Council of Căușeni. In Telenești, the workshop was held at the Restaurant "Dacia" and was attended by 27 participants including Deputy President of the district, 10 Directors and Deputy Directors of directions and sections, and 12 coordinator specialists of the District Council of Telenești.

The Workshops were attended by the following observers:

- Mr Tilman Hope, Long-Term Adviser, EaP-CoE Facility Project on "Good Governance and Fight against Corruption";
- Mr Gheorghe Russu, Deputy Director of the National Anticorruption Centre (NAC);
- Mr Vitalie Verebceanu, Head of the General Direction of Preventing Corruption, NAC;
- Burlacu Rusanda, Senior Consultant, State Chancellery;
- Mostovei Tatiana, Daniela Răilean and Virginia Moraru, main inspectors NAC.

The following **Activities** were carried out in the framework of the 2nd workshops:

Session 1. Validation of the results of the Diagnosis

Session 1 started with the presentation and discussion of the results of the in-depth diagnosis of priority activities selected during the previous workshop. Then the adjusted version of Problems Tree was presented. On each of the activities that have been selected

for intervention¹⁷⁶, the relations causes - effects of Problems Trees were amended and validated by participants. The session ended with the validation of the Diagnostic Reports by the participants.

Session 2. Elaboration of the Strategic Vision

During Session 2, the strategic visions of the Plans of treating and preventing corruption were developed. First of all, each working group developed the vision for each area. Then the final version of the strategic visions was completed through brainstorming.

Session 3. Identification of solutions

During this Session the Strategic objectives, activities and actions to treat the causes and prevent potential corruption cases were identified. The working Method was the Objectives Tree Method which was obtained by transforming the Problem Tree into positive and desirable aspects. Starting from the Strategic Vision for each area of analysis the strategic objectives, operational objectives, activities and actions were identified.

Session 4. Strategic Plan of actions and projects

Session 4 was dedicated to teamwork to develop the Action Plan. In this session the Gantt chart containing the projects' implementation period, entities responsible for project implementation, estimated costs and performance indicators, was completed. Furthermore, the activities were prioritised and priority projects to strengthen the integrity of the organisation were identified. The most priority projects to prevent and combat corruption were detailed and the project proposals filled in, thereby constituting Portfolio of priority projects in each District Council.

Session 5. Planning further activities

During this Session, a presentation was made on the Strategic approaches of the process of preventing and combating corruption within organisations. Then, the further projects activities were planned on:

- Completion of Strategic Plan
- Approval of Strategic Plan by the Council.

Session 6. Evaluation of the Workshops

At the end of the workshops the participants were asked to complete a questionnaire to evaluate: (1) instructional materials; (2) trainers' work, and (3) organisation and conduction of the workshops. The participants were also asked to comment on the positive and negative aspects of the workshops and to make recommendations for their further improvement.

The workshops' agendas, lists of participants, instructional materials used and Draft Plans of treating and preventing risks to corruption were presented in annexes of the Intermediary Report no. 2.

Results:

- Training materials developed and used during the workshops no.2

¹⁷⁶ From 60 activities and services of the District Council that have been analyzed - 4 were selected as the most vulnerable to corruption.

- 2 workshops held
- 60 participants to workshops
- Completed and approved in-depth Diagnosis Reports carried out on the basis of results of the workshops held in September 2012, for activities identified as vulnerable to corruption
- Identified solutions for developing the strategic plans for District Councils;
- Elaborated draft plans of treating and preventing risks to corruption.
- Enhanced knowledge on elaboration process of strategic plans for treating and preventing corruption of personnel from Telenești and Căușeni District Councils.

Activity 4. Draft Strategic Plans

Based on the results of the participatory workshops and experts' contribution, the local working teams from each district council drafted the prefinal versions of strategic plans of treating and preventing risks to corruption.

The prefinal versions of draft strategic plans were presented at public debates. The Plans were posted on the websites of district councils. Within each district council a responsible person was appointed to collect the amendment and adjustment proposals of the strategic plans.

Within the workshop held in Chisinau on November 30, which was attended by 4 representatives from each district council, the amendment proposals to strategic plans submitted by citizens, representatives of civil society and public institutions were analyzed and discussed.

Following several discussions the final versions of the strategic plans were developed.

Reviewed and finalised the draft strategic plans were submitted to the district councils for approval.

Results:

- Drafts of the Strategic Plans on preventing and treating risks to corruption analysed and discussed to public debates
- More than 20 proposals to amend and adjust the drafts of the strategic plans collected
- Workshop for completing the drafts of strategic plans conducted
- Drafts of the Strategic Plans for preventing and treating risks to corruption for District Councils of Căușeni and Telenești completed and submitted to district Councils for approval.

Activity 5. Draft Integrity Plan Model

During the workshop for completing the strategic plans for preventing and treating risks to corruption for district councils the elaboration of a model of integrity plan was discussed

also that could be followed by other local authorities from the Republic of Moldova. The participants made proposals on the structure and appropriate content of such a document.

Taking into account the experience from all workshops, participants' proposals and the relevant legislation in force, after the workshop, the IUD's experts have prepared a final draft of the Integrity Plan Model for Moldovan local public authorities.

The Draft of the Plan - Model was submitted to NAC, State Chancellery, specialised NGOs for discussion, promotion and approval.

Results:

- Workshop on elaboration of the Draft of Integrity Plan Model held
- Involving stakeholders in developing the Draft of the Integrity Plan Model
- The Draft of the Integrity Plan Model developed and submitted to NAC and State Chancellery for promotion and approval.

CONCLUSIONS AND RECOMMENDATIONS

As a result of project implementation IUD consultant team points out that the project, in general, had a benefic and positive impact on preventing and treating some aspects of corruption in the activities of the both district councils.

The achieved results show that implementation of similar projects in all local public authorities from Moldova could have a major impact on diminishing the corruption phenomenon in local public administration activity.

Elaboration of Strategic plans for treating and preventing corruption for Telenești and Căușeni District Councils was performed in a participatory process, involving in workgroups representatives of the subordinated departments and sections, local public institutions, public enterprises that are under district councils's administration, local councils and civil society representatives. As a result of questionnaires analysis, majority of activities and services carried out by the district councils, from 60 evaluated, were identified as vulnerable to corruption, having the average vulnerability indicator higher than 3 (on a 5 points scale). Also, majority of activities performed by local public authorities were evaluated as having a significant negative impact on community if corruption issues were to be manifested. Therefore, a special and constant attention shall be given to the problem of vulnerability of local authorities' activities and services to corruption and the required financial and human resources shall be allocated too.

Participants of the Diagnostic Analysis workshops had a lot of ambiguities regarding methodology notions and terminology used (particularly "discretion" and "monopole") which needed a more detailed and reflective explanation of the meaning and significance of the terminology used. Also, after the first workshops, in which the diagnostic activities were carried out, workshops on elaboration of solutions and strategic plan were conducted. During these workshops problems trees were elaborated, the cause of activities vulnerability and its effects were identified, in order to identify further solutions regarding corruption treating and preventing, priority projects and their implementation time planning. Activities linked to problems trees elaboration were more relied on consultants' efforts. Causality needed too many examples in order to impel some ideas regarding the roots of activities vulnerability and possible effects. Also, project identification and their implementation time planning were more an initiative of the facilitators than of the participants. These deficiencies show that there is still insufficient local capacity for strategic planning. Strengthening strategic planning knowledge and capacity represents an activity that is necessary to be conducted continuously and at all stages of strategic planning, implementation of strategic plans, monitoring and evaluation.

One of the important project activities was quantification of the impact that a vulnerable to corruption activity has over the entire community, in general, and especially on some members that require various public services. This led workshops participants to be aware of the importance of diagnosis, prevention and treatment of any possible acts of corruption in local government bodies. Identifying vulnerability to corruption of district council activities links, first of all, to a bigger clarity on the challenges to which they are subject. Identifying the solutions for prevention and treatment of corruption should be based on a sound methodology both theoretically and practically. Although there was some reluctance

on the application of the methodology, the approach of corruption used in the project was evaluated as being quite simple and applicable, and the methodology used will serve as a useful tool for application in various other activities performed by LPA in the territory.

In the amendment and completion phase the strategic plans, almost didn't suffer major changes. This fact denotes that participatory approach is an important and efficient method. On the one hand, participants learn their product given that they participated in its elaboration. On the other hand, the active involvement of councilors in the process of strategic plan elaboration, which was very appreciated by them, would probably allow a more efficient implementation and ensure a closer and more constructive monitoring process of the documents.

Many of the strategic plans stipulations are focused on transparent and judicious management of the various activities conducted by the LPA authorities. We hope that the insistence in achieving the set objectives, the district councils and other public institutions will be able to rectify the management of the public activities, to take actions in order to increase the overall capacity of the institution, and to initiate a more fruitful dialogue with members of the community, which will increase the degree of communication between public institutions, on one hand and between institutions with community members, on the other hand.

The **main recommendations** concerning further implementation of similar projects in LPAs are:

1. Workshops participants acknowledged the innovative character of the principles which formed the basis of the activities for elaboration of the Strategic Plan for treating and preventing corruption, considering it as quite informative and useful for filling in knowledge in this area. Although, members of work teams showed skills and abilities in strategic planning, which are the result of the activities of several projects, it is recommended to be presented and applied the methodological approach of the planning process with its standard stages – diagnosis, identifying solutions, vision - action plan.
2. During the activities implementation were identified the activities on which will further focus the effort of those involved in developing the strategic plan for treating and preventing corruption. One of the unfavorable aspects of workshops was the fluctuation of the working group members, which needed an additional effort to involve new people in the activities carried out during the workshops. In this respect, it is recommended to create at the initial stage of the project an official institutional structure (type Strategic Planning Working Group) with member's rights and responsibilities. This would leverage the implementation of activities.
3. In the activities carried out, working group members expressed a sufficiently responsive attitude which allowed to successfully carrying out the activities. Also it has been favorable the fact that the members of the working group were many people who have assumed responsibility for solutions to prevent possible acts of corruption by removing the causes that can generate and foster its emergence. Also, involving the district councilors has been very benefic action. Such a scenario is recommended to be preserved and multiplied.

4. Legislation of the Republic of Moldova requires creation of internal audit function within the local government. Local public administrations do not have the internal audit service. Training specialists in the field of internal audit and support the creation of internal audit structure could help the public authority to reach their goals and prevent loss of resources, ensuring a reliable financial and institutional reporting in accordance with the law, avoiding any damage that may affect the work and reputation of the district councils.
5. It is also recommended to continue to organise and conduct training seminars for civil servants and local councilors in project management cycle. Implementation of developed strategic plans with the support of the program requires increased capacity of developing applications for funding and attracting sources of financing.

5. ANNEXES

Annex 1.

Plan of treating and preventing risks to corruption of Telenești District Council
Plan of treating and preventing risks to corruption of Căușeni District Council.

Annex 2.

Draft final Model Integrity Plan

Prepared by:

Veaceslav Bulat
IUD Executive Director

Unofficial translation from Romanian

Strategic Plan
on treatment and prevention of corruption risks
Causeni District Council

October 2012

**Developed by a Working Group with the assistance of
the Institute for Urban Development (IUD)**

**And supported by the
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“Good Governance and Fight against Corruption”**

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INTRODUCTION

In order to promote an innovative and practical approach to treatment and prevention of risks of corruption at the level of local public administration in the Republic of Moldova, between August and November 2012, the Causeni District Council benefitted from the assistance provided under the Activity "*Anti-Corruption Strategies for the Local Governments*" initiated by the National Anticorruption Centre and supported by the the Eastern Partnership-Council of Europe Facility Projecton "Good Governance and Fight against Corruption". Thanks to the project, the Causeni District Council obtained support from the consultant team of the Institute for Urban Development in developing a Strategic Plan to treat and prevent the risks of corruption in a participatory process where:

- **in the diagnosis phase** the activities most vulnerable to corruption are identified and analyzed.
- **in the solution finding phase** *strategies* are identified and *action plans* are developed for the implementation of the strategies.

In order to be selected for the project, the District Council prepared an offer and took part in the competition held in August **2012**.

In order to develop the diagnosis of the activities vulnerable to corruption, the working group made up of representatives of the District Council, businesses, civil society and mass media organized the workshop "*Healthy Local Governments: Corruption Diagnosis*", where the activities most vulnerable to corruption, that would have the most significant negative impact on citizens' life, as well future of the city and image of the District Council were identified and analyzed. After the workshop, the IUD further developed the diagnosis, making it more complex.

In order to develop solutions to treat and prevent corruption in the services and activities that make the object of the Strategic Plan, the working group held the second workshop "*Healthy Local Governments: Treating and Preventing Corruption*" where solutions and strategies to strengthen the integrity of the DC by treating and preventing any possible acts of corruption were identified. The strategies focus on improving the functionality of the organization, promoting transparency and competition, by limiting the discretion in the decision-making process and by providing incentives to the staff. Additionally, the action and project plans for strategy implementation were produced.

The draft of the Strategic plan was discussed in public during the period of October 16-31, examined by the commissions of the District Council, and approved according to the legal procedure on decisions approval.

The Plan shall be implemented, monitored and assessed in line with the provisions laid down in Chapter 4 for each of the activities, actions and projects included in the Action Plan. The Causeni District Council shall appoint a working group that will monitor the implementation of the Strategic Plan.

SUMMARY

The Strategic Plan to Treat and Prevent the Risks of Corruption (hereinafter – the Plan) is a result of the activities carried out by the working group of the Causeni District Council which was assisted by the consultants of the Institute of Urban Development within the framework of the Activity "*Anti-Corruption Strategies for the Local Governments*"of the Eastern Partnership-Council of Europe Facility Projecton "Good Governance and Fight against Corruption", the project implemented for

the Causeni District Council. According to the requirements for such documents, the layout and the content of the plan include the results of the activities carried out at the **participatory diagnosis phase and during workshops**, as follows:

- 16 August 2012 – information meeting with 35 representatives of LPA of I and II levels, the associative sector and businesses;
- 18 - 30 August – interviewing of the representatives of the Causeni District Council;
- 24 September 2012 - workshop No. 1 “*Healthy Local Governments: Corruption Diagnosis*” with the participation of 24 representatives of the Causeni District Council;
- 4 October 2012 - workshop No. 2 “*Healthy Local Governments: Corruption Diagnosis: Treating and Preventing Corruption*” with the participation of 27 representatives of the Causeni District Council.

The performance of diagnosis included the assessment of two aspects of the **60 activities and services** of the District Council: (i) the degree of vulnerability to corruption and (ii) the level of impact on citizens’ life, future of the city and image of the Causeni District Council in case when acts of corruption would emerge within these activities and services.

As a whole, **44 questionnaires** were filled in, namely: LPA of II level – 29 people, LPA of I level – 9 people, businesses – 4 people and NGOs – 2 people. Preliminary evaluation was carried out based on the results of a survey of public officials and some interested third parties. The Index of vulnerability to corruption was calculated on the basis of the survey data, using the Robert Klitgaard¹⁷⁷ formula, which – in a simplified way – applies to probably most corruption vulnerabilities: $\text{Corruption [vulnerability]} = \text{Monopoly} + \text{Discretion} - \text{Transparency}$ ¹⁷⁸

All the activities whose average indicator exceeded the value of 3 were considered as being vulnerable to corruption. Out of those 60 activities assessed by:

- the internal environment (representatives of Local Public Administration (LPA), level II)¹⁷⁹ – **41 activities or 68.33%** out of the total, acquired an average indicator of vulnerability with values ranging between 3.1 and 4.9
- the external environment (representatives of LPA of I level, NGOs and businesses) – **31 activities or 51.67%** out of the total, acquired an average indicator of vulnerability with values ranging between 3.2 and 5.5.

After identifying the activities and public services vulnerable to corruption, the level of negative impact that the potential acts of corruption within such activities could have was identified. All those 60 activities or public services were assessed with regard to the **level of impact** on the quality of life of the citizens and future of Causeni District Council, as well as on the image of the District Council, that the potential acts of corruption could have. The assessment was performed by:

- the internal environment (representatives of LPA of II level) – the activities and public services were considered as having a major negative impact if there were corruption cases with values ranging between 2.32 and 3.90.
- the external environment (representatives of LPA of I level, NGOs and businesses) – the activities and public services were considered as having a major negative impact if there were corruption cases with values ranging between 2.0 and 3.93.

¹⁷⁷ *Corrupt Cities - A Practical Guide to Cure and Prevention*, Robert Klitgaard, Ronald MacLean-Abaroa, Lindsey Parris, Ed. Humanitas, 2006, translated and published in Romanian by FPDL

¹⁷⁸ The formula has been adapted from the book “*Corrupt Cities*”, taking into consideration that Klitgaard and Abaroa use both terms, “accountability” and “transparency”, in different sources.

¹⁷⁹ Local Public Administration of level II means District Councils as representative bodies and President of the District with his Board (departments and sections) as executive body. Local public administration of level I means Local Councils as representative bodies and the Mayor with his working body (mayoralties or town halls) as executive body.

The results of the general diagnosis process were discussed during the workshop „*Healthy Local Governments: Corruption Diagnosis*” and through the decision reached by consensus by the participants in the workshop, the solutions and strategies for the prevention and treatment of the following priority services and activities were to be selected and identified:

- **Public Procurement**
- **Management of Human Resources**
- **Financial Management**
- **Provision of Social Aid**
- **Organization of Road Transport.**

Those activities were analyzed in-depth, and the aspects of vulnerability, as well as the causes that could produce them were identified.

- The major vulnerabilities of the **Public Procurement** are: (1) tender criteria (of the awarding documentation) established depending on the peculiarities of a certain company; (2) higher amounts included in the estimate of expenditures to be later used in one’s own interest; (3) participation of phantom companies; (4) participation of some companies owned by public officials or politicians, or their relatives; (5) reports and minutes prepared that do not match with the reality and are conditioned by the following: (a) estimations are made by people lacking competence in the area; (b) lack of transparency (in distributing the specifications and concluding works contracts); (c) lack of legal control over conflicts of interest.

The major vulnerabilities of the **management of human resources** are: (1) misuse of power in employing/promoting a public officer; (2) formal organisation of job contests; (3) presence of a relational framework upon employment; (4) political framework and party-based employment; (5) promotion of personnel on subjective criteria; (6) lack of controls, scheduled and superficial character of controls. Vulnerabilities are conditioned by the following: (a) organisational culture (the manner in which socio-professional relations unfold might influence the manner in which the professional ethics and ultimately, the law are respected); (b) little attention is paid to the qualitative factor and to knowing the candidates upon employing them directly and especially upon selecting them; (c) existence of certain deficiencies or drawbacks in the system of recruitment, selection, employment and promotion of human resources; (d) lack of an alternative system of incentives; (e) difficulty in attracting and keeping qualified personnel in the system.

The major vulnerabilities of the **financial management** are: (1) decrease of own revenues; the expenditure estimations may be overestimated; (2) poor control of veracity and necessity of the planned expenditures; (3) subjective distribution of financial means to institutions subordinated to the District Council; (4) subjective distribution of the balance available at the beginning of the year. These vulnerabilities are determined by the following: (a) estimations are made by people lacking competence in the field; (b) there are no clear mechanisms and strict procedures for distribution of the funds transferred; (c) lack of transparency in distributing budgetary resources; (d) lack of strategic documents that would establish the funding priorities; (e) lack of objectivity in distributing the financial resources.

The major vulnerabilities of **social aid provision** are: (1) submission of false papers; (2) failure to disclose all assets; (1) dissimulation of incomes through unofficial employment in the labour market; (3) verification of authenticity of the information included in the application for social aid by a specialist; (3) preparation of reports and minutes that do not match with the reality for the

following reasons: (a) lack of transparency; (b) improper information of social-vulnerable categories of population; (c) lack of personnel; (d) personnel fluctuation; (e) huge workload.

The major vulnerabilities of the **road transport** are: (1) failure to observe the principles of competition; (2) submission of incompliant/false papers; (3) preferential selection of the transporting agent; (4) ungrounded refusal to launch a route; (4) transmission of a route to other transporting agents, contrary to the provisions; (5) acceptance of certain incompliant transportation units in the transport services system; (6) failure to observe record-keeping and reporting principles. These vulnerabilities are due to the following reasons: (a) lack of transparency; (b) lack of skillful personnel; (c) old transport units; (d) failure to observe the legal provisions.

The Strategic Plan was developed as a working tool of the administration with regard to the projection and management of treatment and prevention of corruption risks, in order to enhance the efficiency of those five areas and services identified as being vulnerable to corruption. The plan is an inside and outside perspective over the phenomenon, over the current tools used in fighting against corruption and means to prevent and treat non-integral behaviours in the next three years.

Treatment and prevention of corruption risks reflects the general goal of the Strategic Plan and ensues from the **Vision**: *Causeni District Council advocates for a coherent decision-making process and free access to qualitative services provided to citizens*. Thus, the vision reflects the image of the District Council at the end of Plan Implementation Phase and represents the final point in changing the current situation and in problem solving, representing the combination of all the activities identified to reduce the degree of vulnerability to corruption.

Achieving the vision shall be based on achieving the following **strategic objectives**:

1. Optimal public procurement conducted professionally and comprehensively;
2. Qualitative services provided to the citizens through a competent human resources management;
3. Transparent, fair and efficient budget planning and execution;
4. Professional, transparent and efficient income support to vulnerable groups;
5. Qualitative and integral road services.

The strategic objectives shall be achieved through the **operational objectives**, structured by **actions / projects**.

The **implementation** of the Plan shall be ensured through the acceptance by every public officer and citizen from the district of a system of values and **principles** that would become generally accepted norms of conduct and attitude in the next three years: **transparency, competence, professionalism, responsibility, etc. the principles shall be complemented by strategic approaches** of treatment and prevention of corruption risks: (1) selection of proper partners; (2) establishment of systems of compensations; (3) establishment of a system of penalties; (4) increase of transparency and (5) increase of the moral cost of corruption.

Being a flexible document, in the process of **implementation**, the Action Plan shall be tailored to new opportunities of treatment and prevention of corruption risks, as well as to the provisions of national and regional development programs. The **monitoring** shall be carried out by the working group created by the decision of the Causeni District Council.

The following are the results of the implementation of the Strategic Plan of Treatment and Prevention of Corruption Risks, which aim at ensuring good governance within the District Council:

- Proper and efficient use of the public money
- Transparency of the decision-making process

- Skilled human resources
- Proper, qualitative and professional public services delivered to the beneficiaries
- Initiation of public-private partnerships
- District economic, social, institutional development, as well as territorial infrastructure development

1 METHODOLOGY

The diagnosis of the Causeni DC was performed through direct participation of the stakeholders in the opinion poll carried out between 16 - 30 August based on the two questionnaires developed by the IUD and the results of the in-depth diagnosis performed during the workshop of 24 September 2012. The areas of analysis and the analyzed services were taken from the legislation in force and relate to the competences of the district authorities laid down in the Law on Local Public Administration no. 436-XVI as of 28.12.2006 and Law on Administrative Decentralization no. 435-XVI as of 28.12.2006. Thus, 60 duties/activities of the District Council were assessed.

The diagnosis focused on the assessment of two aspects with regard to those 60 activities:

- Degree of vulnerability to corruption;
- Level of impact on the life of citizens, future of the city and image of the District Council in case when such acts of corruption would emerge within those activities.

The identification of vulnerability to corruption was done based on the *Vulnerability Indicator* calculated according to the formula of Robert Klitgaard:

$$\text{Corruption [vulnerability]} = \text{Monopoly} + \text{Discretion} - \text{Transparency}$$

According to this formula, the activities are vulnerable to corruption when there is a **Monopoly** in their delivery, **Discretion** in decision making process and there is lack of **Transparency** and accountability on the side of the decision makers.

The participants in the public polls were asked to assess every separate activity and to score it from 1 to 5 (from 1= to a little extent, up to 5= to a great extent)

- **Monopoly level:** the extent to which the activity represents a monopoly of the District Council (absence of competition in performing the activity)
- **Discretion level:** the extent to which the decisions are taken in a *discretionary manner* while performing these activities (there are no regulations and clear procedures that would guide the decision making process or on the contrary, there are too many, even contradictory regulations and the ones who make the decision can choose the rule convenient to them)
- **Transparency level:** the extent to which the decisions are made in a *transparent manner* (the information is available and there is an easy access to the information on the way in which decisions with regard to a certain activity are made).

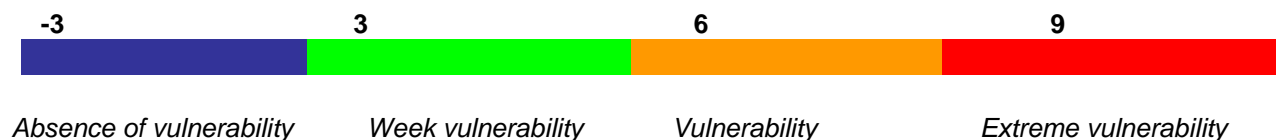
The calculation of the *Impact Indicator* was made based on the assessment of those 60 activities using a scale from 1 to 5 (1 = no negative impact, up to 5 = very serious negative impact) of the impact that the possible acts of corruption might have on the quality of citizens' life, on the future and image of the District Council.

As a whole, 44 questionnaires were filled in to assess the degree of vulnerability to corruption of the activities carried out by the DC and 44 questionnaires to assess the level of impact in case such acts of corruption might occur within such activities. Those 44 questionnaires were filled in by 29 public officers from II level LPA, 9 representatives of I level LPA, 4 businesses and 2 representatives of the associative sector. The variety of respondents allowed having a comparative analysis of the Vulnerability Indicator and Impact Indicator on the services of the Causeni CD, with a comparison of the internal and external environments.

The assessments average of the Monopoly, Discretion and Transparency levels was calculated for every activity. Based on those averages, the Vulnerability to Corruption Indicator was calculated by using the formula $\text{Monopoly} + \text{Discretion} - \text{Transparency}$.

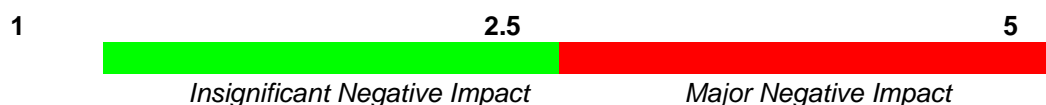
The value of such an Indicator ranges between -3 (situation with no vulnerability: minimum Monopoly = 1 + minimum Discretion = 1 – maximum Transparency = 5) and 9 (situation when the vulnerability is maximum: maximum Monopoly = 5 + maximum Discretion = 5 - minimum Transparency = 1).

Four intervals of the Vulnerability to Corruption Indicator are set between these values, which are encoded in the following colours:



Thus, the average of the Vulnerability Indicator for each of those 60 activities was calculated. All the activities whose indicator exceeded the value of 3 were considered as vulnerable to corruption.

In order to identify the level of impact of particular acts of corruption that might occur within the assessed activities, two value intervals are set, ranging between the minimum value 1 and the maximum 5:



After identifying the activities and services vulnerable to corruption (having average values equal or higher than 3), the level of the negative impact that potential corruption acts within these activities could have on the life of citizens, future and image of the District Council was checked.

These two criteria – vulnerability to corruption and the level of the negative impact – were used to eliminate from the Strategic Plan to treat and prevent corruption risks any potential activities and services which, although being identified as vulnerable to corruption, would not be considered as having a major negative impact.

Two workshops were conducted after performing the diagnosis of the activities from the perspective of vulnerability:

- Workshop 1 “**Healthy Organization: Treating and Preventing Corruption**”, 24 September 2012
- Workshop 2 “**The Strategic Plan to Treat and Prevent the Risks of Corruption**”, 4 October 2012

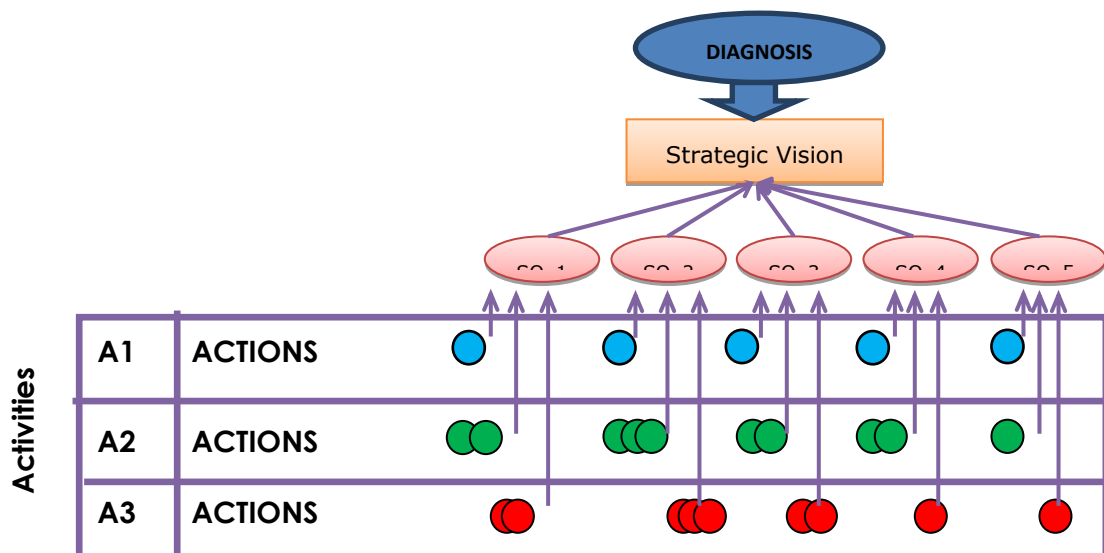
Problem trees were established and the causes and effects of the vulnerability of actions were discussed during those two workshops to further identify solutions for treating and preventing corruption.

A future systematization of the solutions implied their grouping into strategic objectives, activities/projects and actions.

Thus, the typical concepts of a strategic plan were identified and defined:

- Vision** - image of a far and desired future guiding the process of change and describing the situation in which the problems were established and the objectives were reached.
- Strategic objective** - image of a desired future that is nearer in terms of time and less complex than the vision, being a specific domain of the vision that is described in more details.
- Strategies** - activities and actions planned and achieved to reach strategic objectives and the vision.
- Projects** - the ensemble of activities and actions having fixed objectives, conceived to produce specific results in a limited period of time.
- Corruption** - Abusive use of the official positions for personal gains.

Therefore, the logical path for the development of the Strategic Plan comprised iterative activities as specified in the scheme below:



2 DIAGNOSIS

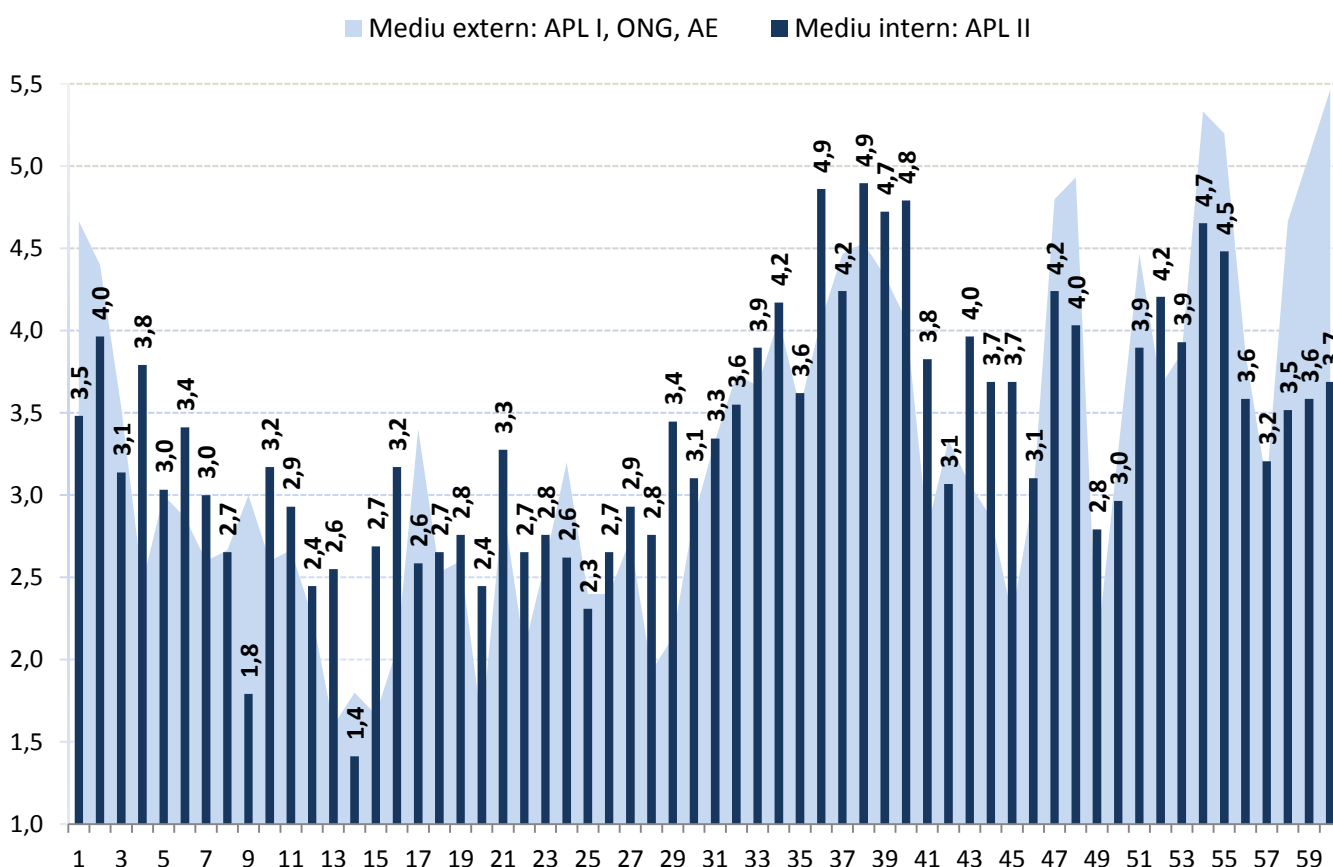
Degree of Vulnerability to Corruption

Out of those **60 activities** assessed by:

- *Internal environment (representatives of the LPA of II level)* – **41 activities or 68.33% out of the total** got an average vulnerability indicator higher than 3; values range between 3.1 and 4.9 points.
- *External environment (representatives of the LPA of I level, NGOs and businesses)* – **31 activities or 51.67% out of the total** got an average vulnerability indicator higher than 3; values range between 3.2 and 5.5 points.

Further on, the average vulnerability to corruption indicator of the assessed activities is presented:

Figure 1. Degree of Vulnerability to Corruption



According to these results it can be stated that the appreciation of the internal and external environment respondents matches as far as the majority of the assessed activities and services are concerned.

In the order they were presented in the questionnaire, the degree of vulnerability to corruption of the activities carried out by the Causeni District Council was scored with a vulnerability indicator higher than 3.5, as shown below:

Table 1. Degree of Vulnerability to Corruption

PUBLIC ACTIVITIES OR SERVICES		Internal Envir.	External Envir.
Level of vulnerability to corruption			
1	Inventory of the public property	3.5	4.7
2	Putting the public property of the district into administration, renting, concession or leasing	4.0	4.4
3	Selling, privatization, concession, renting or leasing of private property of the district	3.1	3.5
4	Capital and routine repairs of the infrastructure	3.8	2.5
32	Examination and submission for approval of schemes, projects or other documents related to the organization of territory	3.6	3.7
33	Organizing and conducting tenders and contests to sell-purchase lands, in line with the respective regulations	3.9	3.7
34	Leasing out land, transferring land into possession or for use	4.2	4.1
35	Preparing the documents for changing the nature of farm lands and submitting them to the local public administration council for approval	3.6	3.5
36	Preparation of specifications	4.9	4.1
37	Call for tenders	4.2	4.5
38	Selection of winners	4.9	4.5
39	Conclusion of contracts	4.7	4.3
40	Supervision of public procurement contracts	4.8	4.1
41	Reporting	3.8	2.8
43	Putting the public services of district interest into administration, renting, concession or leasing	4.0	3.1
44	Approval of tariffs for payment services	3.7	2.9
45	Development and implementation of the projects for interurban gas pipelines (including the medium pressure gas pipelines)	3.7	2.3
47	Organisation of road passenger transport	4.2	4.8
48	Administration of bus stations of bus stops of district interest	4.0	4.9
51	Budget planning and execution	3.9	4.5
52	Assistance and support to the initiatives on economic development of the administrative-territorial unit	4.2	3.7
53	Coordination of foreign investment	3.9	3.9
54	Employment of the personnel	4.7	5.3
55	Promotion of the personnel	4.5	5.2
56	Dissemination of information on trainings and professional advanced courses	3.6	3.9
58	Planning and administration of the construction works	3.5	4.7
59	Construction, administration and repair of the roads of district interest	3.6	5.1
60	Construction, administration and repair of road infrastructure	3.7	5.5

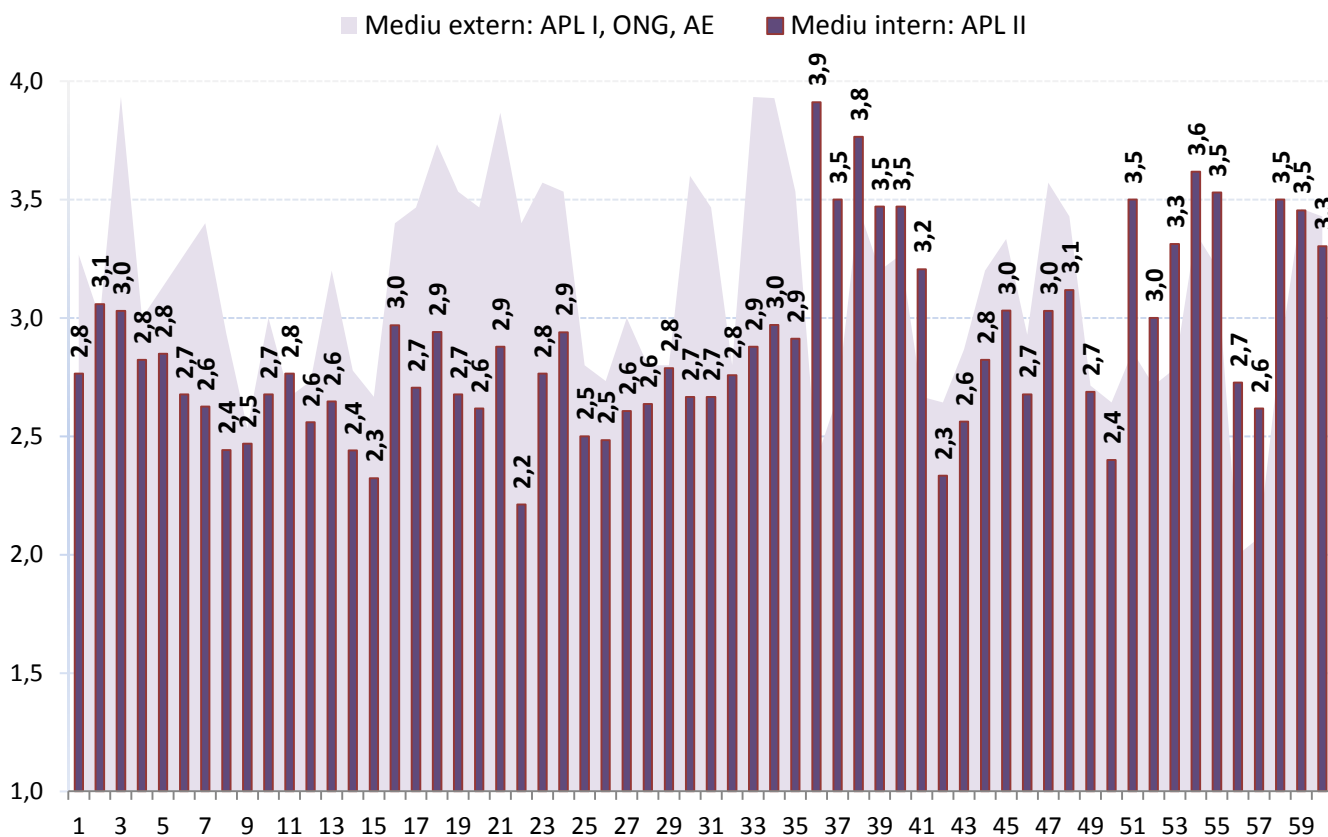
The results of each analyzed activities and services are presented in Annex 1.

Impact Degree

All those 60 activities or services were assessed with regard to the level of impact on the quality of the citizens' life, on the future and image of the DC that the potential acts of corruption might have. The results of this assessment give evidence of the following:

- **Internal environment** (representatives of the LPA of II level) – have assessed **10 activities or 16.67%** out of the total, as having a major **negative impact**, should cases of corruption ranging between **3.5 and 3.9 points** emerge.
- **External environment** (representatives of the LPA of I level, NGOs and businesses) – have assessed **16 activities or 26.67%** out of the total, as having a major **negative impact**, should cases of corruption ranging between **3.5 and 3.9 points** emerge.

Figure 2. Degree of Vulnerability Impact to Corruption



Similarly to the previous index, the opinion of the internal and external respondents match regarding the majority of the assessed activities and services.

In the order they were presented in the questionnaire, the degree of impact of potential acts of corruption was scored with a value higher than 3.5, as shown below:

Table 2. Impact of vulnerability to corruption

PUBLIC ACTIVITIES OR SERVICES		Internal Envir.	External Envir.
3	Selling, privatization, concession, renting or leasing of private property of the district	3.0	3.9

17	Information, assistance and counseling on various aspects of assistance and social protection	2.7	3.5
18	Establishment and delivery of social contributions (allowances, compensations, etc.)	2.9	3.7
19	Information and consultancy in issuing the documents necessary for establishing social contributions	2.7	3.5
20	Temporary placement comprising: shelter, food, care, occupational therapy	2.6	3.5
21	Health recovery (orthopaedic-prosthetic services, resorts and sanatorium services)	2.9	3.9
23	Delivery of social financial and humanitarian aid	2.8	3.6
24	Development and management of community social services for social – vulnerable groups	2.9	3.5
30	Sanitary authorization for production and industrial tools, production equipment and processing systems	2.7	3.6
31	Information on attestation, authorization, licensing and certification of food products	2.7	3.5
33	Organizing and conducting tenders and contests to sell-purchase land, in line with the respective regulations	2.9	3.9
34	Leasing out land, transferring land into possession or for use	3.0	3.9
35	Producing acts on changing the nature of farmlands and submitting them to the local public administration council for approval	2.9	3.5
36	Preparation of specifications	3.9	2.4
37	Opening of tenders	3.5	2.7
38	Selection of winners	3.8	3.5
39	Conclusion of contracts	3.5	3.2
40	Supervision of public procurement contracts	3.5	3.3
47	Organisation of road passenger transport	3.0	3.6
51	Budget planning and execution	3.5	2.9
54	Employment of the personnel	3.6	3.4
55	Promotion of the personnel	3.5	3.2
58	Planning and administration of the construction works	3.5	2.9
59	Construction, administration and repair of the roads of district interest	3.5	3.5

The results of the impact degree of vulnerability to corruption of each analyzed activities and services are presented in Annex 2.

The results of the general process of diagnosis performance were tackled during the workshop as of 24 September and through a consensus-based decision, the members of the group stated that the strategic plan should focus on the following priority activities of the DC:

- **PUBLIC PROCUREMENT**
- **MANAGEMENT OF HUMAN RESOURCES**
- **FINANCIAL MANAGEMENT**
- **PROVISION OF SOCIAL AID**
- **ORGANISATION OF ROAD TRANSPORT.**

These activities were analyzed in-depth during the workshop (a three stage analysis):

1. Activities were detailed into actions conducted within them and arranged in time

2. The potential acts of corruption, which might occur at certain stages of activities execution or within specific actions, were identified
3. The causes that could generate and favour the occurrence of acts of corruption were established.

Further on, we present the results of the in-depth assessment for each activity.

Public Procurement

Public procurement is a process where goods, works and services are purchased with public funds, to cover the needs of one or several contracting authorities, the contracting authority being the local public administration.

In the Causeni DC, public procurement is performed in line with the *Law on public procurement* no. 96-XVI as of 13.04.2007. Public procurement can be performed based on an open (public), limited tender procedure, framework agreement, competitive dialogue, negotiated procedures and procurement from one single source, pricing offers, dynamic systems of procurement, electronic auctions and procurement in case of repair and construction plans for public objectives. Public procurement includes the following **stages**, depending on the procedure:

1. establishment of working groups responsible for conducting public procurement;
2. development of annual and quarterly plans for public procurement;
3. drawing up the invitations for the public procurement procedures;
4. development of tender documentations, as well as other documents applied within the public procurement procedures;
5. launching and conducting public procurement procedures;
6. ensurance of a larger participation to the public procurement procedures;
7. greater openness towards the participation of businesses in tenders;
8. examination, assessment and comparison of offers submitted by the businesses for the public procurement procedures;
9. conclusion of public procurement contracts with the businesses or selected company.
10. production of reports on the public procurement procedures results and its submission to the Agency for Public Procurement;
11. execution and management of the public procurement contracts in line with the terms and conditions agreed upon;
12. storage and record-keeping of all the documents developed and used in the public procurement procedures.

The Contracting Authority undertakes, in line with the legal provisions, to:

- ensure the efficiency of public procurement;
- use efficiently the public funds;
- ensure objectivity and impartiality during the public procurement procedures;
- ensure the transparency of the public procurement process;
- ensure no-discrimination and equal treatment of the businesses;
- provide the Agency, upon request, with any piece of information on the conclusion and execution of public procurement contracts.

In the public procurement process, the most vulnerable **aspects** that could catalyze **potential acts of corruption** are:

- establishment of the tender criteria (awarding documentation) depending on the peculiarities of a certain company;
- preferential selection of a tendering company with the aim to acquire inappropriate benefits;
- biased decisions of the tender committee with the aim to acquire personal profit;

- undeclared conflict of interest;
- abusive use of emergency situations to negotiate the contracts with one single source;
- delivery of confidential information;
- planning a huge volume of works;
- assignation of some higher sums in the income/expense pro forma that would be used for own interest;
- preliminary arrangement of tenderers and participation of a small number of tenderers in the auction;
- specialisation of some companies in public procurement;
- participation of phantom companies;
- participation of some companies owned by public officials, politicians or their relatives;
- influence on the side of certain officials;
- development of reports and minutes that don't match with the reality.

The causes boosting such vulnerable aspects are of objective and subjective nature and can be evinced by the following:

- Estimations are made by people lacking competence in the field;
- Lack of transparency (tender notices on public procurement are not made public);
- Lack of a legal control over the conflict of interest;
- Difficult access to the technical specifications for stakeholders;
- Lack of clear regulations with regard to different applied procedures;
- Failure to perform the expertise of documents;
- Absence of a supervisor (specialist that shall monitor the works carried out);
- Lack of quality control.

The effects of production of corruption causes:

- Embezzlement;
- Financial impact (increase of costs);
- Economic impact (decrease of quality and lose of investors);
- Erosion of confidence in the local public administration;
- Preferential selection of the businesses;
- Distortion in the process of public money earmarking;
- Creation of a group of interest and redistribution of revenues;
- Insufficient use of local and national market opportunities;
- Committing errors during the process of public procurement

Those who might benefit from the acts of corruption could be: certain businesses, some public or private institutions, representatives of PP, some individuals.

When certain acts of corruption are committed, the State, the district budget, the businesses, the district communities, the citizens and the business environment suffer.

a. Human Resources Management

Human resource management is a set of general and special activities to attract, maintain, use and motivate as efficiently as possible human resources of an organization with a view to accomplish its objectives.

The main normative acts that regulate the activities of local public administration employees are laws and Government enactments, namely *Public Office and Public Official Status Law no 158 – XVI of July 4, 2008*; *Public Service Law no 443 – XIII of May 4, 1995*; *Law on Regulation of*

Awarding Qualification Degrees to Public Officials no 1263 - XIII of July 17, 1997; GE no 845 of July 26, 2004 „On Professional Skills Upgrading of Public Officials”, etc..

Any person meeting the following criteria may be a candidate to a public office:

1. Be a citizen of the Republic of Moldova;
2. Have knowledge of Moldovan language and of official languages of interethnic communication spoken on the territory in question in limits established by law;
3. Have full legal capacity;
4. Not to have reached the age of retirement based on age limit;
5. Be able, from the point of view of health, to take up public office, which will be confirmed by an authorized medical institution, if there are any health requirements to the position in question;
6. Have the required level of education for office in question;
7. Meet specific criteria for taking up office in question;
8. Not to have a criminal record of intentional crimes;
9. Not to be deprived of the right to take an office or to perform particular activities, as primary or secondary punishment, based on a final court decision, which orders this prohibition.

The following are ways to take up vacant public office: competition; promotion; transfer.

Competition for taking up vacant public office is based on principles of open competition, transparency, competence and professional merits, as well as on the principle of equal access to public office for every citizen.

Appointment to public office is done based on a written Administrative Appointment Act. Description of duties is attached to the administrative appointment act, and a copy of it shall be given to the official.

Promotion is a way of career development for public officers. They take a position superior to the current one in a public authority where this position is vacant. Public officers may be promoted to higher positions if at last assessment of their professional performance they scored "very well" or if they scored "good" at last two assessments.

Transfer, as means to modify official relations, occurs between public authorities or between internal units of the same public authority. It is performed in the interest of the service or upon request of the public officer.

Public authorities may advertise public offices that may be taken as a result of transfer upon request. If two or more public officers request to take a public office as a result of transfer upon request, the one who has better professional performance results will have the advantage. If the results of professional performance assessment are equal, competition shall be organized.

Depending on the procedure, the following are the stages of taking public office:

1. District Council decides to announce the vacancy.
2. Assessment and Contest Committee is set up.
3. The announcement is published.
4. Dossiers are submitted and received.
5. The assessment committee selects the dossiers according to the requirements.
6. The competition is organized and candidates are assessed during: Written test or Interview.
7. The winners of the vacant position are announced
8. The decision is approved at the meeting of the DC
9. The official is hired (in case it is necessary, the trial period is established).

A beginner public officer shall undergo a trial period, meant to verify professional knowledge,

skills and attitudes in performing duties in public office, to provide practical training to beginner public officers, as well as to allow them to learn the peculiarities and requirement of public administration. The trial period lasts 6 months. When the trial period expires, the beginner public officer:

- a) is confirmed in public office if the score of professional activity assessment is at least "satisfactory";
- b) is dismissed from public office if the score of professional activity assessment is "not satisfactory".

Public officer is sworn in once, after being confirmed in public office, within 10 days after being confirmed in public office, in presence of the head of the relevant public authority and in front of the state symbols.

The public officer has the right and obligation to improve, continuously, his/her skills and professional knowledge, and the public authority shall ensure a systematic and planned process of **continuous professional development** of the public officer, which includes:

- i. Strengthening and update of knowledge, development of skills;
- ii. Shaping the attitude required for efficient exercise of functions of the public officer.
- iii. During the process of in-service development of the public officer, the public authorities have the following obligations:
 - a) Ensure equal opportunities to every public officer to be trained both in country and abroad;
 - b) Ensure to every public officer various forms of continuous professional development, with a duration of at least 40 hours per year, and once in three years – in-service training course with a duration of at least 72 hours;
 - c) Provide in its own yearly budget funds for continuous professional development of public officers, in the amount of at least 2% of the salary fund.

In human resource management the most **vulnerable aspects** that can cause corruption are:

- Influence peddling at hiring/promoting/transferring
- Formal organization of competitions to take an office
- Establishment of hiring/promotion criteria and requirements based on the peculiarities of a particular person
- Participants' false documents
- Political framework and party-based employment
- Promotion based on subjective criteria
- Friendship or kinship between various officials
- Leakage of confidential information about testing/assessment of employees
- Formal organization of attestation
- Modification of professional performance assessment results
- Normative and institutional framework of activity control and verification
- Absence of audits, scheduled audits, as well as superficial audits – record verification only, without considering actual situation
- Abuse of power in exercise of service duties

Causes of the existing vulnerabilities that may favour the appearance of eventual acts of corruption are the following:

- Organizational culture (the development of socio-professional relations influences the way professional ethics and ultimately the law are respected)
- Little attention is paid to the qualitative factor and knowing the candidates while employing them directly and more often, while selecting them
- Deficiencies and faults in the system of recruitment, selection, employment and promotion of human resources

- Lack of a mechanism that would ensure objective processing of documents
- Lack of an alternative incentives system
- Difficulty to attract and keep qualified personnel in the system
- Gaps in decision making and lack of transparency in procedures
- Deficient or inadequate fulfilment of service duties.

The effects of acts of corruption are as follows:

- Elimination of competition as an assessment criterion
- Incompetent public officials
- Reduced quality of services
- Inadequate and unprofessional performance
- Low quality of human resource
- Demoralized and harmed citizens
- Damage done to District Council image
- Economic prejudice to District Council
- Negative perception of DC by potential investors/donors.

The beneficiaries of potential acts of corruption could be: some of the officials, members of parties, some public or private institutions.

As a result of corruption, the State, district communities, citizens, and the business environment would suffer.

b. Financial Management

The budgeting process and local public funds management is a complex process of actions to develop, approve, execute and report collection and spending of public money, regulated by **Law on Budget System and Budget Process no 847 as of 24.05.96**, **Law on Local Public Administration**, no 436 as of 28.12.06, **Law on Administrative Decentralization**, no 435 as of 28.12.06, **Law on Local Public Funds**, no 397-XV as of 16.10.2003 and **Budget Law** of the relevant year, recommendations and instructions issued by the Ministry of Finance.

The district budget is managed by the district executive authority according to procedures and terms established by law. They cover the following steps and procedures:

Stage 1. Budget development

1. In February-March Ministry of Finance communicates to the executive authority of the district and to finance department the information, required for initiation of budgeting at local level;
2. Within 10 days after receipt of this information, finance department informs the executive authorities of the ATU of level I about the main principles of state policy in the sphere of budget revenues and expenditures for the forthcoming year(s), about the forecasts of norms of breakdowns from general state income into local budget and specific rules of calculation of transfers that are forecasted to be allocated to those budgets from the district budgets;
3. Within 20 days after receipt of the information mentioned above, the executive authorities of ATU of level I shall develop the forecast of taxes and fees that will be collected in the forthcoming year(s) in the respective ATU, as well as a draft local budget, that is submitted for review to the District Finance Department;
4. The necessity of expenditures is coordinated with LPA of level I, expenditures are calculated and relevant data verified with State Tax Inspectorate.

5. The Finance Departments submit to the Ministry of Finance for review the forecast of taxes and fees to be collected in the forthcoming year(s) in the ATU, as well as district budgets drafts – the procedure is consultative.
6. Ministry of Finance approves draft district budgets or may request to modify them, if they contradict the legislation or the principles of budget policy promoted by government.

Stage 2. Approval of Budgets

1. ATU budgets are examined and approved in two sub-stages: (1) examining and approval of local budgets (budgets of villages/communities, towns) from the district constituencies and (2) examining and approval of district budget.
2. The representative and deliberative authorities of the district examine the draft budget in two readings. The district budget must be approved on the 10th of December current year, the latest.
3. After the budget is approved, it must be publicized and correlated with the yearly budget law.
4. The Finance Department submits the district budget to the Ministry of Finance according to the existing timeline, to have it included in the national public budget.

Stage 3. Executing District Budget

Execution of cash accounts of the ATU budgets is performed through the treasury. It includes:

1. Collection of revenues according to the budget classification structure;
2. Expenditures made in the limit of approved allocations and in line with the purpose;
3. Control of veracity of the incurred expenditures;
4. Analysis, development and promotion of demarches for budget amendment.

Stage 4. Reporting Execution of the District Budget

1. According to the legislation, every quarter, the executive authority of the district collects relevant data, analyses the execution of the budget and submits the reports on budget execution;
2. At the end/beginning of the year the report on execution of budget for previous year is submitted.

In financial management the most vulnerable aspects that can cause corruption are:

- Understatement of own income
- Overestimation of the necessary expenditures
- Insufficient control of veracity and necessity of planned expenditures
- Superficial analysis of amendment requests
- Subjective distribution of funds to institutions that are on the District Council's books
- Subjective distribution of the balance available at the beginning of the year.

Causes of the existing vulnerabilities that may favour the appearance of eventual acts of corruption are the following:

- Estimations can be made by people lacking skills in the area
- There is no mechanism and no strict procedures to distribute transfers
- Lack of transparency in distribution of budget funds
- Lack of strategic documents that would establish funding priorities.
- Lack of objectivity in distribution of funds.

The effects of acts of corruption are as follows:

- Inadequate and inefficient use of public money

- Embezzlement
- Reduced credibility of local public administration
- Distorted economic, social, territorial and institutional development
- Favourable conditions for influence peddling, nepotism, illegal transactions with public funds.

The beneficiaries of potential acts of corruption could be: some economic entities, some communities of the district, some public or private institutions, some individuals.

As a result of corruption would suffer: the State, district budget, district communities, citizens, business environment.

c. Provision of Social Aid

Social aid is a monthly payment in money, granted to a disadvantaged family to ensure a minimum monthly guaranteed income. The amount is established based on the assessment of global average monthly income of each family and of the need for social aid. The information about the social aid is offered by the community social worker, Department for Social Protection and Family Protection (represented by the head of community service) and by the media.

According to Law no. 133 of 13.06.2008 on Social Aid, **beneficiaries of social aid** are members of disadvantaged families that fit into at least one of the following situations:

- The person has reached the age of retirement, established by law;
- The person is unemployed and registered with the territorial employment agency responsible for the territory where the person in question has permanent residence and does not refuse a job or participation in services to stimulate employment and public activities provided by agencies;
- The person belongs to a disability group;
- The person is in the period between the 30th week of pregnancy and 12th week after birth if the child is born dead or dies during the postnatal leave period, or the person takes care of a child aged under 3;
- The person takes care of a member/several members of the family, that are part of disability group I and require care according to the conclusion of the Medical Expertise of Vitality Council; takes care of a child/children from the same family or of a person aged above 75 from the same family, according to the conclusion of the Consultative Medical Board;
- The person is a worker, including those who get income from business activities.

When the entitlement to social aid is established, the following family members are excluded:

- Those who are citizens of Moldova, but have been absent from the territory of the country for more than 3 consecutive months;
- Those that are in jail;
- Those enrolled in the military service;
- Those that are in state custody, but not in asylum, placement centre, rehabilitation centre etc.

Social aid is provided based on the application for social aid, filed by a fully competent family member, appointed by the family, or, in cases provided by law, by the legal representative of the family. The application must be accompanied by the following documents:

- Certificate about family composition;
- Identity card and a copy thereof;
- Temporary residence permit or the identity card issued by competent authorities, in case of foreign citizens, stateless persons or refugees.

Alternatively, the following **documents** may be requested:

- Child's birth certificate;
- Decision to establish guardianship;
- Decision on placement in an institution;
- Salary confirmation certificate from the employer;
- Certificate about the studies for any member of the family (state funded or contract-based), showing the amount of scholarship, if applicable;
- Confirmation of maintenance allowance payment;
- Certificate about the period of enrollment in the military service;
- Documents, confirming property rights on agricultural land near the house (built-up area), as well as outside the built-up area;
- Rent, lease agreement;
- The document that confirms the disability group and term, as well as its severity.

In order to get social aid one must go through the following **stages**:

1. A receipt is issued to the person that submitted the application, showing the date and registration number. If not all the necessary supportive documents have been submitted, the application is rejected.
2. The application for social aid is entered into and processed by software at the SPFP Department automatically. The decision to grant or not to grant social aid is made by the head of the SPFP Department within 15 working days from the day of filing of the application, by issuing an order.
3. Social Protection and Family Protection Division/Department organizes, together with the representatives of local public administration and/or civil society a selective verification of the authenticity of the information submitted in the application for social aid at applicant's home and compiles the welfare report;
4. The applicant is notified in writing within 5 working days about the decision to grant or not to grant social aid.
5. If the social aid right is granted, the notification will include the term for which the aid is granted, its amount, way of payment and terms to review the right on social aid, as well as the obligations of the beneficiary.
6. If the application is rejected, the notification will include the reasons for rejections and how such decision can be appealed.
7. Social aid may be granted for maximum 2 years and may be reviewed should any change that may impact the amount of the social aid occur.

In granting social aid the **most vulnerable aspects** that can **cause corruption** are:

- Submission of false documents
- Not all assets are declared
- Dissimulation of income by means of unofficial employment
- Verification of the requested data by committee members
- Verification of authenticity of data submitted with the application for social aid, performed by an expert
- Preparing reports and protocols that are different from the real situation.
- Conflict of interest.

The reasons that cause the existence of those vulnerabilities to corruption are the following:

- Lack of transparency
- Failure to inform socially vulnerable categories appropriately
- Shortage of staff
- Turnover of staff
- Large number of requests

- High workload
- Degree of kinship.

The effects of acts of corruption are as follows:

- Embezzlement
- Negative financial impact (increased spending of budget funds)
- A relatively large number of beneficiaries
- Unjustified social aid granted to some categories of population
- Inadequate information of socially vulnerable categories
- Deprivation of some socially vulnerable categories of social aid
- Erosion of trust in social protection public service system and in the state.

The beneficiaries of potential acts of corruption could be:

citizens (claimants), unofficial employers, public or private institutions, officials.

The following would suffer as a result of corruption:

the State, district budget, socially vulnerable individuals, the image of the institution.

d. Organization of Road Transport

Transportation is a sphere of economic activity that covers all road (air and naval) means that ensure the movement of goods and people. It includes the total of assets or persons that are transported in a particular moment under specific conditions.

Transportation in Moldova is regulated by the following legal and normative acts: *Law of the Republic of Moldova on Transportation* no 1194-XIII of 21.05.97; *Road Transportation Code*, approved by Law no 116-XIV of July 29, 1998; *Governmental Enactment* no 854, of 28.07.2006, on Regulation of Passenger and Luggage Road Transportation; *Local Public Administration Law* no 436, of 28.12.2006, and Regulations on Establishment and Functioning of District Councils.

In provision of transportation services the most **vulnerable aspects** that can cause corruption are:

- Non-compliance with competition principles
- Submission of false/non-compliant documents
- Preferential selection of the transporter
- Unjustified refusal to launch a route
- Transfer of the route to other transporters contrary to the provisions
- Admission of non-compliant transportation units to provide transportation services
- Non-compliance with principles of record keeping and reporting

Causes of the existing vulnerabilities that may favour the appearance of eventual acts of corruption are the following:

- Lack of transparency
- Deficit or lack of information for road transportation service providers and citizens
- Lack of competent specialists
- Personnel flow
- Intentions to gain income
- Morally and physically outdated units of transport
- Non-compliance
- Insufficiency of adequate (in terms of capacity) transportation units to respond to the service demand
- Kinship or friendship between officials and service providers
- Insufficient quality of transportation services.

The effects of acts of corruption are as follows:

- Insufficient financial impact
- Inefficient activities
- Impaired security of passenger transportation
- Endangering passengers' lives and luggage integrity
- Non-compliance with the time-table and conditions of transportation
- Passengers are deprived of their rights
- Loss of credibility of transportation services.

The beneficiaries of potential acts of corruption could be:

Some employees of central and local public authorities, road passenger transport operators that do not meet the requirements for being granted the right to transport passengers, individuals involved in verification and control of passenger transport operators.

As a result of corruption would suffer:

The State, district budget, passengers and luggage integrity, traffic security, environment protection, the culture of providing services to passengers, the image of the institution authorized to grant the right to transport passengers.

e. Conclusions

The thorough diagnosis of activities and services vulnerable to corruption in Causeni District Council has been developed in a participatory manner, based on a strategic approach to prevent and mitigate the risks of corruption through internal (representatives of LPA of level II) and external (representatives of LPA of level I, economic entities, civil society, councillors and the media) environment involvement. Such an approach led to a more constructive assessment and deep analysis of services provided by district administration, as well as to identification of the activities that are the most vulnerable to corruption and at the same time may have the most significant negative impact upon life of the citizens, the future and the image of the District Council.

During the diagnosis process there were identified:

- risks and aspects of vulnerability
- causes that favour the existence of those aspects of vulnerability objectively and subjectively
- the effects of corruption
- beneficiaries of corruption
- those who would suffer as a result of corruption.

The results of comprehensive diagnosis have contributed to selection of the following priority services and activities for identification of solutions and strategies to prevent and treat corruption:

- Public procurement
- Human resource management
- Financial management
- Provision of income support
- Organization of road transportation

3 STRATEGIC PLAN

a. General Framework

i. Strategic Vision

In order to solve problems in the areas and services that were identified as being vulnerable to corruption *specific visions by area have been developed.*

- *Public procurement:* Causeni District Council advocates for fair and transparent public procurement, with open and legal access of the community;
- *Human resource management:* Public administration with competent and efficient human resources that provide qualitative services to citizens;
- *Financial management:* Ensuring efficient and correct planning and distribution of public funds;
- *Income support:* Ensuring fairness and legality in providing income support to vulnerable individuals;
- *Road transport:* Passengers' road safety and luggage integrity.

These views served as a basis for formulating a general strategic vision for treatment and prevention of corruption in Causeni District Council:

Causeni District Council advocates for a coherent decision-making process based on fair and transparent activities, as well as access to public services provided to citizens.

The vision reflects the image of the District Council and represents the final point in changing the current situation and in problem solving, representing a synthesis of all activities identified as being vulnerable to corruption.

ii. Principles

The principles reflect the way public officers take action, the way they honour their obligations and the state of their lives; it also includes the behaviour and choices made by an individual, distinguishing an important thing from another by appealing to its value. Formulating these principles leads to what we want to do and how we want to do it.

The vision will be implemented if each district official and citizen adopts a system of principles that are to become rules of conduct and create attitude, which will be generally accepted in the course of the next three years.

Table 3 Principles to Treat and Prevent Corruption

Principle	Manifestation
<i>Transparency</i>	Planned activities will be permanently oriented towards maximizing the ways and possibilities of mutual information of policy makers and community members in order to ensure clarity and comprehension of the

	ongoing process
<i>Competence</i>	value that will be manifested through involvement into solving problems of the district of certain individuals who possess the required knowledge and skills, and who are entitled to exercise these powers and are responsible for their actions
<i>Professional expertise</i>	will be manifested as the ability to solve problems, based on skills, and qualities, and will be characterized in terms of responsibility and attitude towards assumed obligations
<i>Responsibility</i>	is the value that will ensure development in all areas and will be provided by action implementors committing to achieve full accountability for any consequences that may arise
<i>Meritocracy</i>	activity of self-assessment will be manifested by means of promoting decision-makers on grounds of competence, professional expertise and honesty.
<i>Collaboration</i>	will occur through ongoing co-operation with internal and external social actors by providing information and mutual support.
<i>Supremacy of public interest</i>	value according to which the rule of law, integrity, impartiality and efficiency of public authority, public institutions and other units are protected and promoted by the RM legislation
<i>Spirit of initiative</i>	value that will be manifested through making the community open to ideas and new opportunities in order to facilitate overcoming eventual obstacles
<i>Non - discrimination</i>	will be ensured through full participation of community members (including common citizens) at the development and implementation of projects.

Treatment and prevention of corruption shall be done in accordance with the following strategic approaches:

Table 4 Strategic Approaches for Treatment and Prevention of Corruption Risks

Strategic approach		Description
1. Selecting partners	suitable	<ul style="list-style-type: none"> Employing personnel on grounds of merit and performance, excluding protectionism and conflict of interest; Collaboration with external partners (NGOs, businesses, professional associations, recommendations from ad hoc working groups, etc.).
2. Establishing systems	reward	<ul style="list-style-type: none"> Making a priority of using employee moral boosting (trainings, trips to conferences, advertisements, public recognition of achievements); Rewarding certain actions that are important in the attempt to reduce corruption; Transparent and result-based and performance-based promotion of personnel.
3. Establishing systems	penalty	<ul style="list-style-type: none"> Tightening penalties for corrupt behaviour; Using penalties in order to annihilate the culture of impunity

Strategic approach	Description
	(uncontrolled discretion); <ul style="list-style-type: none"> Using various penalties such as transfer, negative publicity, fellow professionals' opprobrium, loss of privilege related to trips, trainings or participating in other events).
4. Increasing transparency	<ul style="list-style-type: none"> Improving internal audit system through inspection, unbiased control and assessment of vulnerable areas; Development of information obtaining capacity (auditors, IT specialists, etc.) and encouraging disclosure of corruption cases; Data collection from customers (citizens, companies) and various other sources (banks, media).
5. Raising the moral cost of corruption by	<ul style="list-style-type: none"> Personal example, education and training; Development of an ethical code and monitoring compliance with it; Implementation of changes in the organizational culture (customs, values and principles that are promoted).

b. Operational Framework

During the discussions in the working group, several critical aspects of treatment and prevention of corruption were discussed. Having analyzed the needs and priorities for treatment and prevention of corruption risks, having the Vision as a landmark, Strategic Objectives for Treatment and Prevention of Corruption Risks were formulated for the next three years and operational objectives and projects / actions necessary to achieve were identified.

In order to treat and prevent corruption, the activities of all stakeholders will be directed towards achieving five strategic objectives:

Table 5 Strategic and operational objectives

Strategic objective	Specific objectives
Optimal public procurement conducted professionally and comprehensively	<ul style="list-style-type: none"> Ensure transparency in public procurement at the local level; Promote anti-corruption campaigns in procurement; Establish assessment and control mechanisms for procurement.
Qualitative services provided to citizens through a competent human resources management	<ul style="list-style-type: none"> Recruit, select and promote competent public officials; Providing quality public services to citizens.
Transparent, fair and efficient budget planning and execution	<ul style="list-style-type: none"> Use public funds transparently and efficiently; Develop and implement an efficient budget.
Professional, Transparent and Efficient Provision of Income Support to	<ul style="list-style-type: none"> Ensure transparency in social assistance; Provide quality, professional and efficient social services.

Vulnerable Groups

Qualitative and integral road transport services

- *Promote comprehensive relations with the central government (Ministry of Transport)*
- *Promote partnerships with II level LPA.*

4 ACTION PLAN

a. Strategic Objective 1. Optimal Public Procurement Conducted Professionally and Comprehensively

Specific Objective Activities/ Actions	Deadline	Estimated cost, MDL	Person in charge	Performance Indicators
SO 1.1. Ensuring Transparency in Public Procurement				
1.1.1. Establishment and maintenance of a general data base on public procurement (planned, performed, cancelled, postponed PP, etc.).	2013-2015	20000	Site administrator Public Relations specialist	Number of page views Number of visits Number of published announcements
1.1.2. Mandatory publication of information regarding all public procurements on the website of Causeni District Council	2013-2015	40000	Public Relations specialist; Public procurement specialist	Number of newspapers Number of published announcements Number of informative materials
1.1.3. Publication of announcements regarding public procurement in local and regional media	2013-2015	20000	Specialist responsible for the activity	Number of page views Designed system
1.1.4. Development of information portal and design of e-procurement system Causeni	2014-2015	50000	Head of the Directorate	Operating system Number of Specifications placed on the web site
1.1.5. Creating conditions for placement of Specifications on the website and an online payment facility to purchase these documents	2014	20000	District Deputy	Report on corruption risks
1.1.6. Updating corruption risk analysis regarding the activities of the District Council	Annually	-	Specialist responsible for the activity	Operating data base, Nr. of planned, performed, cancelled, and postponed public procurement.
SO 1.2. Establishing Assessment and Control Mechanisms for Public Procurement				
1.2.1. Establishment of public Committees on participatory monitoring of public procurement	2013	10000	Head of the Directorate	Number of members in Committees, including civil society representatives
1.2.2. Ensure avoidance of the conflict of interest and integrity of specialists	2013-2015	20000	Committees conducting public	Number of reports regarding biased decisions of Tender Commissions,

Specific Objective Activities/ Actions	Deadline	Estimated cost, MDL	Person in charge	Performance Indicators
<i>involved in conducting public procurement</i>			tenders	preliminary agreements of bidders, conflict of interest etc.
1.2.3. Creation of Internal Audit Service	2013-2014	20000	Specialist responsible for the activity	Created Internal Audit Service
1.2.4. Monitoring the implementation of recommendations given by internal audit missions	2013-2015	-	Specialists mentioned in audit reports	Number of fulfilled recommendations
1.2.5. Conducting permanent quality control of purchased goods	2013-2015	-	Committees conducting public tenders	Number of monitoring reports
1.2.6. Quarterly evaluation of conducted public procurement and submission of relevant reports	2013-2015	-	Procurement specialist	Number of evaluation reports
1.2.7. Monitoring the observance of legality in the process of public procurement	2013-2015	-	Committees conducting public tenders	Number of monitoring reports

SO 1.3. Increasing the level of training and legal culture

1.3.1. Developing of explanatory instruction on organisation and execution of the public procurement procedure that reflects in detail, by stages and steps, the process of making public procurement	2013	12000	Head of the Procurement Directorate	Detailed and explicit explanations regarding the method of announcement dissemination, criteria for selecting companies, negotiating contracts on single source, drawing up minutes, etc.
1.3.2. Training public officials on the application of explanatory instruction on organisation and execution of the public procurement procedure and their annual certification	2013-2015	-	District Deputy	Certified officials who know in detail the procedure of public procurement
1.3.3. Development and approval of the Code of Ethics on organizing and conducting public procurement taking	2013	5000	District Deputy	Regulation by the Code of the conflict of interest, influence peddling, providing confidential information etc.

Specific Objective Activities/ Actions	Deadline	Estimated cost, MDL	Person in charge	Performance Indicators
<i>into account international standards such as OECD Code of conduct for procurement practitioners¹⁸⁰</i>				
1.3.4. Organisation of training seminars on different topics including: <ul style="list-style-type: none"> • Public procurement • Estimation of the volume of procurement • Anti-corruption legislation • Influence peddling, conflicts of interest, declarations of impartiality • International experience, etc. 	Semi-annually	50000	Head of the Directorate	Number of seminars Number of participants Reduced number of cases of corruption
1.3.5. Participation in trainings and seminars organized by different institutions targeting the public procurement process	Semi-annually	-	Human resources manager	Number of participants Number of trainings
1.3.6. Support of and cooperation with the civil society initiatives to prevent and treat corruption	2013-2015	30000	Vice-chairperson of the district	Number of supported initiatives % of reduction of the number of cases of corruption

¹⁸⁰ <http://www.oecd.org/governance/procurement/toolbox/codeofconductforprocurementpractitioners.htm>.

b. Strategic Objective 2. Qualitative Services Provided to the Citizens through a Competent Human Resources Management

Specific Objective Activities/ Actions	Deadline	Estimated cost, MDL	Person in charge	Performance Indicators
SO 2.1. Optimal use of Public Officers Skills				
2.1.1. <i>Publication of announcements on vacancies in all information sources: website mass – media and billboards</i>	2012 - 2015	30000	Human Resources Specialist	Number of press-releases Number of accesses on the web site Number of articles in mass - media Number of announcements on billboards Number of informed beneficiaries
2.1.2. <i>Establishment of a Committee empowered to test the recruited personnel</i>	2012 - 2015		Deputy President of District	Established Committee
2.1.3. <i>Monitoring the personnel employment</i>	2012 - 2015	5000	Profile Committee	Signed Declaration on the conflict of interest Number of developed and published announcements Number of press-releases List of competitors placed on the web site Number of received CVs Results on assessment published
2.1.4. <i>Transparent promotion of the personnel recruitment, selection and employment system</i>	2012 - 2015	4000	Human Resources Specialist	Number of developed announcements Number of published announcements Number of employments Number of CVs received within the process of recruitment and selection Number of press-releases
2.1.5. <i>Continuous training / re-training of the public officers in the area of</i> <ul style="list-style-type: none"> • <i>specialization</i> • <i>anticorruption</i> 	2012 - 2015	20000	Human Resources Specialist, AAPP	Number of received requests for training/retraining Number of trainings/re-trainings carried out Number of trained/retrained public officers Number of AC workshops/trainings carried out
2.1.6. <i>Assessment of the capacities of the public officers</i>	2012 - 2015	8000	Human Resources Specialist	Assessment Committee established Signed Declaration of Confidentiality Signed Declaration of Integrity

Specific Objective Activities/ Actions	Deadline	Estimated cost, MDL	Person in charge	Performance Indicators
				Number of developed questionnaires Number of assessments carried out Number of tested public officers
<i>2.1.7. Monitoring public officers' integrity ensurance</i>	Permanently	5000	Profile Committee	Committee established Developed model of Declaration of income Number of filled in and checked Declarations of income Number of received notifications
SO 2.2. Qualitative and Integral Services Delivered to Citizens				
<i>2.2.1. Promotion of the relation between the public officer and customer</i>	2012 - 2015	30000	Human Resources Specialist	Open doors day established Number of carried out meetings with citizen Number of printed leaflets Number of displayed announcements
<i>2.2.2. Monitoring the quality of the services provided by setting up a box for petitions/acknowledgements</i>	2012 - 2015	3000	PR Specialist	Number of installed boxes Record Book developed Number of received petitions/acknowledgements Number of received corruption claims Number of sanctioned public officers
<i>2.2.3. Installation of a telephone line and reception of anonymous petitions /acknowledgements from beneficiaries, including AC claims</i>	2012 - 2015	1000	PR Specialist	Telephone line installed Log Journal developed Number of received petitions/acknowledgements Personnel in charge with AC hot lines Number of citizens that called Number of registered AC cases and submitted to the law enforcement bodies
<i>2.2.4. Awareness campaigns on the corruption phenomenon</i>	2012 - 2015	60000	Human Resources Specialist	Working Group created Number of carried out campaigns Number of participants

c. Strategic Objective 3. Transparent, Fair and Efficient Budget Planning and Execution

Specific Objective Activities/ Actions	Deadline	Estimated cost, MDL	Person in charge	Performance Indicators
SO 3.1. Transparency and Efficiency in Using Public Funds				
3.1.1. <i>Conducting financial management by means of informational system, in particular the collection of fees and taxes in conformity with an updated taxation base</i>	2013-2015	20000	Specialist responsible for the activity	Updated informational system Share in % of digital information
3.1.2. <i>Placing on the District Council information portal of information regarding</i> <ul style="list-style-type: none"> • Planning, approval and execution of the annual and multi-annual budget Involving citizens in budget planning through consultations • Involving citizens in budget planning through consultations • Types of taxes, payment terms, penalties, etc. 	2013-2015	20000 - - -	Specialist responsible for the activity	Number of informative materials placed Number of web-page views Number of articles on the information board Number of articles published in local and regional mass-media
3.1.3. <i>Editing of monthly newsletter and publishing the same information in brochures or on information boards</i>	2013-2015	20000	Specialist responsible for the activity	Number of published newsletters
SO 3.2. Implementation of performance in financial management				
3.2.1. <i>Developing of explanatory instruction on organisation and execution of the budgetary process that reflects in detail, by stages and steps, the process of budget planning, execution and reporting</i>	2013	20000	Working group	Explicit and detailed specification of budget planning steps, methods of revenue and expenditure estimation, ways of adjustment, etc.
3.2.2. <i>Conducting annual information activities for counsellors and persons responsible for financial issues regarding budgetary process and</i>	Annually	15000	Head of the Directorate	Number of organised informational meetings Number of participants

Specific Objective Activities/ Actions	Deadline	Estimated cost, MDL	Person in charge	Performance Indicators
management of public money				
3.2.3. Development and approval of framework criteria regarding the allocation of available balance, allocation of financial resources, budget adjustment, etc.	Annually	-	Working group	Clear and objective criteria for public money management
3.2.4. Certification of activity according to quality standards ISO 9001-20000	2015	130000	Working group	Obtained quality certificate ISO
3.2.5. Develop a multi-annual budget reflecting and supporting the implementation of multi-annual sectoral plans	2013	-	Head of the Directorate	Developed draft budget
3.2.6. Application of performance indicators in budget planning and budget execution reporting	Annually	-	Specialists responsible for budget planning	Draft budgets and budget execution reports that include performance indicators
3.2.7. Supporting and promoting legislative initiatives on financial decentralization	2013-2015	-	Specialist responsible for the activity	Number of launched initiatives
3.2.8. Monitoring corruption risks in the domain of district budget planning and execution	Annually	-	Vice-chairperson of the district	% of reduction of corruption risks

d. Strategic Objective 4. Professional, Transparent and Efficient Provision of Income Support to Vulnerable Groups

Specific Objective Activities/ Actions	Deadline	Estimated cost, MDL	Person in charge	Performance Indicators
SO 4.1. Ensurance of Transparency in the Provision of Income Support to Beneficiaries				
4.1.1. <i>The information on income support is shared on the web site of the DC, displayed on billboards and broadcast in the local and regional mass – media</i>	2013 - 2015	10000	Web site Administrator, Specialist of Social Assistance Division	Number of accesses on the web site Number of set-up billboards Number of announcements displayed on billboards Number of developed press-releases Number of published press-releases Number of informed citizens
4.1.2. <i>Development, publication and dissemination of promotional materials regarding stages, modality and procedure for obtaining social aid in partnership with an NGO</i>	2013 - 2015	15000	Specialist of Social Assistance Division, NGO	Number of printed leaflets Number of distributed leaflets Number of meetings carried out Number of participants
4.1.3. <i>Development of a database on the beneficiaries of income support</i>	2013 - 2015	200000	Specialist of Social Assistance Division	Constituted Working Group Trained specialists Developed common database Black list of the beneficiaries
4.1.4. <i>Developing of internal explanatory instruction on organisation and execution of the process of monitoring and evaluation of social aid granting</i>	2013-2015	20000	Working group	Developed explanatory instruction
4.1.5. <i>Monitoring of social aid granting by public committees of the community</i>	2013-2014	20000	Specialist of the Department of social assistance	Number of visits and monitoring reports; Number of claimed employers who employ unofficially; Number of claimed social aid beneficiaries employed unofficially; Number of claimed social aid beneficiaries working abroad Number of general meetings held in villages; Number of participants informed; Number of evaluated beneficiaries

SO 4.2. Qualitative, Professional and Efficient Services Delivery

<p>4.2.1. <i>Continuous training of the personnel in the area:</i></p> <ul style="list-style-type: none"> • <i>Social assistance</i> • <i>Anticorruption</i> 	2013 -2015	10000	Specialist of Social Assistance Division	Number of trained personnel Number of attended courses Number of AC workshops carried out
<p>4.2.2. <i>Ensuring cooperation with responsible institutions in the domain with the view to identify beneficiaries acting in bad faith</i></p>	Permanently	15000	Head of the Department	Number of submitted inquiries Number of identified beneficiaries acting in bad faith Number of penalized beneficiaries
<p>4.2.3. <i>Screening of the social assistants based on integrity criteria</i></p>	Permanently		Specialist of Social Assistance Division	Established Committee Developed model of Declaration of income Number of filled in Declarations of income Signed Declaration on the conflict of interest Number of checked declarations of income Number of notified public officers
<p>4.2.4. <i>Identification and sustaining of bad faith beneficiaries and managers fostering unofficial employment through cooperation with various institutions</i></p>	Permanently	15000	Specialist of Social Assistance Division	Number of lodged demarches Number of received replies Number of identified bad faith beneficiaries Number of sanctioned beneficiaries Number of denounced managers fostering unofficial employment Number of denounced beneficiaries of income support unofficially employed Number of denounced beneficiaries of income support who migrated abroad

e. Strategic Objective 5. Qualitative and Integral Road Services

Specific Objective Activities/ Actions	Deadline	Estimated cost, MDL	Person in charge	Performance Indicators
SO 5.1. Promotion of Integral Relations with the Central Public Administration				
<i>5.1.1. Identification of problems through questioning / revealing the deficiencies in the relations with the Ministry of Transport</i>	2013	15000	President of the Transport Committee	Developed questionnaire Number of interviewed respondents Developed report
<i>5.1.2. Conducting public hearings in the area of public transport</i>	2014	5000	President of the Transport Committee	Public hearings conducted Number of participants Minutes developed
<i>5.1.3. Launching a dialogue with the Ministry of Transport</i>	2013	2000	President of the Transport Committee	Number of participants Minutes of the meeting developed
<i>5.1.4. Monitoring and assessing the situation related to public transport organization</i>	2014	5000	President of the Transport Committee	Established Committee Number of settled claims
SO 5.2. Promotion of partnership relations between the transporters and LPA of II level				
<i>5.2.1. Promotion of proper relations within the DC with the road passenger transport, founded on trust, transparency and legal norms</i>	2013 - 2015	30000	President of the Transport Committee	Billboard put in place Amount of displayed information Conducting fair contests Open information on available routes Number of participating companies
<i>5.2.2. Hearings within the DC devoted to road transporters, traffic police officers and beneficiaries of services</i>	Permanently	-	President of the Transport Committee	Number of conducted hearings Number of participants Number of decisions

-+

5 IMPLEMENTATION AND MONITORING

5.1 Institutional Framework

The success of putting into practice the Strategic Plan for treatment and prevention of corruption risk in the Causeni District Council greatly depends on the involvement of all the inhabitants in the process of its implementation and monitoring and on the presence of a solid social coalition. Different actors will be involved in the implementation of the Strategic Plan and each of them will have a personal goal and will play the role of implementor of planned actions. These are the actors concerned:

1. Local Public Administration (District Council)
2. Inhabitants of the district
3. Civil society
4. Businesses
5. External structures (Government, State Chancellery, International Organizations).

The implementation of the Strategic Plan for treatment and prevention of corruption risk could be conventionally divided into three stages:

- Adoption of the Strategic Plan;
- Implementation of the Strategic Plan;
- Monitoring of the Strategic Plan.

Adoption of the Strategic Plan. At this stage, the Strategic Plan will be debated within the District Council. After the debates and tailored inclusion of proposals and recommendations, the Strategic Plan will be submitted to the District Council for approval. After the approval of the Plan, the District Council will coordinate the development of quarterly and annual action plans on the implementation of the Strategic Plan in line with the Strategic Action Plan.

Implementation of the Strategic Plan shall be performed through the achievement of concrete implementation actions, activities, measures and projects. The objectives, the activities plan, the deployment period (duration), project responsible parties and partners shall be specified for every action or project. Additionally, the financial sources for the projects to be implemented will be identified.

Monitoring of the Strategic Plan. During the implementation period, the persons in charge with the achievement of the action plan shall report about the fulfilment of activities, projects and accomplishment of specific objectives of the Working Group. The Working Group for the monitoring of the Strategic Plan implementation process will be appointed by the Causeni District Council. Monitoring of projects, actions and strategies shall be done based on the established implementation indicators. Should there be deviations from the Action Plan, measures must be developed to correct and adjust the plan.

Institutional Framework. The entity and person, responsible for implementation of the present Plan shall be appointed by the Decision of the District Council – it is recommended to delegate the functions on coordination, control and implementation of the Plan to one of the vice-chairpersons of the district. Besides the responsible entity/person, the institutional framework of the present Plan implementation and monitoring shall also include:

1. **Special Committee of the District Council** on monitoring the process of implementation of the Strategic Plan consisting of members, designated by Causeni District Council.
2. **Persons responsible for actions/projects implementation.**

Monitoring of the implementation of projects, actions and strategies shall be performed by means of **Performance Indicators**, stipulated by the Action Plan. In case there are identified some deviations from the Action Plan, correction or adjustment measures of the Plan will be initiated.

The District Council will evaluate and update the Strategic Plan annually. In case of new necessities or new projects implementation, the Action Plan will be modified. . In this case, the action plan will be corrected and adjusted to changes.

The intermediate and final reports on actions and projects are major monitoring and assessment tools. The persons in charge with the implementation shall quarterly submit intermediate reports on the implementation of projects and/or actions of the Working Group. At the end of the project implementation period, the persons in charge with the monitoring shall submit final reports. The implementation of projects funded from external sources will be subject of a monitoring and assessment performed by competent institutions, in line with the funding agreements. Special Committee conducted by the person responsible for the Plan implementation shall report to the District Council about the progress in the realization of the Plan.

Monitoring and evaluation procedure will apply provisions of the Methodology for monitoring and evaluation of implementation of Annex 2 of the National Anti-corruption Strategy for 2011-2015, adopted by the Parliament Decision nr. 154 as of 27.07.2011

5.2 Risks and Barriers for the Implementation

The efficient accomplishment of the actions laid down in the Strategic Plan might be obstructed by certain risks and barriers related to implementation. The risks and barriers connected to the implementation of the Strategic Plan could be of two types: (i) internal and (ii) external.

Table 5. Risks and Barriers for the Implementation of the Strategic Plan

Domain	Description
<i>Internal Risks and Barriers</i>	
<i>Management of Plan Implementation</i>	<ul style="list-style-type: none"> • Conflicts of interest with regard to the implementation of the Strategic Plan • Lack of experience in the area of implementation management • Lack of experience in producing, promoting and managing development projects • Formal accomplishment of project activities • Predominance of personal interests • Limited financial resources • Lack of capacities to attract investments • Incorrect estimation of time and possibilities • Unreal expectations with regard to the advantages • Poor communication in implementing the strategy.
<i>Partnership</i>	<ul style="list-style-type: none"> • Lack of co-operation between the LPA, the business community and the society • Lack of interest and non-involvement of the population in supporting the activities • Absence of the civil society structures.
<i>Social</i>	<ul style="list-style-type: none"> • Limited resources for income support • Continuous pauperization of the population

	<ul style="list-style-type: none"> • Labour force migration.
<i>External risks and barriers</i>	
<i>Political and legal framework</i>	<ul style="list-style-type: none"> ▪ Instability of the political path ▪ Political influence ▪ Contradiction and instability of the current legislation ▪ Legal framework suppressing the local autonomy.
<i>Relations with foreign partners</i>	<ul style="list-style-type: none"> ▪ Lack of co-operation with the local and central public authorities ▪ Decrease of the volume of transfers from the state budget.

6 ANNEXES

Annex 1. Degree of vulnerability to corruption

PUBLIC ACTIVITIES OR SERVICES		Internal medium	External medium
DEGREE OF VULNERABILITY TO CORRUPTION			
1	Public property accounting	3.5	4.7
2	Granting into management, rent, concession or location of district public property	4.0	4.4
3	Sale, privatization, concession, rent or location of district public property	3.1	3.5
4	Capital and current repairs of existing infrastructure	3.8	2.5
5	Maintenance, repairs, development and modernization of objects from economic domain	3.0	3.0
6	Maintenance, repairs, development and modernization of objects from social domain	3.4	2.9
7	Maintenance, repairs, development and modernization of objects from communal and recreation domains of district importance	3.0	2.6
8	Management of cultural institutions	2.7	2.7
9	Management of tourism institutions	1.8	3.0
10	Management of sport institutions	3.2	2.6
11	Management of educational activities	2.9	2.7
12	Management of cultural activities	2.4	2.3
13	Management of sport activities	2.6	1.6
14	Management of municipal enterprises	1.4	1.8
15	Establishing a general framework for planning at the district level	2.7	1.7
16	Protection of forests of district importance	3.2	2.1
17	Information, assistance and advice on various aspects of health and social protection	2.6	3.4
18	Establishing and providing social benefits (allowances, compensation, etc.).	2.7	2.5
19	Information and advice on preparation of documents necessary to establish benefits	2.8	2.6
20	Temporary placement including: shelter, food, care, occupational therapy	2.4	1.6
21	Health rehabilitation (orthopaedic and prosthetics, sanatorium-and-spa services)	3.3	2.9
22	Quality service monitoring	2.7	2.1
23	Granting of financial and humanitarian social aid	2.8	2.6
24	Develop and manage community social services social categories - vulnerable	2.6	3.2
25	Drafting and approval of the use of labor in the territory	2.3	2.4
26	Sanitary - hygienic expertise of development projects	2.7	2.4
27	Informational assistance on providing farmers with seeds, seedlings, technical, fuels, fertilizers and phytosanitary products	2.9	2.7
28	Methodological and technological support of producers and processors on agricultural production, including individual rural owners of land	2.8	1.9
29	Informational assistance of rural owners on how to use the financial resources for subsidizing farmers	3.4	2.1
30	Sanitary authorisation of means of production, production equipment, processing technologies	3.1	2.9
31	Informing on attestation, authorisation, licensing and certification of food and agriculture products	3.3	3.3
32	Examination and submission for approval of schemes, projects and other documentation related to territorial organisation	3.6	3.7

PUBLIC ACTIVITIES OR SERVICES		Internal medium	External medium
DEGREE OF VULNERABILITY TO CORRUPTION			
33	Organization and development, under those regulations, tenders and competitions on the sale and purchase of land	3.9	3.7
34	Granting into rent, use or property of land lots	4.2	4.1
35	Preparation of documents concerning land use change and their submission to local council for approval	3.6	3.5
36	Drawing up specifications	4.9	4.1
37	Tender launching	4.2	4.5
38	Selection of tender winners	4.9	4.5
39	Conclusion of contracts	4.7	4.3
40	Following up of contracts on public procurement	4.8	4.1
41	Reporting on public procurement	3.8	2.8
42	Organization of public services at district level	3.1	3.3
43	Concession of management, leasing, lease or rental of the public services on district interest	4.0	3.1
44	Approval rates for paid services	3.7	2.9
45	Develop and implement long-distance pipeline construction projects (including medium pressure pipelines)	3.7	2.3
46	Develop and implement projects on construction of thermal power objectives with local destination	3.1	3.0
47	Organization of road passenger transport	4.2	4.8
48	Management of bus stations and parking lots of district importance	4.0	4.9
49	Maintenance and management of public objects of district importance	2.8	2.1
50	Establishment, reorganization and liquidation of social and cultural institutions	3.0	3.3
51	Budget planning and execution	3.9	4.5
52	Support and stimulation of initiatives on economic development of the administrative and territorial unit	4.2	3.7
53	Coordination of foreign investments	3.9	3.9
54	Staff employment	4.7	5.3
55	Staff promotion	4.5	5.2
56	Information regarding conducting training courses	3.6	3.9
57	Participation at trainings, professional development, including abroad	3.2	3.1
58	Planning and management of construction works	3.5	4.7
59	Construction, management and repairs of roads of district importance	3.6	5.1
60	Construction, management and repairs of road infrastructure	3.7	5.5

Annex 2. Degree of impact of vulnerability to corruption

PUBLIC ACTIVITIES OR SERVICES		Internal medium	External medium
Level of corruption impact			
1	Public property accounting	2.8	3.3
2	Granting into management, rent, concession or location of district public property	3.1	3.0




PUBLIC ACTIVITIES OR SERVICES		Internal medium	External medium
Level of corruption impact			
3	Sale, privatization, concession, rent or location of district public property	3.0	3.9
4	Capital and current repairs of existing infrastructure	2.8	3.0
5	Maintenance, repairs, development and modernization of objects from economic domain	2.8	3.1
6	Maintenance, repairs, development and modernization of objects from social domain	2.7	3.3
7	Maintenance, repairs, development and modernization of objects from communal and recreation domains of district importance	2.6	3.4
8	Management of cultural institutions	2.4	2.9
9	Management of tourism institutions	2.5	2.5
10	Management of sport institutions	2.7	3.0
11	Management of educational activities	2.8	2.7
12	Management of cultural activities	2.6	2.7
13	Management of sport activities	2.6	3.2
14	Management of municipal enterprises of district importance, mentioned	2.4	2.8
15	Establishing of a general framework for land improvement at the district level	2.3	2.7
16	Protection of forests of district importance	3.0	3.4
17	Information, assistance and counselling on various aspects of social assistance and protection	2.7	3.5
18	Awarding and providing social benefits (allowances, compensation, etc.)	2.9	3.7
19	Providing information and consultancy in preparation of documents necessary for awarding social benefits	2.7	3.5
20	Temporary placement including: shelter, food, care, occupational therapy	2.6	3.5
21	Health rehabilitation (orthopaedic and prosthetics, sanatorium-and-spa services)	2.9	3.9
22	Quality service monitoring	2.2	3.4
23	Granting of financial and humanitarian social aid	2.8	3.6
24	Develop and manage community social services social categories - vulnerable	2.9	3.5
25	Drafting and approval of the use of labor in the territory	2.5	2.8
26	Sanitary - hygienic expertise of development projects	2.5	2.7
27	Informational assistance on providing farmers with seeds, seedlings, technical, fuels, fertilizers and phytosanitary products	2.6	3.0
28	Methodological and technological support of producers and processors on agricultural production, including individual rural owners of land	2.6	2.8
29	Informational assistance of rural owners on how to use the financial resources for subsidizing farmers	2.8	2.8
30	Sanitary authorisation of means of production, production equipment, processing technologies	2.7	3.6
31	Informing on attestation, authorisation, licensing and certification of food and agriculture products	2.7	3.5
32	Examination and submission for approval of schemes, projects and other documentation related to territorial organisation	2.8	2.8
33	Organization and development, under those regulations, tenders and competitions on the sale and purchase of land	2.9	3.9
34	Granting into rent, use or property of land lots	3.0	3.9
35	Preparation of documents concerning land use change and their submission to local council for approval	2.9	3.5

PUBLIC ACTIVITIES OR SERVICES		Internal medium	External medium
	Level of corruption impact		
36	Drawing up specifications	2.9	2.4
37	Tender launching	3.1	2.7
38	Selection of tender winners	3.8	3.5
39	Conclusion of contracts	3.5	3.2
40	Following up of contracts on public procurement	3.5	3.3
41	Reporting	3.2	2.7
42	Organization of public services at district level	2.3	2.6
43	Granting into management, concession, rent or location of public services of district importance	2.6	2.9
44	Approval of tariffs for paid services	2.8	3.2
45	Develop and implement long-distance pipeline construction projects (including medium pressure pipelines)	3.0	3.3
46	Develop and implement projects on construction of thermal power objectives with local destination	2.7	2.9
47	Organization of road passenger transport	3.0	3.6
48	Management of bus stations and parking lots of district importance	3.1	3.4
49	Maintenance and management of public objects of district importance	2.7	2.7
50	Establishment, reorganization and liquidation of social and cultural institutions	2.4	2.6
51	Budget planning and execution	3.5	2.9
52	Support and stimulation of initiatives on economic development of the administrative and territorial unit	3.0	2.7
53	Coordination of foreign investments	3.3	2.8
54	Staff employment	3.6	3.4
55	Staff promotion	3.5	3.2
56	Information regarding conducting training courses	2.7	2.0
57	Participation at trainings, professional development, including abroad	2.6	2.1
58	Planning and management of construction works	3.4	2.9
59	Construction, management and repairs of roads of district importance	3.5	3.5
60	Construction, management and repairs of road infrastructure	3.3	3.4

Annex 3. Public Procurement Scheme

1. •Establish the working groups in charge with the public procurement
2. •Prepare annual and quarterly plans for the public procurement
3. •Prepare invitations within the process of public procurement
4. •Prepare tender documentation and other documents to be used in the public procurement procedures
5. •Launch and hold public procurement procedures
6. •Ensure a large participation of economic operators within public procurement procedures
7. •Examine, assess and compare bids provided by the economic operators within public procurement procedures
8. •Conclude public procurement contracts with the operator (economic operators)
9. •Prepare reports on the results of the public procurement procedures and submit them to the Public Procurement Agency
10. •Execute and manage public procurement contracts in the agreed upon terms and conditions
11. •Store and keep track of all the documents prepared and used within the public procurement procedures

Annex 4. Human Resources Management Scheme

Contest	 Promotion	 Transfer	 Professional Continuous Training
<ol style="list-style-type: none"> 1. Approval of the decision of DC on vacancy notice 2. Establishment of the assessment and contest committee 3. Publication of the announcement 4. Reception and submission of dossiers 5. Selection of the dossiers in line with requirements through the assessment committee and based on the assessment tests 6. Organization of contest: 7. Written test 8. Interview 9. Assessment of the winner 10. Notification of the winner of the vacancy contest 11. Approval of the decision during the DC meeting 12. Employment of the public officer and in case of necessity, fixing a trial period 	<ul style="list-style-type: none"> • Approval of the decision/ordinance of DC on vacancy notice • Establishment of the assessment and contest committee • Reception and submission of files • Selection of the dossiers in line with the requirements, through the assessment committee and based on the assessment tests • Notification of the winner of the vacancy contest • Approval of the decision during the DC meeting 	<ul style="list-style-type: none"> • Approval of the decision/ordinance of DC on vacancy notice • Application of the public officer with regard to transfer • Drawing up the transfer order in the interest of the service 	<ul style="list-style-type: none"> • Reception of offers • Provision of the public officer with information on the professional development courses • Drawing up the order of the President of DC on the list of public officers

Annex 5. Financial Management Scheme

Development

- Communication of the information to launch local budgetary procedures
- Communication of the basic principles of the state policy in the area of revenues and budgetary expenditures for the forthcoming year (s), forecasts of the norms of breakdowns from the state general revenues to the local budgets and specific aspects for calculation of the transfers to be allocated to these budgets from the district budgets;
- Development of forecasts on taxes and fees to be collected in the forthcoming year (s), as well as of the local budget draft which will be submitted for analysis to the District Financial Department;
- Coordination of the expenditure needs with LPA of I level
- Analysis of forecasts on taxes and fees
- Endorsement or amendment of the budget drafts.

Approval

- (1) Examination and approval of the local budgets (budgets of the villages / communities/ towns part of the district) and (2) Examination and approval of the district budgets;
- Correlation between the budget and the Law on annual budget;
- Submission of the district budget which will be included in the national public budget to the Ministry of Finances.

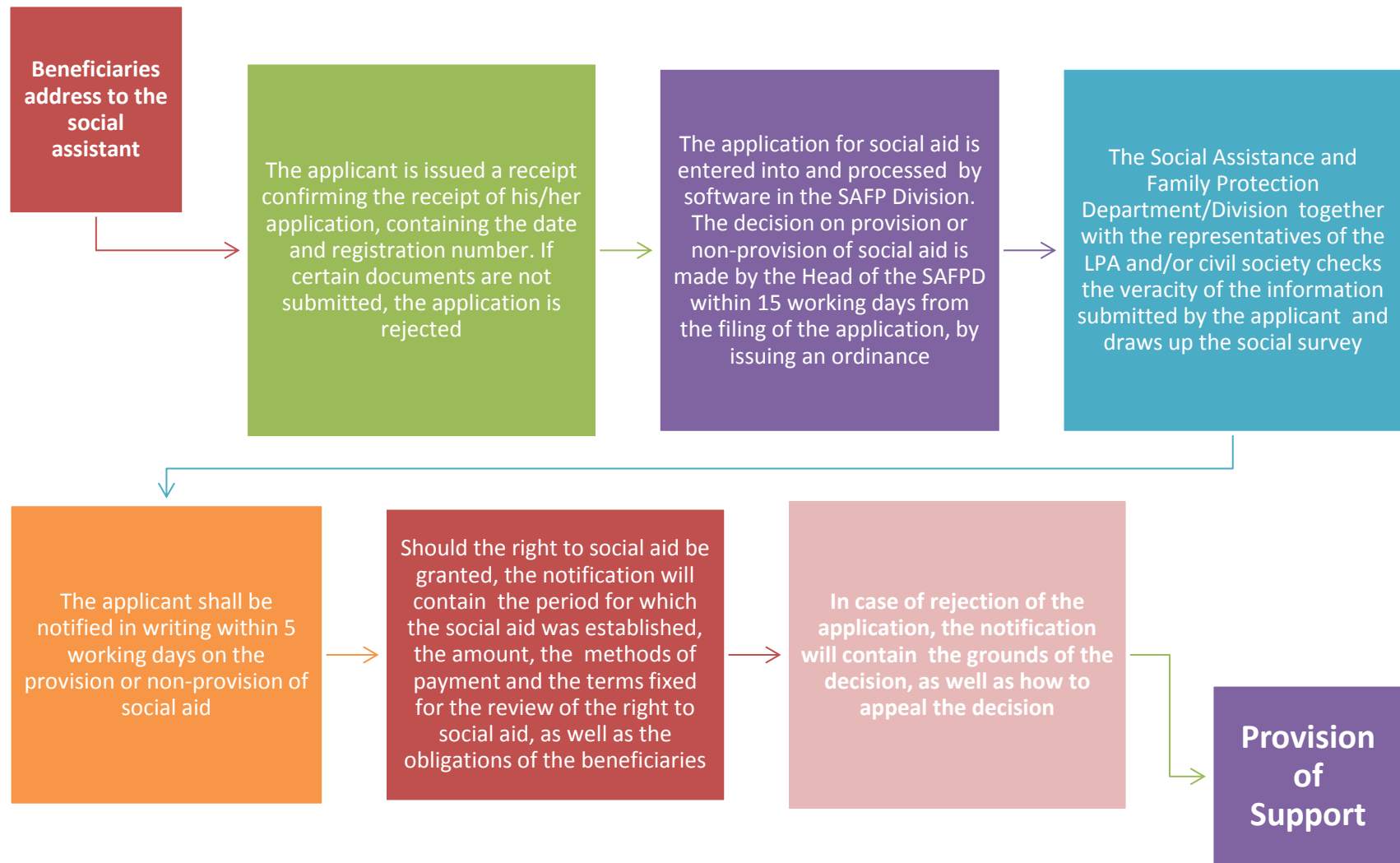
Execution

- Collection of revenues in line with the budget classification structure;
- Expenditures made in the limit of approved allocations and in line with the purpose;
- Control of veracity of the incurred expenditures;
- Analysis, development and promotion of demarches for budget amendment.

Reporting

- Quarterly collection of relevant data, analysis of the budget execution and submission of the report on budget execution;
- Submission at the beginning/end of year of the report on the budget execution for previous year.

Annex 6: Social Aid Provision Scheme



Annex 7: Road Transport Organization Scheme

Launching the process of acquiring the right to serve regular routes

- Identification of the need to launch a new route
- Analysis of the requirements on the side of the population, businesses, public administration; analysis of the current situation and of other factors
- Control carried out by the organizations empowered to issue the route passport
- Development of the conformity dossier
- Submission of documents for acquiring the right to serve the routes
- Launching concrete and argued proposals on opportunities to launch routes

Conducting the contest for the selection of the transporter

- Information on contest to be conducted
- Establishment of specialized committees
- Examination of the requests and scoring the requesting parties
- Selection of the party that obtained the maximum score

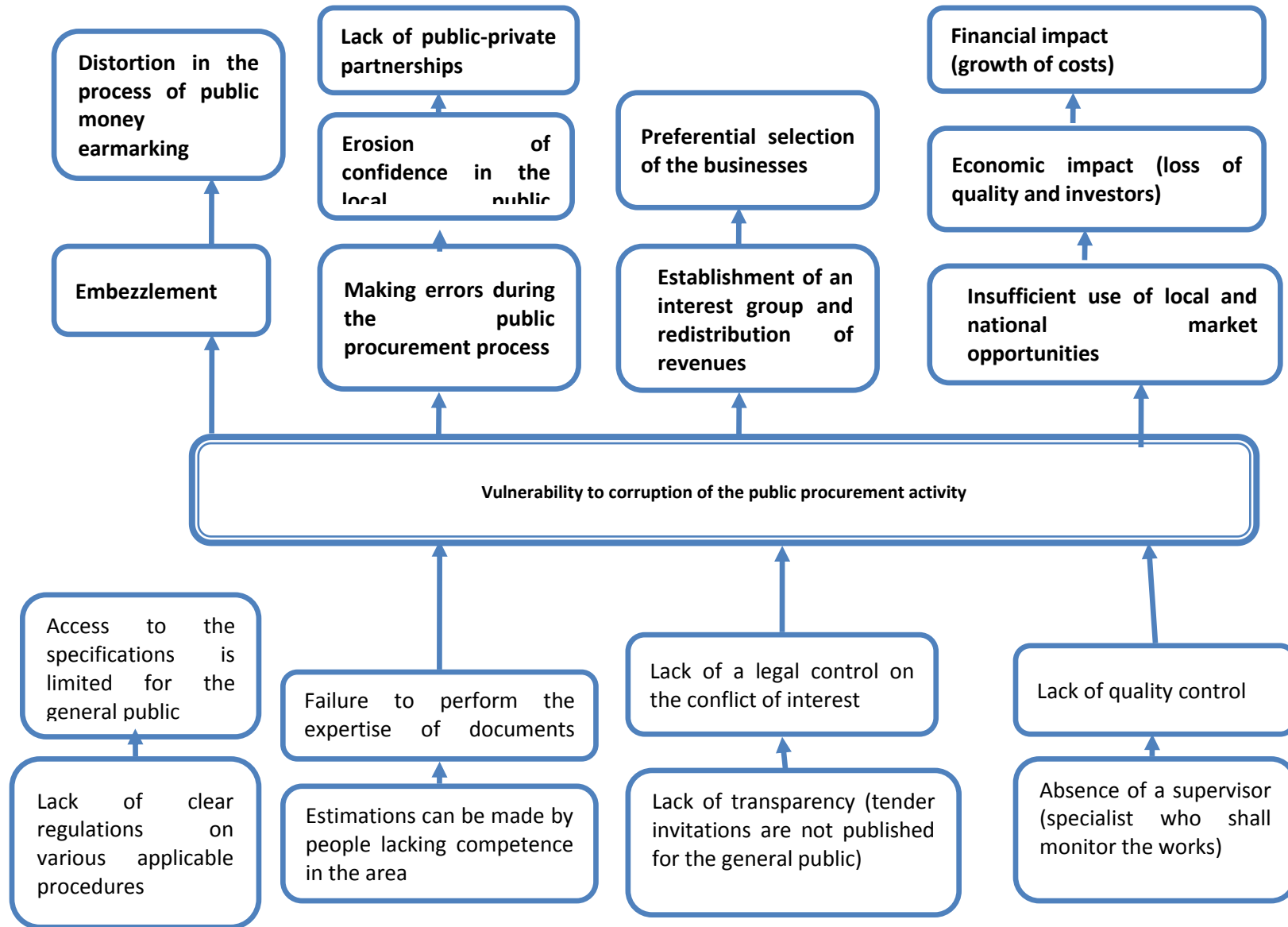
Awarding or rejection of the right to serve the route

- Approval of the route passport
- Acquisition of the permit of activity for the route
- Establishment of the activity starting date
- Establishment of the schedule
- Keeping record of the routes network
- Control over the transport activities
- Refusal to launch a new route

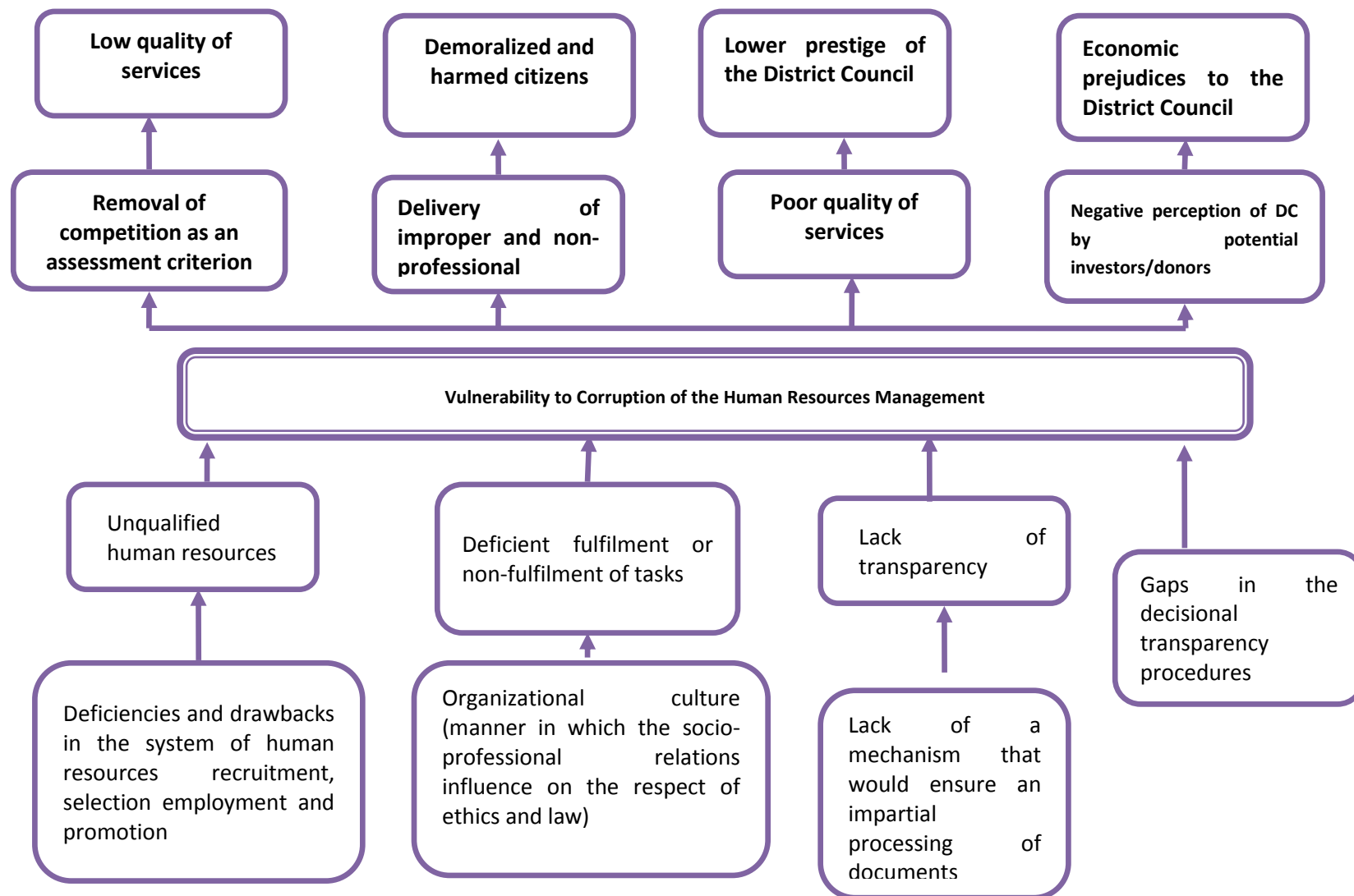
Changes in the routes network and withdrawal of the right to serve the routes

- Changes in the current routes
- Loss of transport licence
- Failure to remove breaches
- Non conformity of the transport units with the set up requirements
- Non conformity of the transport infrastructure

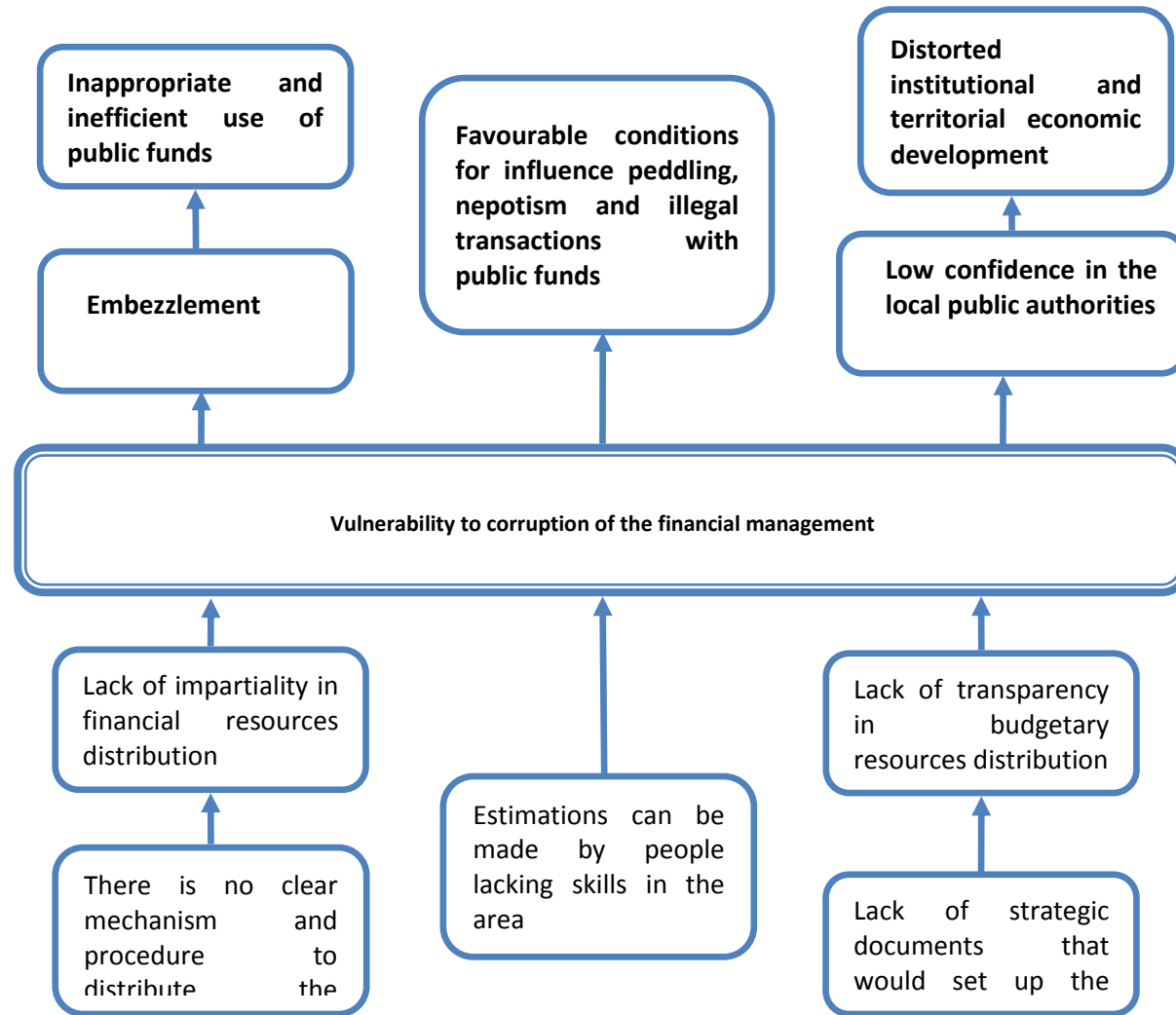
Annex 8. Problem Tree „Public Procurement”



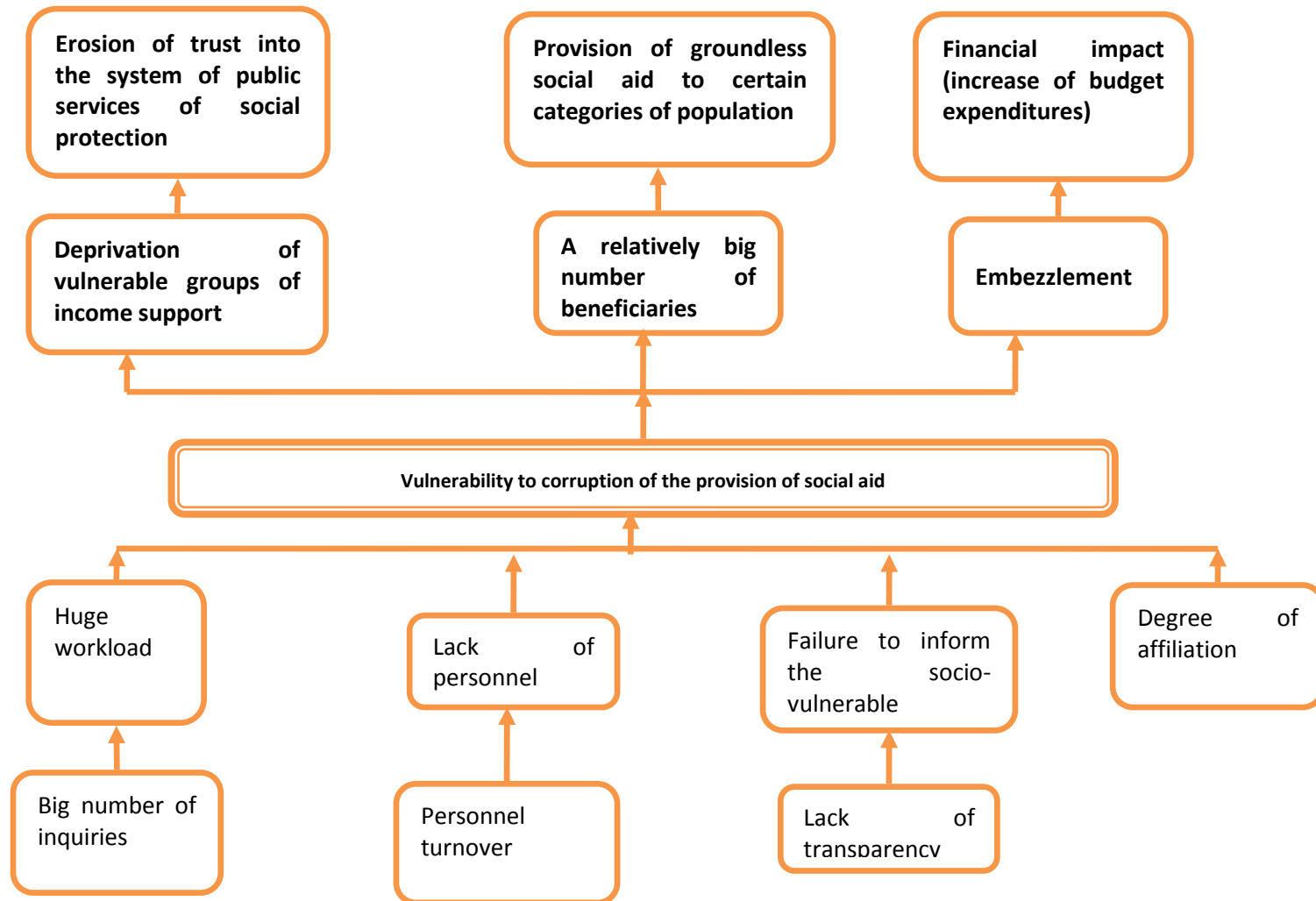
Annex 9. Problem Tree “Human Resources Management”



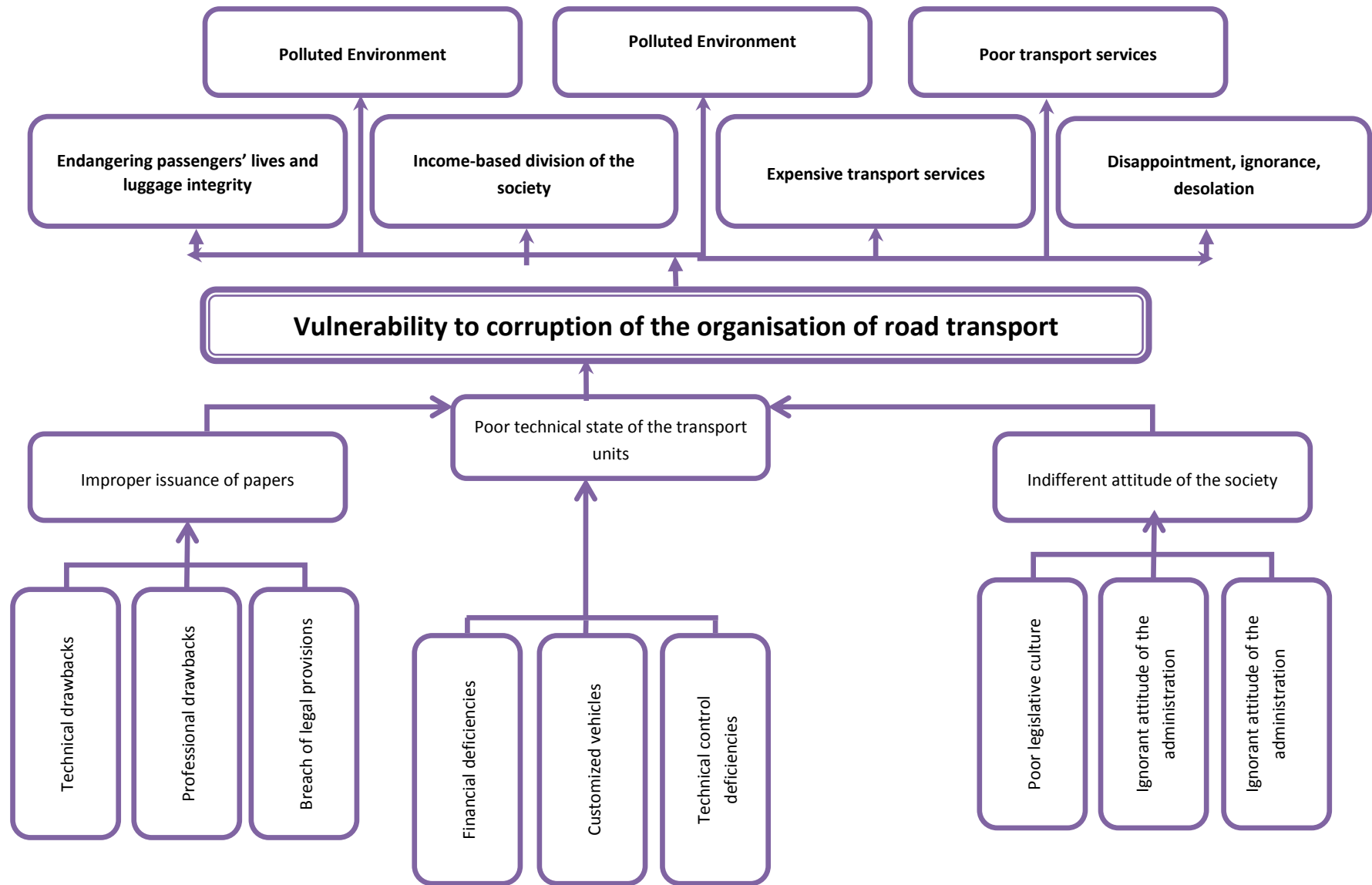
Annex 10. Problem Tree “Financial Management”



Annex 11. Problem Tree “Provision of Income Support”



Annex 12. Problem Tree “Organisation of Road Transport”



7 PRIORITY PROJECTS

The following are some first project proposals by the Working Group of the Causeni District Council which would – with funding from third parties/donors – support implementation of the action plan, or support achieving the overall goal of fighting corruption.

PROJECT No. 1. Transparency of Decision-Making Process in Causeni District Council

Project Idea:

In order to have a transparent decision-making process and democratic and fair decisions, the conference/training room of the Causeni DC shall be equipped with a video system. This will allow online broadcasting of the DC meetings and the citizens will have the opportunity to access the web site and visualise in real time the meetings from everywhere in the world.

Purpose of the Project:

- To improve the quality of the council meetings
- To manage efficiently and integrally the process of economic, social and cultural development
- To inform the citizen on the decision-making process
- To use modern IT.

ACTIVITIES/ACTIONS	2013				2014				2015			
	1	2	3	4	1	2	3	4	1	2	3	4
Development of a modern web site	x											
Provision of furniture for the conference/training room of the DC				x	x							
Provision of a multimedia kit (laptop, video projector, projection screen, module)					x	x						
Installation of the acoustic system (microphone, speakers)					x	x						
The meetings of the Causeni DC are broadcast online							x	x	x	x	x	x

PERSON RESPONSIBLE FOR THE PROJECT: *Head of Public Administration Department*

NECESSARY RESOURCES

Experts - staff, information - IUD

Involved personnel (current or new)

- *Specialist in Public Administration;*
- *Specialist in PR;*
- *Web site administrator;*
- *Technicians.*

Equipment

- multimedia kit (laptop, video projector, projection screen, module)
- acoustic system (microphone, speakers).

Space: Conference Room – 200 m².

Estimated budget: 250000 lei.

PROJECT No. 2. Development and Implementation of Performance-Based Budget

Project Idea:

A performance-based budget is an efficient management tool used to establish the priorities and decision-making on the future allocation of budget resources depending on the results of the public programs.

The core idea behind the performance-based budget developing is to introduce tasks in the management of public resources through specific objectives, correspondingly for the achievement of certain results - to be established in the measurement system. The effects of introducing the performance-based budget in the Causeni DC are:

- **Economy** (savings – reducing to minimum the consumed or necessary costs) – **lower expenditures**
- **Efficiency** (performance – coefficient of the obtained results compared to related expenditures) – **spending well**
- **Effectiveness** (effectiveness – coefficient between the planned and obtained results, as public expenditures result) – **spending smart**

ACTIVITIES/ACTIONS	2013				2014				2015			
	1	2	3	4	1	2	3	4	1	2	3	4
Training of four public officers in: Performance-based budgeting				X								
Study visits					X							
Equipment of the office with furniture and tools						X						
Installation of software						X						
Development of a performance-based budget							X	X	X	X	X	X
Publication of the budget on the website												X

PERSON RESPONSIBLE FOR THE PROJECT: *Chief Accountant*

NECESSARY RESOURCES

Experts - staff, information - IUD

Involved personnel (current or new)

- *Specialist in Accounting;*
- *Specialist in PR;*
- *Web site Administrator.*

Equipment

- Computer, printer
- Soft
- Furniture
- Chairs

Space: Offices – 40m².

Estimated budget 90000 lei.

PROJECT No. 3. Development of an Internal Auditing Service

Project Idea:

In order to secure good governance in the Causeni District, a new service, i.e. internal auditing shall be established. The newly created service will efficiently and responsibly manage the public resources; will contribute to ensuring the integrity of the public property, to improving activities, to reinforcing the accountability of public institutions leaders and to obtaining citizens' confidence in the fight against corruption.

ACTIVITIES/ACTIONS	2013				2014				2015			
	1	2	3	4	1	2	3	4	1	2	3	4
Training of four public officers in:							X	X				
• Internal Auditing												
• Quality Management												
Equipment of the office with furniture and tools							X	X				
Installation of software								X				
Study visits								X	X			
Development of audit reports									X	X	X	X

PERSON RESPONSIBLE FOR THE PROJECT: *Deputy President of the DC*

NECESSARY RESOURCES

Involved personnel (current or new)

- *Trained public officers.*

Equipment

- Computer, printer
- Soft
- Furniture
- Chairs

Space

- Conference Room – 45m².

Estimated budget: 200000 lei.

PROJECT No. 4. Training Public Officers in the Area of Project Management

Project Idea:

In order to attract investments to the Causeni District Council, it is necessary to train the public officers in project management. This will contribute to the economic and social development of the district.

ACTIVITIES/ACTIONS	2013				2014				2015			
	1	2	3	4	1	2	3	4	1	2	3	4
Training in the area of project management		X										
Project development to attract investments				X	X	X	X	X	X	X	X	X
Study visits					X	X						
Establishment of public-private partnerships					X	X	X	X	X	X	X	X
Placing the information on the web site												

PERSON RESPONSIBLE FOR THE PROJECT: *Main Specialist in Attracting Investments*

NECESSARY RESOURCES

Experts - staff, information - IUD

Involved personnel (current or new)

- *Specialist in Public Administration;*
- *Specialist in PR;*
- *Website Administrator.*

Equipment

- Computer, printer
- Software
- Furniture
- Chairs.

Space

- Offices – 60 m².

Estimated budget: 100000 lei.

Unofficial translation from Romanian

Strategic Plan
on treatment and prevention of corruption risks
Telenesti District Council

October 2012

Developed by a Working Group with the assistance of
the Institute for Urban Development (IUD)

And supported by the
Eastern Partnership-Council of Europe Facility Project on
“Good Governance and Fight against Corruption”

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INTRODUCTION

With a view to promoting and implementing in the Republic of Moldova the innovative approach and practice of treatment and prevention of corruption risks within local public administration, in August - November 2012 Telenesti District Council benefited from the assistance provided under the activity “*Anti-corruption Strategies for Local Governments*” initiated by the National Anti-Corruption Centre and supported by the Eastern Partnership-Council of Europe Facility Project on “Good Governance and Fight against Corruption”. Within the framework of this activity, the Telenesti District Council benefited from the assistance of the team of consultants of the Institute for Urban Development (IUD) with a view to developing a Strategic Plan on treatment and prevention of corruption risks through a participatory process where:

- **At the diagnosis stage** activities most vulnerable to corruption were analysed and identified.
- **At the stage of solution development** strategies were identified and an *Action Plan* for implementation of the strategy was developed.

In order to be selected, the District Council submitted an application and participated in a selection contest, which took place in August 2012.

In order to elaborate the diagnosis of activities most vulnerable to corruption, the Working group consisting of the representatives of the District Council, local public authorities of the 1st level, economic agents, representatives of civil society and media participated in a Workshop entitled “*Healthy Local Government: Corruption Diagnosis*”, which identified and analysed the activities most vulnerable to corruption, and having the most significant negative impact on citizens’ life, and on the future of the city and image of the District Council. After the workshop, the diagnosis was further developed and completed by the IUD consultants.

In order to develop solutions for treatment and prevention of corruption risks for services and activities that were selected for the Strategic plan, the Working group participated in the second Workshop “*Healthy Local Government: treating and preventing corruption*” which identified solutions and strategies for strengthening the integrity of the District Council through treatment of causes and prevention of possible cases of corruption. Strategies are focused on the improvement of the operating way of the institution, promoting transparency and competition, limiting discretion in decision-making and motivating working staff. At the same time, the Action Plan and projects for strategy implementation were elaborated.

The draft of the Strategic plan was discussed in public during the period of October 16-31, examined by the commissions of the District Council, and approved according to the legal procedure on decisions approval.

The present Plan shall be implemented, monitored and evaluated according to the provisions of *Chapter 5* with regard to each activity, action and project included in the Action Plan.

SUMMARY

The present Action Plan for treatment and prevention of corruption risks (hereinafter Plan) is a result of activities implemented by the Working group of Telenesti District Council assisted by the consultants of the Institute for Urban Development within the framework of the Activity “*Anti-corruption Strategies for Local Government*” of the Eastern Partnership-Council of Europe Facility Project on “Good Governance and Fight against Corruption”. The contents of the Plan comprise the results of the work carried out in two stages: **diagnosis stage** and **strategic planning stage** carried out within the period of August-October 2012.

The diagnosis stage included evaluation of **60 activities and services carried out/rendered by** the District Council under two evaluation criteria: (1) Degree of vulnerability to corruption and (2) Degree of impact on citizens’ life, and on the future and image of Telenesti District Council in case the corruption risk manifests itself in these activities and services. Preliminary evaluation was carried out based on the results of a survey of public officials and some interested third parties. The Index of vulnerability to corruption was calculated on the basis of the survey data, using the Robert Klitgaard¹⁸¹ formula, which – in a simplified way – applies to probably most corruption vulnerabilities: Corruption [vulnerability] = Monopoly + Discretion – Transparency¹⁸²

All the activities with average index exceeding the value of 3 were considered vulnerable to corruption. Out of those 60 activities assessed by:

- the internal environment (representatives of Local Public Administration (LPA), level II)¹⁸³ – **28 activities or 46.7%** of the total number, acquired an average indicator of vulnerability with values ranging between 3.2 and 5.2.
- the external environment (representatives of LPA level I, NGOs and businesses) – **47 activities or 78.3%** of the total number, acquired an average indicator of vulnerability with values ranging between 3.1 and 5.6.

All those 60 activities or public services were assessed with regard to the **level of impact** on the quality of life of the citizens and future of Telenesti District Council, as well as on the image of the Council. According to the results provided by:

- the internal environment (representatives of LPA level II) – **29 activities or 48,3%** of the total number were considered as having significant negative impact in case of presence of corruption acts, with values varying between 2.5 and 4.0.
- the external environment (representatives of LPA level I, NGO and economic agents) - **48 activities or 80%** of the total number were considered as having significant negative impact in case of presence of corruption acts, with values varying between 2.6 and 4.3.

The results of general diagnosis process were discussed within the Workshop no. 1 “Healthy Local Governments – Corruption Diagnosis” and through the decision reached by consensus by the participants in the workshop, the solutions and strategies for the prevention and treatment of the following priority services and activities were to be selected and identified:

- **Public procurement;**
- **Planning and management of construction works;**
- **Financial management;**
- **Providing social aid.**

Procedures of **public procurement** are vulnerable to corruption in the following aspects: (i) working groups are formed on the assumption of factors of interest; (ii) establishment of tender criteria (assigned documentation) depending on

¹⁸¹ *Corrupt Cities - A Practical Guide to Cure and Prevention*, Robert Klitgaard, Ronald MacLean-Abaroa, Lindsey Parris, Ed. Humanitas, 2006, translated and published in Romanian by FPDL

¹⁸² The formula has been adapted from the book “Corrupt Cities”, taking into consideration that Klitgaard and Abaroa use both terms, “accountability” and “transparency”, in different sources.

¹⁸³ Local Public Administration of level II means District Councils as representative bodies and President of the District with his Board (departments and sections) as executive body. Local public administration of level I means Local Councils as representative bodies and the Mayor with his working body (mayoralities or town halls) as executive body.

peculiarities of a certain company; (iii) appraisal in the estimates of expenditures of bigger amounts of money for being subsequently used for personal interests; (iv) participation of phantom companies in tenders; (v) participation in the tenders of companies owned by public officials, politicians or their inner circles and (vi) drawing up of reports and minutes on tenders which do not correspond to the reality. These vulnerabilities are caused by the following factors: (i) estimation of the necessary expenses by persons incompetent in the field; (ii) lack of transparency, certain announcements about procurement are not published for large public; (iii) absence of effective control over conflicts of interest; (iv) lack of supervisors, specialists who can monitor purchases.

The area of **planning and management of construction works** is a subject of the following vulnerability to corruption acts: (i) deliberate increase of volumes or costs of works; (ii) overestimation of necessary expenses for realisation of construction works; (iii) possibilities to by-pass the selection procedures of winner (designer, entrepreneur) while conducting the procurement procedure; (iv) signing fictitious acceptance and transfer documents; (v) insufficient control of the quality of works carried out. The causes that favour existence of these vulnerable aspects can be objective and subjective, the most important being: (i) estimation of the necessary expenses by persons incompetent in the domain; (ii) complex procedures which allow promotion of some financial and personal interests; (iii) insufficient transparency of the information regarding the activities on tender and construction and repair works; (iv) mistakes in evaluation of expenses; (v) superficial monitoring of construction works; (vi) collusion between the tenderer and bidders; (vii) too much works to monitor and control; (viii) absence of staff with technical training and existence of inadequate incentives.

The main vulnerability factors for **financial management** are: (i) underestimation of own incomes; (ii) overestimation of the necessary expenses; (iii) insufficient control of veracity and necessity of planned expenditures; (iv) subjective distribution of financial means for institutions subordinated to the District Council; (v) subjective distribution of the balance available at the beginning of the year. These vulnerabilities are caused by the following: (i) estimations made by the people who promote certain interests in certain domains; (ii) absence of a mechanism and strict procedures of money transfers allocation; (iii) lack of transparency in budget resources distribution; (iv) absence of strategic documents which would establish priorities in financing; (v) lack of objectivity in distribution of financial resources.

The main vulnerabilities for **providing social aid** are: (i) submission of some falsified acts by potential beneficiaries; (ii) understatement of all property by beneficiaries; (iii) concealment of incomes through unofficial employment; (iv) inadequate checking by responsible persons of the veracity of information presented in application for allocation of social aid; (v) drawing up some statement reports and minutes which do not correspond to the reality. These vulnerabilities are conditioned by the following factors: (i) lack of transparency in processing the documents for allocation of social aid; (ii) failure to inform socially vulnerable categories appropriately regarding applications and opportunities for the social aid; (iv) lack of qualified specialists; (v) high turnover of staff; (vi) high workload per staff unit.

The Workshop No. 2 "*Healthy Local Governments: treating and preventing corruption*" identified solutions for treating and preventing possible acts of corruption for each of the activities vulnerable to corruption.

Based on the identified solutions, the Vision and Strategic Objectives, strategies, action plan on prevention and treatment of corruption and necessary projects, including those prioritised for the implementation of strategies, were developed. For the period of the following 3 years the vision of Telenesti District Council on treatment and prevention of corruption risks **consists of providing public services in a transparent way through legal instruments and by professional specialists and efficient use of funds for the ultimate benefit and interest of community.**

In order to accomplish this challenge, 4 strategic objectives were set, which correspond to the sector areas: (1) Conducting of public procurement by contracting authorities in a legal, transparent and professional way for the ultimate benefit of the community; (2) Ensuring transparency in the process of use of resources allocated for the implementation of repair and construction works; (3) Reducing the influence peddling, adequate use of public money, higher appreciation of proposals made by specialists which will ensure the increase of public trust in district public administration; and (4) Transforming of social assistance from the supporter of vulnerable categories of population into opportunity provider. Based on general strategic objectives 12 operational objectives were identified. **In order to achieve the operational objectives over 60 actions and projects were planned.** The total estimated cost for the implementation of the Plan is

about 2 million MDL. Financial resources for the planned activities and projects are provided by local budget, state budget, funds attracted from different international donors.

The District Council will monitor and evaluate the implementation of the Plan through coordination by one of the vice-chairpersons of the district. The parties responsible for the implementation of activities and projects will report annually on the implementation progress of actions, used resources, obtained results and impact of the Plan implementation.

1. METHODOLOGY

The Strategic Plan on treatment and prevention of corruption risks within Telenesti District Council was developed with direct participation of stakeholders in the activities carried out in two stages: **participatory diagnosis stage** and **strategic planning stage** which involved organisation of two workshops. The following activities were carried out to develop the Plan:

- August 17, 2012 - interviewing internal and external stakeholders during the information meeting attended by about 30 representatives of LPA level I, II, associated sector and businesses.
- during the period of August 18 - 30 - interviewing the representatives of Telenesti District Council, representatives of LPA level I, businesses and associated sector, about 20 persons.
- September 19, 2012 - Workshop no. 1 "Healthy Local Governments – Corruption Diagnosis" attended by 24 representatives of Telenesti District Council.
- October 5, 2012 - Workshop no. 2 "*Healthy of Local Governments: treating and preventing corruption*" attended by 23 representatives of Telenesti District Council.

The first stage was conducted in the period of August 17 – 30 by organising an opinion poll, directly involving internal and external stakeholders. The opinion poll was carried out on the basis of the two questionnaires developed by IUD experts for the activity areas of the District Council. The analysed areas and services were taken from the legislation in force and related to the competences of the district authorities laid down in the Law on Local Public Administration no. 436-XVI as of 28.12.2006 and Law on Administrative Decentralization no. 435-XVI as of 28.12.2006. Thus, 60 duties/activities of the District Council were assessed.

Diagnosis was focused on the evaluation of two aspects of the each of those 60 activities/services:

- Degree of vulnerability to corruption
- Level of impact on the life of citizens, future of the city and image of the District Council in case when such acts of corruption would emerge within those activities.

The identification of vulnerability to corruption was done based on the **Vulnerability Indicator** calculated according to the formula of Robert Klitgaard

$$\text{Corruption [vulnerability]} = \text{Monopoly} + \text{Discretion} - \text{Transparency}$$

According to this formula, Activities are vulnerable to corruption when there is a **Monopoly** in their supply, **Discretion** in decision-making and absence of **Transparency** and accountability on the side of the decision makers.

The participants in the public polls were asked to assess each activity and to score them from 1 to 5 (from 1= to a little extent, up to 5= to a great extent)

- **Monopoly level:** the extent to which the activity represents a monopoly of the District Council (absence of competition in performing the activity)
- **Discretion level:** the extent to which the decisions are taken in a *discretionary manner* while performing these activities (there are no regulations and clear procedures that would guide the decision making process or on the contrary, there are too many, even contradictory regulations and the ones who make decisions can choose the rule convenient to them)
- **Transparency level:** the extent to which the decisions are made in a *transparent manner* (the information is available and there is an easy access to the information on the way in which decisions with regard to a certain activity are made).

The calculation of the **Impact Indicator** was made based on the assessment of those 60 activities using a scale from 1 to 5 (1 = no negative impact, up to 5 = very serious negative impact) of the impact that the possible acts of corruption might have on the quality of citizens' life, on the future and image of the District Council.

As a whole, 38 questionnaires were filled in to assess the degree of vulnerability to corruption of the activities carried out by the District Council and 38 questionnaires to assess the level of impact in case such acts of corruption might occur

within such activities. Those 38 questionnaires were filled in by 19 public officers from II level LPA, 10 representatives of I level LPA, 5 businesses and 4 representatives of the associative sector. The variety of respondents allowed having a comparative analysis of the Vulnerability Indicator and Impact Indicator.

The average of the Monopoly, Discretion and Transparency levels was calculated for every activity. Based on those averages, the Vulnerability to Corruption Indicator was calculated by using the formula $\text{Monopoly} + \text{Discretion} - \text{Transparency}$.

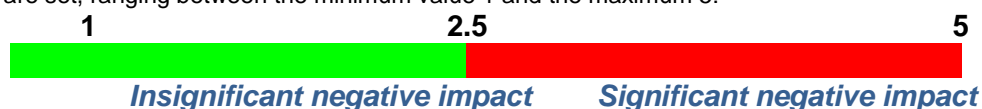
The value of such an Indicator ranges between -3 (situation with no vulnerability: minimum Monopoly = 1 + minimum Discretion = 1 – maximum Transparency = 5) and 9 (situation when the vulnerability is maximum: maximum Monopoly = 5 + maximum Discretion = 5 - minimum Transparency = 1).

Four intervals of the Vulnerability to Corruption Indicator are set between these values, which are encoded in the following colours:



Thus, the average of the Vulnerability Indicator for each of those 60 activities was calculated. All the activities whose indicator exceeded the value of 3 were considered as vulnerable to corruption.

In order to identify the level of impact of particular acts of corruption that might occur within the assessed activities, two value intervals are set, ranging between the minimum value 1 and the maximum 5:



After identifying the activities and services vulnerable to corruption (having average values equal to or higher than 3), the level of the negative impact that potential corruption acts within these activities could have on the life of citizens, future and image of the District Council was checked.

These two criteria – vulnerability to corruption and the level of the negative impact – were used to eliminate from the Strategic Plan to treat and prevent corruption risks any potential activities and services which, although being identified as vulnerable to corruption, would not be considered as having a major negative impact.

The results of the general diagnosis process were discussed within Workshop no. 1 “Healthy Local Governments – Corruption Diagnosis”, and the most vulnerable activities and services were selected with the aim to identify solutions and strategies on corruption prevention and treatment. Each of them was thoroughly analysed to identify vulnerability aspects and reasons which can invoke them. Problem trees were established and the causes and effects of the vulnerability of actions were discussed during those two workshops.

The results of the in-depth diagnosis were presented in the Workshop no. 2 “Healthy Local Governments: treating and preventing corruption”, followed by the identification of solutions and strategies to strengthen the integrity of the District Council through treating causes and preventing possible corruption cases. The strategies focus on improving the performance of the institution, promoting transparency and competition, limiting discretion in decision-making and motivating working staff. Systematisation of solutions implied their grouping by strategies, programs and projects. At the same time an action plan and projects for implementation of strategies were developed.

The basic concepts of the strategic Plan have the following definitions:

Vision – image of a far and desired future guiding the process of change and describing the situation in which the problems were established and the objectives were reached.

Strategic objective – image of desirable future which is closer in time and less complicated than vision being a specific area of the described vision with more details.

Strategies – activities and actions which are planned and implemented for the accomplishment of strategic objectives and vision.

Activities – all projects included in the common areas of implementation.

Projects – all activities and actions with targets, designed to produce specific results in a limited time frame.

Corruption – abusive use of official position for personal benefit.

Therefore, the **Strategic Plan** consists of **Diagnosis study** which identified activities vulnerable to corruption, **Strategic Vision** that will be realised through **Activities** and **Actions** which also include projects grouped by **Strategic Objectives**.

2. DIAGNOSIS

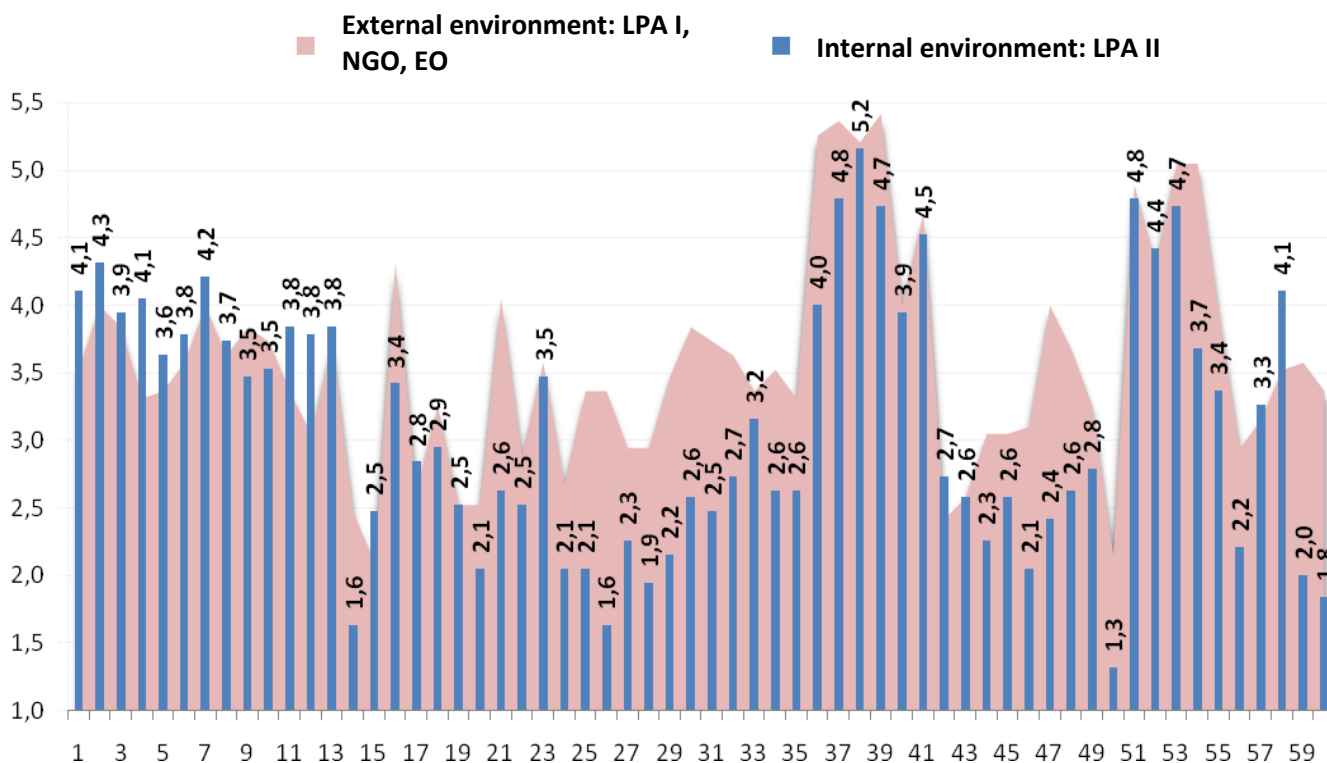
2.1 Degree of Vulnerability to Corruption

Out of those **60 activities** assessed by:

- *Internal environment (representatives of LPA level II) – 28 activities or 46.7% of the total number* acquired an average Vulnerability Index higher than 3, values range between 3.2 and 5.2 points.
- *External environment (representatives of LPA level I, NGO and businesses) – 47 activities or 78.3% of the total number* acquired an average Vulnerability Index higher than 3, values range between 3.1 and 5.6 points.

Below is the average vulnerability index to corruption of the assessed activities:

Figure 1. Degree of Vulnerability to Corruption



According to these results it can be stated that:

1. The appreciation of the internal and external environment respondents matches as far as the majority of the assessed activities and services are concerned.
2. On more than 15 activities/services respondents from external environment: *representatives of LPA level I, NGO and businesses* have an attitude towards activities vulnerable to corruption.
3. The activities of Telenesti District Council having the degree of vulnerability to corruption higher than 3.5 are shown below in the order they were presented in the questionnaire:

Table 1. Degree of vulnerability to corruption

PUBLIC ACTIVITIES OR SERVICES		Internal Envir.	External Envir.
LEVEL OF VULNERABILITY TO CORRUPTION			
1	Public property accounting	4.1	3.5
2	Commissioning the public property of the district into administration, renting, concession or leasing	4.3	4.0
3	Sale, privatization, concession, rent or lease of private property of the district	3.9	3.8
4	Capital and routine repairs of the infrastructure	4.1	3.3
5	Maintenance, repairs, development and modernization of the economic facilities	3.6	3.3
6	Maintenance, repairs, development and modernization of the social facilities	3.8	3.6
7	Maintenance, repairs, development and modernization of community and leisure facilities of district interest	4.2	4.0
8	Management of cultural institutions	3.7	3.6
9	Management of tourism institutions	3.5	3.8
10	Management of sport institutions	3.5	3.7
11	Management of educational activities	3.8	3.3
12	Management of cultural activities	3.8	3.0
13	Management of sport activities	3.8	3.7
16	Protection of forests of district importance	3.4	4.3
21	Health rehabilitation (orthopaedic-prosthetic services, resorts and sanatorium services)	2.6	4.0
23	Delivery of social financial and humanitarian aid	3.4	3.6
30	Sanitary authorisation for production and industrial tools, production equipment and processing technologies	2.6	3.8
31	Information on attestation, authorisation, licensing and certification of food and agriculture products	2.5	3.7
32	Examination and submission for approval of schemes, projects and other documentation related to territorial organisation	2.7	3.6
34	Leasing out land, transferring land into possession or for use	2.6	3.5
36	Drawing up of specifications	4.0	5.2
37	Opening of tenders	4.8	5.3
38	Selection of tender winners	5.2	5.2
39	Conclusion of contracts	4.7	5.4
40	Supervision of public procurement contracts	4.0	4.0
41	Reporting	4.5	4.7
47	Organisation of road passenger transport	2.4	4.0
48	Management of bus stations and parking lots of district importance	2.6	3.6
49	Maintenance and management of public objects of district importance	2.8	3.2
51	Budget planning and execution	4.8	4.9
52	Support and stimulation of initiatives on economic development of the administrative and territorial unit	4.4	4.3
53	Coordination of foreign investments	4.7	5.0
54	Staff employment	3.7	5.0
55	Staff promotion	3.3	3.9
58	Planning and management of construction works	4.1	3.5
59	Construction, management and repairs of roads of district importance	2.0	3.6

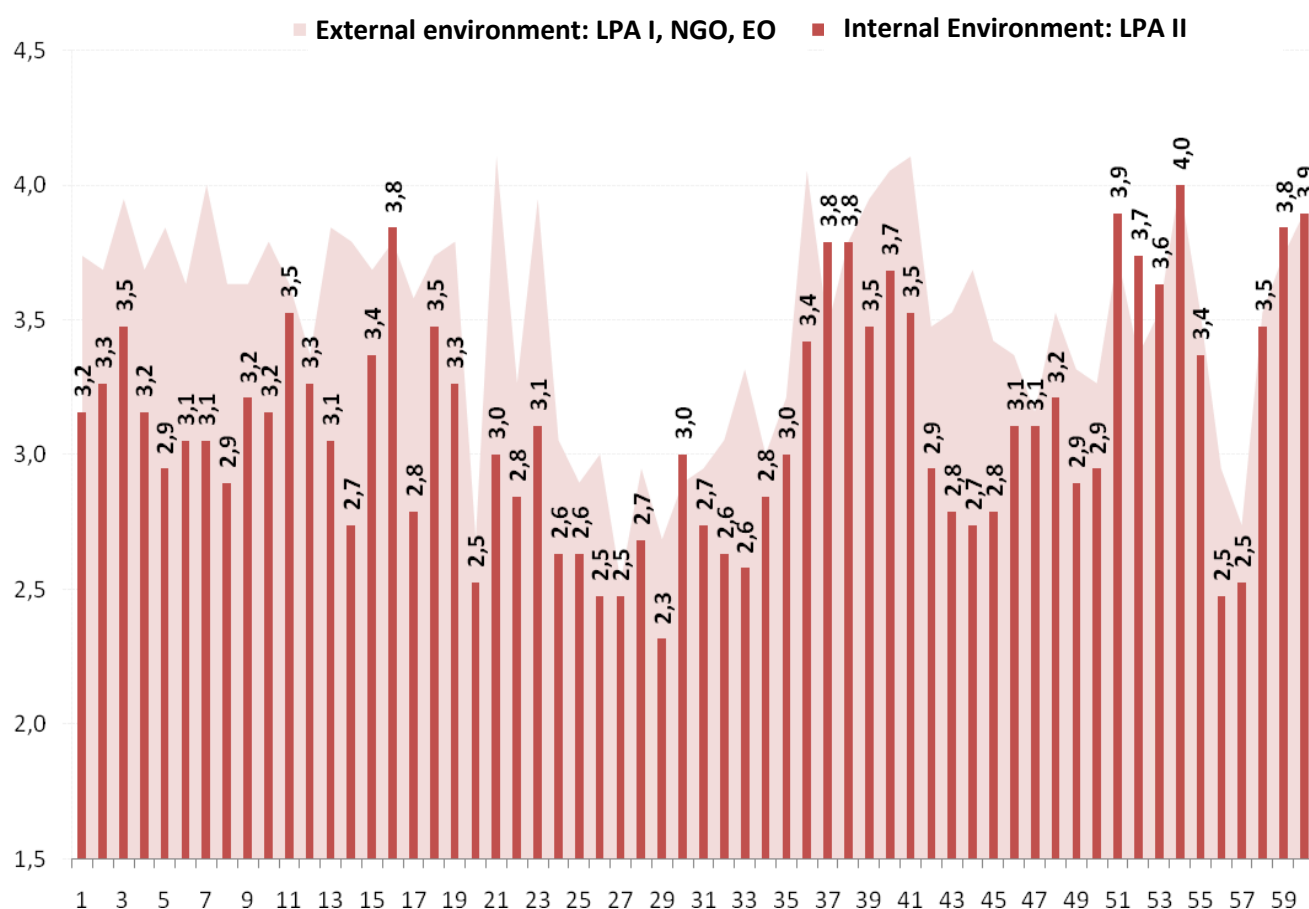
The results of each analyzed activities and services are presented in Annex 1.

2.2 Impact Degree

All these 60 activities or services were evaluated with regard to the level of impact on the quality of the citizens' life, on the future and image of the DC that the potential acts of corruption might have. The results of this assessment give evidence of the following:

- **Internal environment** (representatives of LPA level II) – **15 activities or 25%** from the total number were considered to have a significant **negative impact** if the cases of corruption are manifested; the score ranges between **3.5 and 4.0 points**.
- **External environment** (representatives of LPA level I, NGO and businesses) – **35 activities or 58.33%** from the total number were considered to have a significant **negative impact** if the cases of corruption are manifested, the score ranges between **3.5 and 4.3 points**.

Figure 2. Degree of Vulnerability Impact to Corruption



Similarly to the previous index, the opinion of the internal and external respondents match regarding the majority of the assessed activities and services, but on more than 20 activities/services respondents from the external environment: *representatives of LPA level I, NGO and businesses* considered the degree of impact higher. The degree of impact of possible corruption acts estimated higher than 3.5 is shown below per activity/service following the order in which they were presented in the questionnaire:

Table 2. The impact of vulnerability to corruption

PUBLIC ACTIVITIES OR SERVICES		Internal Envir.	External Envir.
Level of corruption impact			
1	Inventory of the public property	3.2	3.7
2	Commissioning the public property of the district into administration, renting, concession or leasing	3.3	3.7
3	Sale, privatization, concession, rent or lease of private property of the district	3.9	3.9
4	Capital and routine repairs of the infrastructure	3.2	3.7
5	Maintenance, repairs, development and modernization of the economic facilities	2.9	3.8
6	Maintenance, repairs, development and modernization of the social facilities	3.1	3.6
7	Maintenance, repairs, development and modernization of community and leisure facilities of district interest	3.1	4.0
8	Management of cultural institutions	2.9	3.6
9	Management of tourism institutions	3.2	3.6
10	Management of sport institutions	3.2	3.8
11	Management of educational activities	3.5	3.6
13	Management of cultural activities	3.1	3.8
14	Management of municipal enterprises of district importance, mentioned	2.7	3.8
15	Establishing of a general framework for land improvement at the district level	3.4	3.7
16	Protection of forests of district importance	3.8	3.8
17	Information, assistance and counselling on various aspects of social assistance and protection	2.8	3.6
18	Awarding and providing social benefits (allowances, compensation, etc.)	3.5	3.7
19	Providing information and consultancy on preparation of documents necessary for awarding social benefits	3.3	3.8
21	Health rehabilitation (orthopaedic-prosthetic services, resorts and sanatorium services)	3.0	4.1
23	Delivery of social financial and humanitarian aid	3.1	3.9
36	Drawing up of specifications	3.4	4.1
38	Call for tenders	3.8	3.8
39	Selection of winners	3.5	3.9
40	Conclusion of contracts	3.7	4.1
41	Supervision of public procurement contracts	3.5	4.1
43	Commissioning the public services of district interest into administration, renting, concession or leasing	2.8	3.5
44	Approval of tariffs for paid services	2.7	3.7
48	Management of bus stations and parking lots of district importance	3.2	3.5
51	Budget planning and execution	3.9	3.7
52	Support and stimulation of initiatives on economic development of the administrative and territorial unit	3.7	3.4
53	Coordination of foreign investments	3.6	3.5
54	Staff employment	4.0	4.0
55	Staff promotion	3.4	3.5
58	Planning and management of construction works	3.5	3.5
59	Construction, management and repairs of roads of district importance	3.8	3.7
60	Construction, management and repairs of road infrastructure	3.9	3.9

The results of the impact degree of vulnerability to corruption of each analyzed activities and services are presented in Annex 2.

The results of the general diagnosis process were discussed during the workshop on September 19 and according to the consensus decision of the Workgroup members, it was decided that the Strategic Plan will focus on the following four priority activities of the District Council:

- **PUBLIC PROCUREMENT;**
- **PLANNING AND EXECUTION OF CONSTRUCTION WORKS;**
- **FINANCIAL MANAGEMENT;**
- **PROVIDING SOCIAL AID.**

These activities were thoroughly analysed during the workshop in three stages:

4. Activities were detailed into actions to be carried out within their framework and timelines. The schemes of service provision are presented in **Annexes 3-6** of the present Plan.
5. The potential acts of corruption, which might occur at certain stages of implementation of activities and specific actions, were identified.
6. The causes that could generate and favour the occurrence of acts of corruption were identified. Cause-effect relations are shown in the Trees of Problems and are provided in **Annexes 7-10** of the present Plan.

The results of the in-depth assessment for each activity are presented below.

2.3 Public procurement

Public procurement is a process where goods, works and services are purchased with public funds, to cover the needs of one or several contracting authorities, the contracting authority being the local public administration.

In Telenesti District Council, public procurement is performed in line with the *Law on public procurement* no. 96-XVI as of 13.04.2007. Public procurement can be performed based on an open (public), limited tender procedure, framework agreement, competitive dialogue, negotiated procedures and procurement from one single source, pricing offers, dynamic systems of procurement, electronic auctions and procurements in case of social housing construction.

Depending on the procedure, public procurement includes the following **stages**:

13. Establishment of working groups responsible for conducting of public procurements;
14. Development of annual and quarterly plans on public procurements;
15. Drawing up invitations within the public procurement procedures;
16. Development of tender documentations, as well as other documents applied within the public procurement procedures;
17. Launching and conducting public procurement procedures;
18. Ensuring large-scale participation of economic operators in public procurement procedures;
19. Examination, evaluation and comparison of offers submitted by economic operators in the framework of public procurement procedures;
20. Concluding public procurement contracts with the operator (economic operator);
21. Drawing up of reports on the results of the public procurement procedures and their submission to the Agency for Public Procurement;
22. Execution and management of the public procurement contracts in line with the agreed terms and conditions;
23. Storage and record-keeping of all the documents developed and used in the public procurement procedures

The Contracting Authority undertakes, in line with the legal provisions, to:

- ensure the efficiency of public procurement;
- use efficiently the public funds;
- ensure objectivity and impartiality during the public procurement procedures;
- ensure transparency and publicity of public procurement procedures;
- ensure non-discrimination and equal treatment of economic operators;
- provide the Agency, upon request, any piece of information with regard to drawing up and execution of public procurement contracts.

In the public procurement process, the most **vulnerable aspects** that could contribute to **potential acts of corruption** are:

- Selective transmission of tender announcement;
- Establishment of the tender criteria (awarding documentation) depending on peculiarities of a certain company;
- Preferential selection of a bidding company with the aim to acquire inappropriate benefits;
- Biased decisions of the tender commission with the aim to acquire personal profit;
- Abusive use of emergency situations to negotiate the contracts with one single source;
- Disclosure of confidential information;
- Planning of an exaggerated volume of works (some of it will not be executed);
- Assessment in the estimates of expenditures of bigger amounts of money for being subsequently used for personal interests;
- Preliminary collusion between bidders and presence of a smaller number of bidders at tender;
- Participation of phantom companies;
- Participation of companies owned by public officials, politicians or their inner circles;
- Influence from the side of some official persons;
- Failure to declare conflict of interest;
- Drawing up of reports and minutes which do not correspond to reality.

The causes boosting such vulnerable aspects are of objective and subjective nature and can be evinced by the following:

- Estimations are made by people lacking competence in the field;
- Lack of transparency (tender notices on public procurement are not made public);
- Lack of legal control over the conflict of interest;
- Difficult access to the technical specifications for stakeholders;
- Lack of clear regulations with regard to different applicable procedures;
- Failure to perform the expertise of documents;
- Absence of a supervisor (specialist to monitor the works carried out);
- Lack of quality control.

The effects of production of corruption causes:

- Embezzlement
- Financial impact (increase of costs)
- Economic impact (loss of quality and investors)
- Decrease of confidence in local public administration
- Preferential selection of the economic operators
- Distortion in the process of public funds allocation
- Establishment of a group of interest and redistribution of revenues
- Insufficient use of local and national market opportunities
- Absence of public - private partnerships
- Committing occurring during the process of public procurement.

Possible **beneficiaries** of corruption acts can be: certain economic operators, some public or private institutions, representatives of the control bodies, influential representatives of political environment and criminal layers of society.

When certain acts of corruption are committed, the State budget, the district budget, the businesses, the district communities, the citizens and the business environment **suffer**.

2.4 Planning and Management of Construction Works

Planning and management of construction works represents a complex system of procedures and techniques referred to design, execution, receipt, exploitation and tracking of behaviour in exploitation of different types of constructions from different areas, including all necessary data for identification and determination of technical (physical) state of constructions, design and operation of construction works and their development through time. The complexity of procedures in this field is controlled by many legislative and normative acts, the main being: **Law on budgetary system and budgetary process, no. 847 as of 24.05.96**, **Law on local public administration, no. 436 as of 28.12.2006**, **Law on administrative decentralization no. 435 as of 28.12.2006**, **Law on quality of construction no. 721 as of 02.02.1996**, **Government Decision no. 834 as of 13.09.2010 regarding the approval of Regulations on public procurements for works, etc.**

In essence the construction works can be defined as an action with a limited duration with the aim to realize, rehabilitate or demolish a construction object through execution of some variable and standardized or non-standardized works by one or more specialized entrepreneurs based on a certain budget, following the specifications of the required quality.

The main stages of planning and management of construction works are:

1. Defining of the project, this is to identify the construction objective to achieve.
2. Designing, this is to develop some studies and detailed layouts.
3. Contracting – establishment of legal relations between beneficiary and constructor.
4. Supplying and execution of construction, which is supply of necessary resources and performing of construction works.
5. Exploitation and maintenance of the construction, i.e. correct exploitation of constructions in order not to endanger their safety as well as periodical necessary reparations.
6. Post-utilization which implies dismantling, demolition of constructions to recover some materials. In case when the materials are not recoverable, storage actions are undertaken in special places, in accordance with requirements of the environment protection.

The most vulnerable aspects which can condition **possible cases of corruption** during the planning and management of public construction works are:

- Deliberate increase of the volume of work
- Deliberate increase of the costs of work
- Overestimation of the necessary expenditures to perform construction works
- Possibilities to by-pass the procedures of selection of the winner (designer, entrepreneur) in the procurement process
- Failure to follow the work technology
- Signature of fictitious acceptance and transfer documents
- Signature of minutes with exaggerated volume of work
- Insufficient control over the quality of work.

The causes that favour existence of these vulnerable aspects can be objective and subjective, the most important being the following:

- Estimation of the necessary expenses made by persons who have no expertise in the field
- Complex procedures which allow promotion of some financial and personal interests
- Insufficient transparency of information on tenders for construction and repair works
- Errors in estimation of expenditures
- Superficial monitoring of construction works
- Announcements about tenders are not published in newspapers and access to specifications is difficult
- The reports for citizens are not made in accessible language, that would prove effective usage of public money
- The District Council does not use web site as an information tool on the construction works
- Collusion between tenderers and bidders
- Too much works to monitor and control
- Lack of random checks and sanctions for estimation mistakes
- Lack of staff with technical training
- Low salaries, lack of a staff motivation system
- Lack of performance indicators for activity and staff
- Absence of procedures for monitoring and control over construction works.

Effects of vulnerabilities to corruption of the planning and management of construction works lead to:

- Preferential selection of the construction company
- Overestimation of estimates of expenditures: bigger quantities or prices, works that will not be executed
- Approval of unjustified budget modifications during the execution of works
- Drawing up of minutes on works without checking the quality and quantity of the executed works.

Possible **beneficiaries** of corruption acts can be: Certain economic agents, officers of public institutions, representatives of the control bodies, influential representatives of political medium and criminal layers of the society.

When certain acts of corruption are committed, the State budget, the district budget, the businesses, the district communities, the citizens and the business environment **suffer**.

2.5 Financial Management

The budgeting process and management of local public funds is a complex process of actions to develop, approve, execute and report collection and spending of public money, regulated by *Law on Budget System and Budget Process no 847 as of 24.05.96*, *Law on Local Public Administration*, no 436 as of 28.12.06, *Law on Administrative Decentralization*, no 435 as of 28.12.06, *Law on Local Public Funds*, no 397-XV as of 16.10.2003 and *Budget Law* of the relevant year, recommendations and instructions issued by the Ministry of Finance.

The district budget is managed by the district executive authority according to procedures and terms established by law. They cover the following steps and procedures:

Stage 1. Budget development

7. In the period of February – March, the Ministry of Finance communicates to the executive authority of the district and to finance department the information, required for initiation of budgeting at local level;
8. Within 10 days upon receipt of this information, the department of finance informs the executive authorities of the administrative-territorial units (ATU) of level I about the basic principles of the state policy regarding budgetary revenues and expenditures for the next year(s), about the forecasts of norms of breakdowns from general state income into local budget and specific rules of calculation of transfers that are forecasted to be allocated to those budgets from the district budgets;
9. Within 20 days upon receipt of the above-mentioned information, the executive authorities of ATU of level I shall develop the forecast of taxes and fees that will be collected in the forthcoming year(s) in the respective ATU, as well as a draft local budget, that is submitted for review to the District Finance Department;
10. The necessity of expenditures is coordinated with LPA of level I, expenditures are calculated and relevant data verified with State Tax Inspectorate;
11. The Finance Departments submit to the Ministry of Finance for review the forecast of taxes and fees to be collected in the forthcoming year(s) in the ATU, as well as district budgets drafts – the procedure is consultative.
12. Ministry of Finance approves draft district budgets or may request to modify them, if they contradict the legislation or the principles of budget policy promoted by government.

Stage 2. Approval of budgets

5. ATU budgets are examined and approved in two sub-stages: (1) examining and approval of local budgets (budgets of villages/communities, towns) from the district constituencies and (2) examining and approval of district budget.
6. The representative and deliberative authorities of the district examine the draft budget in two readings. The district budget must be approved on the 10th of December current year, the latest.
7. After the budget is approved, it must be publicized and correlated with the yearly budget law.
8. The Finance Department submits the district budget to the Ministry of Finance according to the existing timeline, to have it included in the national public budget.

Stage 3. Executing District Budget

Execution of cash accounts of the ATU budgets is performed through the treasury. It includes:

5. Collection of revenues according to the budget classification structure;
6. Expenditures made in the limit of approved allocations and in line with the purpose;
7. Control of veracity of the incurred expenditures;
8. Analysis, development and promotion of demarches for budget amendment.

Stage 4. Reporting Execution of the District Budget

3. According to the legislation, every quarter, the executive authority of the district collects relevant data, analyses the execution of the budget and submits the reports on budget execution;
4. At the end/beginning of the year the report on execution of budget for previous year is submitted.

In financial management the most **vulnerable aspects** that can cause corruption are:

- Underestimation of own incomes
- Overestimation of the necessary expenditures
- Insufficient control of veracity and necessity of planned expenses
- Superficial analysis of requests for modifications
- Subjective distribution of financial funds for institutions which are at the balance of the District Council
- Subjective distribution of the balance available at the beginning of the year.

Causes of the existing vulnerabilities that may favour the appearance of eventual acts of corruption are the following:

- Estimations can be made by people lacking skills in the area
- There is no mechanism and no strict procedures to distribute transfers
- Lack of transparency in distribution of budget funds
- Lack of strategic documents that would establish funding priorities.
- Lack of objectivity in distribution of funds.

The effects of acts of corruption are as follows:

- Inadequate and inefficient use of public money
- Embezzlement
- Reduced credibility of local public administration
- Distorted economic, social, territorial and institutional development
- Favourable conditions for influence peddling, nepotism, illegal transactions with public funds.

Possible **beneficiaries** of corruption acts can be: Some economic entities, some communities of the district, some public or private institutions, some individuals.

As a result of corruption would **suffer**: the State, district budget, district communities, citizens, business environment.

2.6 Provision of social aid

Social aid is a monthly payment in money, granted to a disadvantaged family to ensure a minimum monthly guaranteed income. The amount is established based on the assessment of global average monthly income of each family and of the need for social aid. The information about the social aid is offered by the community social worker, Department for Social Protection and Family Protection (represented by the head of community service) and by the media.

According to Law no. 133 of 13.06.2008 on Social Aid, **beneficiaries of social aid** are members of disadvantaged families that fit into at least one of the following situations:

- The person has reached the age of retirement, established by law;
- The person is unemployed and registered with the territorial employment agency responsible for the territory where the person in question has permanent residence and does not refuse a job or participation in services to stimulate employment and public activities provided by agencies;
- The person belongs to a disability group;
- The person is in the period between the 30th week of pregnancy and 12th week after birth if the child is born dead or dies during the postnatal leave period, or the person takes care of a child aged under 3;
- The person takes care of a member/several members of the family, that are part of disability group I and require care according to the conclusion of the Medical Expertise of Vitality Council; takes care of a child/children from the same family or of a person aged above 75 from the same family, according to the conclusion of the Consultative Medical Board;
- The person employed, including those who get income from business activities.

On determination of the right for social aid there are excluded family members who:

- Hold the citizenship of the Republic of Moldova, but have been absent from the territory of the country for more than 3 consecutive months;
- Serve a term of imprisonment;
- Undergo statutory military service;
- Are under the custody of state, i.e. in asylum, shelter, placement centre, rehabilitation centre, etc.

Social aid is provided based on the application for social aid, filed by a fully competent family member, appointed by the family, or, in cases provided by law, by the legal representative of the family.

The application must be accompanied by the following documents:

- Certificate on family composition;
- Identity card and a copy thereof;
- Certificate on temporary residence or identity document issued by relevant authorities in the case of foreign citizens, stateless persons or refugees.

Alternatively, the following **documents** may be requested:

- Birth certificate of a child;
- Decision on custody/trusteeship establishment;
- Decision on placement to the institution;
- Salary confirmation certificate from the employer;
- Certificate about the studies for any member of the family (state funded or contract-based), showing the amount of scholarship, if applicable;
- Confirmation on alimony payment;
- Certificate about the period of enrollment in the military service;
- Documents, confirming property rights on agricultural land near the house (built-up area), as well as outside the built-up area;
- Rent, lease agreement;
- The document that confirms the disability group and term, as well as its severity.

In order to benefit from the social aid a potential applicant shall undergo the following **stages**:

8. The applicant is issued with a receipt on application registration stating the date and registration number. The application is not accepted in case of failure to provide all necessary documents.
9. The application for social aid is entered and processed by automated software of the SPFP Department. The decision on granting or refusal to grant social aid is taken by the Head of SPFP Department within 15 working days since the application has been filed by issuance of an order.
10. Social Protection and Family Protection Division/Department organizes, together with the representatives of local public administration and/or civil society a selective verification of the authenticity of the information submitted in the application for social aid at applicant's home and compiles the welfare report;
11. The applicant is notified in writing within 5 working days about the decision to grant or not to grant social aid.
12. If the social aid right is granted, the notification will include the term for which the aid is granted, its amount, method of payment and terms to review the right to social aid, as well as the obligations of the beneficiary.
13. If the application is rejected, the notification will include the reasons for rejection and how such decision can be appealed.

14. Social aid may be granted for maximum 2 years and may be reviewed should any change that may impact the amount of the social aid occur.

In granting social aid the **most vulnerable aspects** that can **cause corruption** are:

- Submission of falsified acts
- Understatement of all property
- Concealment of income through unofficial employment
- Verification of requested data by the commission members
- Verification of authenticity of information presented in application for the allocation of social aid by a specialist
- Preparing reports and protocols that are different from the real situation

The reasons that cause the existence of those vulnerabilities to corruption are the following:

- Lack of transparency
- Failure to inform socially vulnerable categories appropriately
- Shortage of staff
- Turnover of staff
- Large number of requests
- High workload
- Degree of kinship.

The effects of acts of corruption are as follows:

- Embezzlement
- Financial impact (increase of budget expenditure)
- Relatively large number of beneficiaries
- Providing unjustified social aid for some categories of population
- Deprivation of some socially vulnerable categories of social assistance
- Decrease of trust in the system of public social protection services and state institution.

The **beneficiaries** of potential acts of corruption could be: citizens (claimants), unofficial employers, public or private institutions, officials.

The following would **suffer** as a result of corruption: the State budget, the District budget, socially vulnerable individuals, the image of the institution.

2.7 Conclusions

The in-depth diagnosis of activities and services vulnerable to corruption in Telenesti District Council has been developed based on an innovative method involving best practices in the area, opinion poll among internal and external environment stakeholders operating in Telenesti District Council as well as in-depth analysis of the selected areas.

This diagnosis has a high degree of credibility and support since it has been developed through participatory approach by a Working Group consisting both of the District Council officials, responsible for evaluated activities or services, and representatives of external environment: economic operators, civil society, counsellors, who have expertise and knowledge in the field and r were/will be affected by possible actions mentioned in this document. The fact that the assessment of vulnerability degree and impact of corruption is approximately identical, confirms that the results of diagnosis match the reality.

The results of the diagnosis contributed to identification of areas and fields, which due to existing risks and some uncertain aspects are vulnerable to corruption.

In the process of thorough analysis it was possible to identify causes, which determine the vulnerability to corruption of services and activities of the District Council.

Also, as a result of the diagnosis it was possible to identify impacts in case of possible corruption acts upon citizens, the future and image of the District Council.

Finally, the results of the diagnosis helped identify activities that will focus the effort involved in developing the strategic plan for treating and prevention of corruption in Telenesti District Council.

The results of diagnosis show the existence of multiple possibilities that create optimal conditions for corruption of public officers in the majority of activity areas of the District Council, due to system imperfections and errors.

Identification of vulnerabilities facilitates identification of adequate solutions to prevent possible acts of corruption, to eliminate cases that can generate or favour its occurrence.

3. STRATEGIC PLAN

3.1 Vision

The Strategic vision for treatment and prevention of corruption risks for the next 3 years is as follows:

TELENESTI DISTRICT COUNCIL BY MEANS OF LEGAL INSTRUMENTS AND PROFESSIONAL SPECIALISTS ENSURES A TRANSPARENT PROVISION OF PUBLIC SERVICES AND EFFICIENTLY ENHANCES RESOURCES FOR THE ULTIMATE BENEFIT AND INTEREST OF THE COMMUNITY.

The vision reflects the image of service provision by the departments of the District Council and represents the final point in changing the current situation and in problem solving, representing a synthesis of all activities identified as being vulnerable to corruption.

Strategic vision is based on sectoral outcomes to be accomplished, and namely:

- in *public procurement* – conducting public procurement by contracting authorities in legal, transparent and professional way for the ultimate benefit of the community.
- in *planning and execution of construction works* – ensuring transparency in the process of evaluation of resources allocated for repair and construction works.
- in *financial management* – reducing the influence traffic, adequate use of public money, higher appreciation of proposals made by specialists that will ensure the increase of public confidence in district public administration.
- in *social aid provision* – transforming of social assistance from a supporter of vulnerable layers of population into opportunity provider.

3.2 Principles

Implementation of the Plan will be based on a set of principles which will guide the behaviour, attitudes, rights and way of service duty fulfilment by persons responsible for implementation. These principles are:

The Principle of transparency – implementation of the Plan will be permanently oriented towards maximizing the ways and possibilities of mutual information of policy makers and community members in order to ensure clarity and comprehension of the ongoing process.

The Principle of competence – the implementation of the plan will involve certain individuals who possess the required knowledge and skills, and who are entitled to exercise these powers and are responsible for their actions.

The Principle of responsibility - involves the value provided by action implementers committing to achieve full accountability for any consequences that may arise.

The Principle of cooperation with civil society and local stakeholders - during the implementation of the Plan, public authorities will collaborate openly, accurately and efficiently at maximum extent with civil society and local stakeholders.

The Principle of supremacy of public interest – according to this principle the rule of law, integrity, impartiality and efficiency of public authority, public institutions and other entities are guided by predominance of public interest.

The Principle of non-discrimination – the implementation of the Plan will ensure the involvement of all community groups in the process of development and implementation of projects, including vulnerable groups.

3.3 Strategic Objectives

Achieving the Strategic vision will be ensured by attaining sectoral outcomes identified as the most vulnerable by the Diagnosis. For each of four domains of intervention the activities of stakeholders will focus achieving of the following **Strategic objectives**:

1. **Ensuring the efficient use of public funds in public procurement**

2. Reducing vulnerability to corruption during construction works
3. Budget planning and execution in transparent and efficient manner
4. Improving the quality of life by providing efficient and professional social services to socially vulnerable people of the community.

Effective implementation of Strategic objectives is ensured by the set of activities, actions and projects, structured by **Operational objectives**. Based on general Strategic objectives, the Operational objectives are:

Strategic objective	Operational objectives
Ensuring the efficient use of public funds in public procurement	<ul style="list-style-type: none"> ▪ Ensuring transparency in the process of public procurement at the local level ▪ Increasing the level of training and legal culture ▪ Strengthening of the evaluation and control mechanisms for public procurement
Reducing vulnerability to corruption during performing of construction works	<ul style="list-style-type: none"> ▪ Ensuring transparency in planning and management of construction works ▪ Increasing the quality of planning and management process for construction works ▪ Ensuring efficiency in the planning and management of construction works ▪
Budget planning and execution in transparent and efficient way	<ul style="list-style-type: none"> ▪ Ensuring transparency of the use of public money ▪ Implementation of performance in financial management
Improving the quality of life by providing efficient and professional social services to socially vulnerable people of the community	<ul style="list-style-type: none"> ▪ Increasing transparency in the process of providing social aid to beneficiaries ▪ Strengthening the evaluation and monitoring framework in the domain of social aid ▪ Improving the quality of social services rendered at the local level

3.4 Strategic Approaches

Implementing of the strategic Plan of treatment and prevention of corruption risks will be based on the following strategic approaches:

Strategic approach	Description
Diversification and application of reward system	<ul style="list-style-type: none"> • Making a priority of using employee moral boosting (trainings, trips to conferences, advertisements, public recognition of achievements); • Rewarding of certain actions which are important in the efforts of reducing corruption; • Promotion based on performance and results achieved.
Application of penalties	<ul style="list-style-type: none"> • Tightening penalties for corrupt behavior; • Using penalties in order to annihilate the culture of impunity (uncontrolled discretion); • Application of diverse penalties as follows: transfer, negative publicity, deprivation of some of privileges related to trips or participation in other events).
Increase of transparency	<ul style="list-style-type: none"> • Improvement of internal audit system through inspections, unannounced control and evaluation of vulnerable areas; • Capacity building in being informed wherein information is received and revealed attempts of corruption are encouraged; • Collection of information from citizens, companies, mass-media.
Raising the moral cost of	<ul style="list-style-type: none"> • Personal example, education and training;

Strategic approach	Description
corruption	<ul style="list-style-type: none">• Development of the Code of ethics and monitoring compliance with it;• Implementation of some changes in the culture of organisation (customs, values and promoted principles).

4. ACTION PLAN

Strategic Objective 1. Telenesti District Council with professionalism and integrity ensures efficient use of public money in public procurement

Activities/ Actions	Timeframe	Estimated cost, MDL:	Responsible	Performance indicators
Specific objective 1. Ensuring transparency in public procurement at the local level				
1. Establishment and maintenance of a general data base on public procurement (planned, performed, cancelled, postponed PP, etc.).	2013-2015	20000	Specialist responsible for the activity	Operating data base, Nr. of planned, performed, cancelled, and postponed public procurement.
2. Mandatory publication of information regarding all public procurements on the website of Telenesti District Council	2013-2015	40000	Site administrator Public Relations specialist	Number of page views Number of visits Number of published announcements
3. Publication of announcements regarding public procurement in local and regional media	2013-2015	20000	Public Relations specialist; Public procurement specialist	Number of newspapers Number of published announcements Number of informative materials
4. Development of information portal and design of e-procurement system Telenesti	2014-2015	50000	Specialist responsible for the activity	Number of page views Designed system
5. Creating conditions for placement of Specifications on the website and an online payment facility to purchase these documents	2014	20000	Head of the Directorate	Operating system Number of Specifications placed on the web site
6. Updating corruption risk analysis regarding the activities of the District Council	Annually	-	District Deputy	Report on corruption risks

Specific objective 2. Increasing the level of training and legal culture					
1. Developing of explanatory instruction on organisation and execution of the public procurement procedure that reflects in detail, by stages and steps, the process of making public procurement	2013	12000	Head of the Procurement Directorate	Detailed and explicit explanations regarding the method of announcement dissemination, criteria for selecting companies, negotiating contracts on single source, drawing up minutes, etc.	
2. Training public officials on the application of explanatory instruction on organisation and execution of the public procurement procedure and their annual certification	2013-2015	-	District Deputy	Certified officials who know in detail the procedure of public procurement	
3. Development and approval of the Code of Ethics on organizing and conducting public procurement taking into account international standards such as OECD Code of conduct for procurement practitioners ¹⁸⁴	2013	5000	District Deputy	Regulation by the Code of the conflict of interest, influence peddling, providing confidential information etc.	
4. Organisation of training seminars on different topics including: - Public procurement - Estimation of the volume of procurement - Anti-corruption legislation - Influence peddling, conflicts of interest, declarations of impartiality - International experience, etc.	Semi-annually	50000	Head of the Directorate	Number of seminars Number of participants Reduced number of cases of corruption	
5. Participation in trainings and seminars organized by different institutions targeting the public procurement process	Semi-annually	-	Human resources manager	Number of participants Number of trainings	
6. Support of and cooperation with the civil society initiatives to prevent and treat corruption	2013-2015	30000	Vice-chairperson of the district	Number of supported initiatives % of reduction of the number of cases of corruption	
Specific objective 3. Strengthening the evaluation and control mechanism regarding public procurement					
1. Establishment of public Committees on participatory monitoring of public procurement	2013	10000	Head of the Directorate	Number of members in Committees, including civil society representatives	

¹⁸⁴ <http://www.oecd.org/governance/procurement/toolbox/codeofconductforprocurementpractitioners.htm>.

2. Ensure avoidance of the conflict of interest and integrity of specialists involved in conducting public procurement	2013-2015	20000	Committees conducting public tenders	Number of reports regarding biased decisions of Tender Commissions, preliminary agreements of bidders, conflict of interest etc.
3. Creation of Internal Audit Service	2013-2014	20000	Specialist responsible for the activity	Created Internal Audit Service
4. Monitoring the implementation of recommendations given by internal audit missions	2013-2015	-	Specialists mentioned in audit reports	Number of fulfilled recommendations
5. Conducting permanent quality control of purchased goods	2013-2015	-	Committees conducting public tenders	Number of monitoring reports
6. Quarterly evaluation of conducted public procurement and submission of relevant reports	2013-2015	-	Procurement specialist	Number of evaluation reports
7. Monitoring the observance of legality in the process of public procurement	2013-2015	-	Committees conducting public tenders	Number of monitoring reports

Strategic Objective 2. Reducing vulnerability to corruption in the planning and performing of construction works

Activities/ Actions	Timeframe	Estimated cost, MDL:	Responsible	Performance indicators
Specific objective 1. Ensuring transparency in the process of planning and management of construction works				
1. Publication of information on planning and management of construction works on DC website, information boards, in local and regional media	2013-2015	30000	Web-page administrator, Public Relations specialist	Number of web-page views Number of articles on the information board Number of articles published in mass-media
2. Development of multi-annual investment plans for construction works, repair works, purchase of equipment for public institutions	2013-2014	20000	Head of the Directorate	Approved multi-annual plan
3. Developing and submitting proposals to improve the methodology and procedures for examination of applications for financing of construction works, repair works, purchase of equipment including taking into account the recommendations by the Global Infrastructure Anti Corruption Centre (GIACC) ¹⁸⁵	2013-2015	10000	Head of the Directorate	Number of proposals regarding improvement of procedures Level of knowledge on procedures
Specific objective 2. Ensuring quality in the process of planning and management of construction works				
1. Conducting activities on information and explanation of the process and methodology of planning and management of construction works	Quarterly	20000	Head of the Department	Number of meetings for information of persons involved in the process Number of participants
2. Continuous training of staff engaged in planning and management of construction works	2013-2015		Specialist responsible for staff policies	Number of trained specialists Number of courses Number of courses/specialist
3. Contract based recruitment of experts in the domain in planning and management of construction works	2013-2015		Senior specialist of the department	Number of recruited qualified specialists
4. Monitoring the observance of legality in the process of construction works	2013-2014	20000	Special Committee on monitoring and evaluation	Planned works; Executed works; Postponed works Cancelled works

¹⁸⁵ http://www.giaccentre.org/project_anti_corruption_system_home.php.

Activities/ Actions	Timeframe	Estimated cost, MDL:	Responsible	Performance indicators
5. Establishment of a Committee with control powers	2013	-	Special Committee on monitoring and evaluation	Assigned Committee
6. Internal regulation on methods of penalisation and stimulation of activity in the domain	2013	-	Special Committee on monitoring and evaluation	Internal regulations on methods of penalisation and stimulation
7. Monitoring of contracting procedures for works	Permanently	-	Special Committee on monitoring and evaluation	Reduction of the number of cases of contracting procedures violation
8. Monitoring the schedule of works execution	2013-2015	20000	Special Committee on monitoring and evaluation	Number of violations Works executed in conformity with the schedule
Specific objective 3. Ensuring efficiency in the process of planning and performing of construction works				
1. Supervising the execution of works without deviations from the project document	2013-2015	20000	Senior specialists	Number of visits Number of reports
2. Supervising the use of materials of guaranteed quality and real price	2013-2014	20000	Senior specialists	Number of visits Number of reports
3. Building professional capacities of the specialists in the domain	2013-2015	20000	Head of the Directorate	Number of specialists who participated in training and advanced training sessions
4. Annual evaluation of efficiency in the process of planning and execution of construction works	Annually	-	District Deputy	Report on the efficiency of activity of the bodies responsible for construction works

Strategic objective 3. Budget planning and execution in a transparent, equitable and efficient way

Activities/ Actions	Timeframe	Estimated cost, MDL:	Responsible	Performance indicators
Specific objective 1. Ensuring transparency in the process of public money use				
1. Conducting financial management by means of informational system, in particular the collection of fees and taxes in conformity with an updated taxation base	2013-2015	20000	Specialist responsible for the activity	Updated informational system Share in % of digital information
2. Placing on the District Council information portal of information regarding	2013-2015	20000	Specialist responsible for the activity	Number of informative materials placed
<ul style="list-style-type: none"> • Planning, approval and execution of the annual and multi-annual budget • Involving citizens in budget planning through 		-		Number of web-page views Number of articles on the information

Activities/ Actions	Timeframe	Estimated cost, MDL:	Responsible	Performance indicators
consultations <ul style="list-style-type: none"> Types of taxes, payment terms, penalties, etc. 				board Number of articles published in local and regional mass-media
3. Editing of monthly newsletter and publishing the same information in brochures or on information boards	2013-2015	20000	Specialist responsible for the activity	Number of published newsletters
Specific objective 2. Implementation of performance in financial management				
1. Developing of explanatory instruction on organisation and execution of the budgetary process that reflects in detail, by stages and steps, the process of budget planning, execution and reporting	2013	20000	Working group	Explicit and detailed specification of budget planning steps, methods of revenue and expenditure estimation, ways of adjustment, etc.
2. Conducting annual information activities for counsellors and persons responsible for financial issues regarding budgetary process and management of public money	Annually	15000	Head of the Directorate	Number of organised informational meetings Number of participants
3. Development and approval of framework criteria regarding the allocation of available balance, allocation of financial resources, budget adjustment, etc.	Annually	-	Working group	Clear and objective criteria for public money management
4. Certification of activity according to quality standards ISO 9001-20000	2015	130000	Working group	Obtained quality certificate ISO
5. Develop a multi-annual budget reflecting and supporting the implementation of multi-annual sectoral plans	2013	-	Head of the Directorate	Developed draft budget
6. Application of performance indicators in budget planning and budget execution reporting	Annually	-	Specialists responsible for budget planning	Draft budgets and budget execution reports that include performance indicators
7. Supporting and promoting legislative initiatives on financial decentralization	2013-2015	-	Specialist responsible for the activity	Number of launched initiatives
8. Monitoring corruption risks in the domain of district budget planning and execution	Annually	-	Vice-chairperson of the district	% of reduction of corruption risks

Strategic objective 4. Improving the quality of life by providing efficient and professional social services to socially vulnerable groups of the community

Activities/ Actions	Timeframe	Estimated cost, MDL:	Responsible	Performance indicators
Specific objective 1. Increasing transparency in the process of providing social aid to beneficiaries				
1. Permanent updating of information on information boards	2013-2015	30000	Specialist of the Department of social assistance	Number of updated informative materials
2. Placing of information regarding social aid granting on DC website and information boards, in local and regional media	2013-2015	-	Web-page administrator, Public Relations specialist	Number of page views Number of announcements placed Number of articles in local and regional mass-media
3. Organisation of informative meetings with potential beneficiaries	2013-2015	10000	Head of the Department	Number of meetings Number of participants
4. Development, publication and dissemination of promotional materials regarding stages, modality and procedure for obtaining social aid	2013 - 2015	15000	Specialist of the Department of social assistance	Number of printed booklets Number of distributed booklets Number of meetings held Number of participants
Specific objective 2. Strengthening the evaluation and monitoring framework in the domain of social aid				
1. Developing of internal explanatory instruction on organisation and execution of the process of monitoring and evaluation of social aid granting	2013-2015	20000	Working group	Developed explanatory instruction
2. Monitoring of social aid granting by public committees of the community	2013-2014	20000	Specialist of the Department of social assistance	Number of visits and monitoring reports; Number of claimed employers who employ unofficially; Number of claimed social aid beneficiaries employed unofficially; Number of claimed social aid beneficiaries working abroad Number of general meetings held in villages; Number of participants informed; Number of evaluated beneficiaries
3. Developing of the database of social aid beneficiaries	2013 - 2015	200000	Specialist of the Department of social	Established working group; Trained specialists; Developed

Activities/ Actions	Timeframe	Estimated cost, MDL:	Responsible	Performance indicators
			assistance	common database Black list of beneficiaries developed
Specific objective 3. Increasing the quality of service rendering				
1. Continuous training of staff in the domains: <ul style="list-style-type: none"> • social assistance • anticorruption 	2013-2015	20000	Senior specialists	Number of specialists who participated in training and advanced training sessions
2. Ensuring cooperation with responsible institutions in the domain with the view to identify beneficiaries acting in bad faith	Permanently	15000	Head of the Department	Number of submitted inquiries Number of identified beneficiaries acting in bad faith Number of penalized beneficiaries
3. Ensuring participation in programs on experience exchange and learning of best practices	2013-2015	20000	Head of the Department	Number of programmes Number of beneficiaries
4. Certification of activity according to quality standards ISO 9001-20000	2013-2015	40000	Head of the Department	Obtained quality certificate

5. IMPLEMENTATION, MONITORING AND EVALUATION

5.1 Institutional Framework

Implementation and monitoring of the Strategic Plan on treatment and prevention of corruption risks greatly depend on participation of all stakeholders and presence of efforts consolidation. Different actors will be involved in the implementation of the Strategic Plan and each of them will have a personal goal and will play the role of implementer of planned actions. These are the actors concerned:

6. Local Public Administration (District Council) and subordinate institutions
7. Civil society
8. Economic operators
9. District residents
10. External entities (National Anti-Corruption Centre, Government, International organisations).

Implementation and monitoring of the Plan can be conventionally divided into 3 stages:

Adoption of the Strategic Plan. At this stage, the Strategic Plan will be debated within the District Council. After the debates and tailored inclusion of proposals and recommendations, the Strategic Plan will be submitted to the District Council for approval. After the approval of the Plan, the District Council will coordinate the development of quarterly and annual action plans on the implementation of the Strategic Plan in line with the Strategic Action Plan.

Implementation of the Strategic Plan shall be performed by means of actions, activities, measures and certain projects of implementation. The objectives, the activities plan, the deployment period (duration), project responsible parties and partners shall be specified for every action or project. Additionally, the financial sources for the projects to be implemented will be identified.

Monitoring of the Strategic Plan. During the period of implementation the persons responsible for the implementation of the Action Plan shall report on the progress of actions, projects and achievement of specific objectives of the District Council.

Institutional Framework. The entity and person, responsible for implementation of the present Plan shall be appointed by the Decision of the District Council – it is recommended to delegate the functions on coordination, control and implementation of the Plan to one of the vice-chairpersons of the district. Besides the responsible entity/person, the institutional framework of the present Plan implementation and monitoring shall also include:

1. **Special Committee of the District Council** on monitoring the process of implementation of the Strategic Plan consisting of members, designated by Telenesti District Council.
2. **Persons responsible for actions/projects implementation.**

Monitoring of the implementation of projects, actions and strategies shall be performed by means of **Performance Indicators**, stipulated by the Action Plan. In case there are identified some deviations from the Action Plan, correction or adjustment measures of the Plan will be initiated.

The District Council will evaluate and update the Strategic Plan annually. In case of new necessities or new projects implementation, the Action Plan will be modified. . In this case, the action plan will be corrected and adjusted to changes.

The intermediate and final reports on actions and projects are major monitoring and assessment tools. The persons in charge with the implementation shall quarterly submit intermediate reports on the implementation of projects and/or actions of the Working Group. At the end of the project implementation period, the persons in charge with the monitoring shall submit final reports. The implementation of projects funded from external sources will be subject of a monitoring and assessment performed by competent institutions, in line with the funding agreements. Special Committee conducted by the person responsible for the Plan implementation shall report to the District Council about the progress in the realization of the Plan.

Monitoring and evaluation procedure will apply provisions of the Methodology for monitoring and evaluation of implementation of Annex 2 of the National Anti-corruption Strategy for 2011-2015, adopted by the Parliament Decision nr. 154 as of 27.07.2011

5.2 Risks and Barriers for the Implementation

The efficient accomplishment of the actions laid down in the Strategic Plan might be obstructed by certain risks and barriers related to implementation. The risks and barriers connected to the implementation of the Strategic Plan could be of two types: (i) internal and (ii) external.

Field	Description
Internal risks	
Management of Plan Implementation	<ul style="list-style-type: none"> • Lack of experience in the domain of implementation management • Conflict of interests regarding Strategic Plan implementation • Domination of certain political interests • Lack of experience in development, promotion and management of projects on development • Formal execution of projects activities • Limited financial resources • Lack of capacities to attract investments • Incorrect estimation of time and possibilities • Unrealistic expectations on benefits • Poor communication in implementing the Plan.
Partnership and cooperation	<ul style="list-style-type: none"> • Lack of cooperation between local public authorities, business sector and the society • Indifference and failure to involve population in supporting of activities • Insufficient implication of civil society structures.

Field	Description
External risks	
Political and legal framework	<ul style="list-style-type: none"> ▪ Political instability ▪ Political influence ▪ Contradictions and instability of the current legislation ▪ Modification of the institutional framework.
Relations with external partners	<ul style="list-style-type: none"> ▪ Absence of cooperation with local and central public authorities ▪ Reduced assistance from the programs of external financing ▪ Reduced financial support and transfers from the state budget.

6. ANNEXES

Annex 1. Degree of vulnerability to corruption

PUBLIC ACTIVITIES OR SERVICIES		Internal Envir.	External Envir.
DEGREE OF VULNERABILITY TO CORRUPTION			
1	Public property accounting	4.1	3.5
2	Commissioning the public property of the district into administration, renting, concession or leasing	4.3	4.0
3	Sale, privatization, concession, rent or lease of private property of the district	3.9	3.8
4	Capital and routine repairs of the infrastructure	4.1	3.3
5	Maintenance, repairs, development and modernization of economic facilities	3.6	3.3
6	Maintenance, repairs, development and modernization of social facilities	3.8	3.6
7	Maintenance, repairs, development and modernization of district's community and leisure facilities	4.2	4.0
8	Management of cultural institutions	3.7	3.6
9	Management of tourism institutions	3.5	3.8
10	Management of sport institutions	3.5	3.7
11	Management of educational activities	3.8	3.3
12	Management of cultural activities	3.8	3.0
13	Management of sport activities	3.8	3.7
14	Management of municipal enterprises	1.6	2.5
15	Establishing a general framework for planning at the district level	2.4	2.1
16	Protection of forests of district importance	3.4	4.3
17	Information, assistance and advice on various aspects of health and social protection	2.8	2.6
18	Establishing and providing social benefits (allowances, compensation, etc.).	2.9	3.2
19	Information and advice on preparation of documents necessary to establish benefits	2.5	2.5
20	Temporary placement including: shelter, food, care, occupational therapy	2.0	2.5
21	Health rehabilitation (orthopaedic and prosthetics, sanatorium-and-spa services)	2.6	4.0
22	Quality service monitoring	2.5	2.9
23	Granting of financial and humanitarian social aid	3.4	3.6
24	Develop and manage community social services social categories - vulnerable	2.0	2.7
25	Drafting and approval of the use of labor in the territory	2.0	3.4
26	Sanitary - hygienic expertise of development projects	1.6	3.4
27	Informational assistance on providing farmers with seeds, seedlings, technical, fuels, fertilizers and phytosanitary products	2.2	2.3
28	Methodological and technological support of producers and processors on agricultural production, including individual rural owners of land	2.0	3.0
29	Informational assistance of rural owners on how to use the financial resources for subsidizing farmers	2.2	3.0
30	Sanitary authorisation of means of production, production equipment, processing technologies	2.6	3.8
31	Informing on attestation, authorisation, licensing and certification of food and	2.5	3.7

PUBLIC ACTIVITIES OR SERVICES		Internal Envir.	External Envir.
DEGREE OF VULNERABILITY TO CORRUPTION			
	agriculture products		
32	Examination and submission for approval of schemes, projects and other documentation related to territorial organisation	2.7	3.6
33	Organisation and development, under those regulations, tenders and competitions on the sale and purchase of land	3.1	3.4
34	Granting into rent, use or property of land lots	2.6	3.5
35	Preparation of documents concerning land use change and their submission to local council for approval	2.6	3.3
36	Drawing up specifications	4.0	5.2
37	Tender launching	4.8	5.3
38	Selection of tender winners	5.2	5.2
39	Conclusion of contracts	4.7	5.4
40	Following up of contracts on public procurement	4.0	4.0
41	Reporting on public procurement	4.5	4.7
42	Organisation of public services at district level	2.7	2.4
43	Concession of management, leasing, lease or rental of the public services on district interest	2.6	2.6
44	Approval rates for paid services	2.3	3.0
45	Develop and implement long-distance pipeline construction projects (including medium pressure pipelines)	2.6	3.0
46	Develop and implement projects on construction of thermal power objectives with local destination	2.0	3.1
47	Organisation of road passenger transport	2.4	4.0
48	Management of bus stations and parking lots of district importance	2.6	3.6
49	Maintenance and management of public objects of district importance	2.8	3.2
50	Establishment, reorganisation and liquidation of social and cultural institutions	1.3	2.1
51	Budget planning and execution	4.8	4.9
52	Support and stimulation of initiatives on economic development of the administrative and territorial unit	4.4	4.3
53	Coordination of foreign investments	4.7	5.0
54	Staff employment	3.7	5.0
55	Staff promotion	3.3	3.9
56	Information regarding conducting training courses	2.2	3.0
57	Participation at trainings, professional development, including abroad	3.2	3.1
58	Planning and management of construction works	4.1	3.5
59	Construction, management and repairs of roads of district importance	2.0	3.6
60	Construction, management and repairs of road infrastructure	1.8	3.3

Annex 2. Degree of impact of vulnerability to corruption

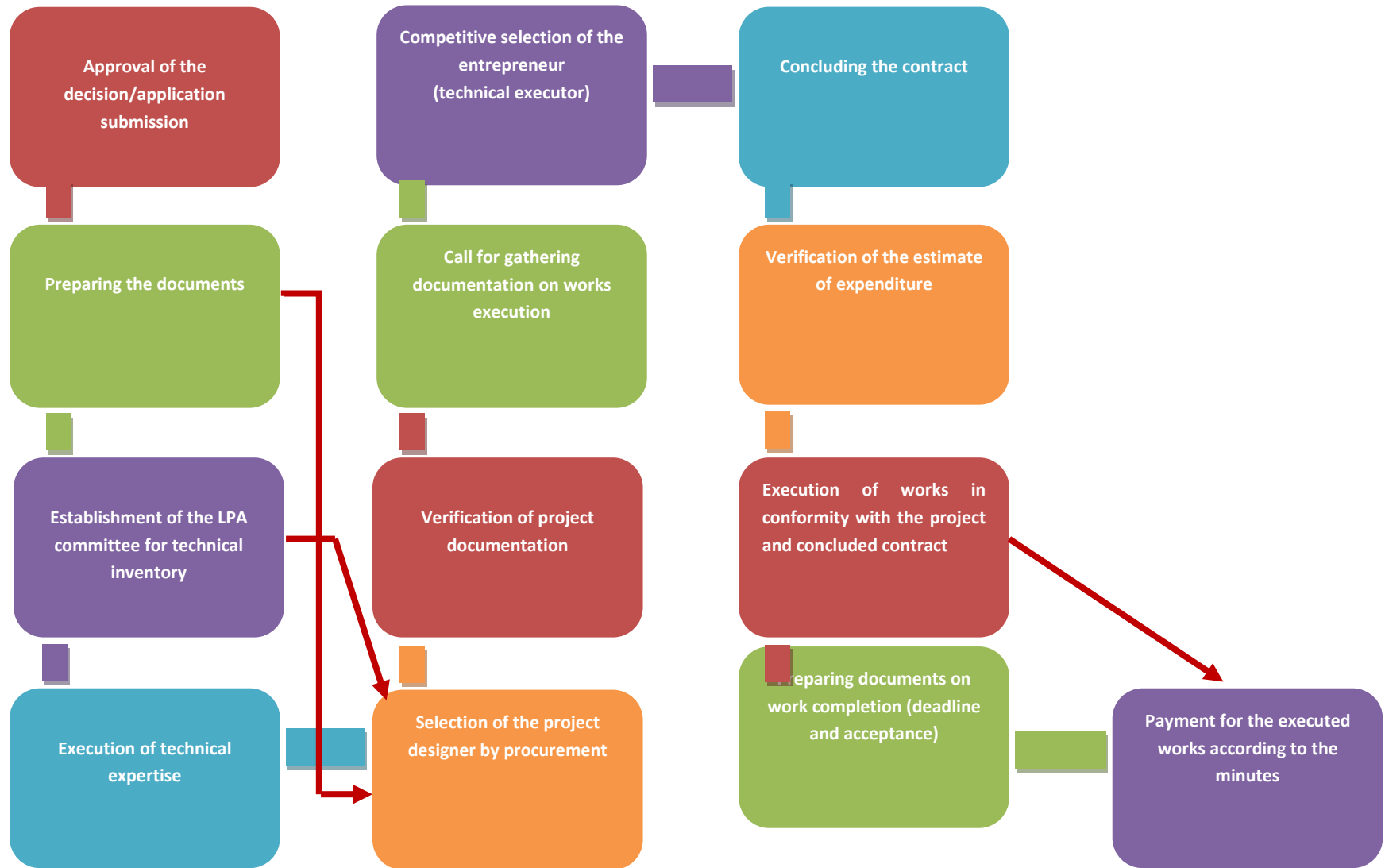
PUBLIC ACTIVITIES OR SERVICES		Internal Envir.	External Envir.
Level of corruption impact			
1	Public property accounting	3.2	3.7
2	Commissioning the public property of the district into administration, renting, concession or leasing	3.3	3.7
3	Sale, privatization, concession, rent or lease of private property of the district	3.9	3.9
4	Capital and current repairs of existing infrastructure	3.2	3.7
5	Maintenance, repairs, development and modernization of economic facilities	2.9	3.8
6	Maintenance, repairs, development and modernization of social facilities	3.1	3.6
7	Maintenance, repairs, development and modernization of district's community and leisure facilities	3.1	4.0
8	Management of cultural institutions	2.9	3.6
9	Management of tourism institutions	3.2	3.6
10	Management of sport institutions	3.2	3.8
11	Management of educational activities	3.5	3.6
12	Management of cultural activities	3.3	3.4
13	Management of sport activities	3.1	3.8
14	Management of municipal enterprises of district importance, mentioned	2.7	3.8
15	Establishing of a general framework for land improvement at the district level	3.4	3.7
16	Protection of forests of district importance	3.8	3.8
17	Information, assistance and counselling on various aspects of social assistance and protection	2.8	3.6
18	Awarding and providing social benefits (allowances, compensation, etc.)	3.5	3.7
19	Providing information and consultancy in preparation of documents necessary for awarding social benefits	3.3	3.8
20	Temporary placement including: shelter, food, care, occupational therapy		
21	Health rehabilitation (orthopaedic and prosthetics, sanatorium-and-spa services)	3.0	4.1
22	Quality service monitoring		
23	Granting of financial and humanitarian social aid	3.1	3.9
24	Develop and manage community social services social categories - vulnerable	2.6	3.1
25	Drafting and approval of the use of labor in the territory	2.6	2.9
26	Sanitary - hygienic expertise of development projects	2.5	3.0
27	Informational assistance on providing farmers with seeds, seedlings, technical, fuels, fertilizers and phytosanitary products	2.5	2.5
28	Methodological and technological support of producers and processors on agricultural production, including individual rural owners of land	2.7	2.9
29	Informational assistance of rural owners on how to use the financial resources for subsidizing farmers	2.3	2.7
30	Sanitary authorisation of means of production, production equipment, processing technologies	3.0	2.9
31	Informing on attestation, authorisation, licensing and certification of food and	2.7	2.9

	agriculture products		
32	Examination and submission for approval of schemes, projects and other documentation related to territorial organisation	2.6	3.1
33	Organisation and development, under those regulations, tenders and competitions on the sale and purchase of land	2.6	3.3
34	Leasing out land, transferring land into possession or for use	2.8	3.0
35	Preparation of documents concerning land use change and their submission to local council for approval	3.0	3.2
36	Drawing up of specifications	3.4	4.1
37	Tender launching	3.8	3.5
38	Selection of tender winners	3.8	3.8
39	Conclusion of contracts	3.5	3.9
40	Following up of contracts on public procurement	3.7	4.1
41	Reporting	3.5	4.1
42	Organisation of public services at district level		
43	Granting into management, concession, rent or location of public services of district importance	2.8	3.5
44	Approval of tariffs for paid services	2.7	3.7
45	Develop and implement long-distance pipeline construction projects (including medium pressure pipelines)	2.8	3.4
46	Develop and implement projects on construction of thermal power objectives with local destination	3.1	3.4
47	Organisation of road passenger transport	3.1	3.2
48	Management of bus stations and parking lots of district importance	3.2	3.5
49	Maintenance and management of public facilities of district importance	2.9	3.3
50	Establishment, reorganisation and liquidation of social and cultural institutions	2.9	3.3
51	Budget planning and execution	3.9	3.7
52	Support and stimulation of initiatives on economic development of the administrative and territorial unit	3.7	3.4
53	Coordination of foreign investments	3.6	3.5
54	Staff employment	4.0	4.0
55	Staff promotion	3.4	3.5
56	Information regarding conducting training courses	2.5	2.9
57	Participation at trainings, professional development, including abroad	2.5	2.7
58	Planning and management of construction works	3.5	3.5
59	Construction, management and maintenance of roads of district importance	3.8	3.7
60	Construction, management and maintenance of road infrastructure	3.9	3.9

Annex 3. Public Procurement Scheme

1.	Establishment of working groups responsible for conducting public procurement
2.	Development of annual and quarterly plans for conducting public procurement
3.	Prepare invitations within the framework of public procurement procedures
4.	Development of tender documents and other applicable documents within the framework of public procurement procedures
5.	Initiation and conducting of public procurement procedures
6.	Ensuring large-scale participation of economic operators in public procurement procedures
Huge	Personnel turnover
8.	Concluding the contract on public procurement with the operator (economic operators)
Big	Degree of affiliation
10.	Vulnerability to corruption of the organisation of road transport
Vulnerab	Failure to inform the socio-vulnerable categories

Annex 4: Procedure of Construction Works Planning and Management



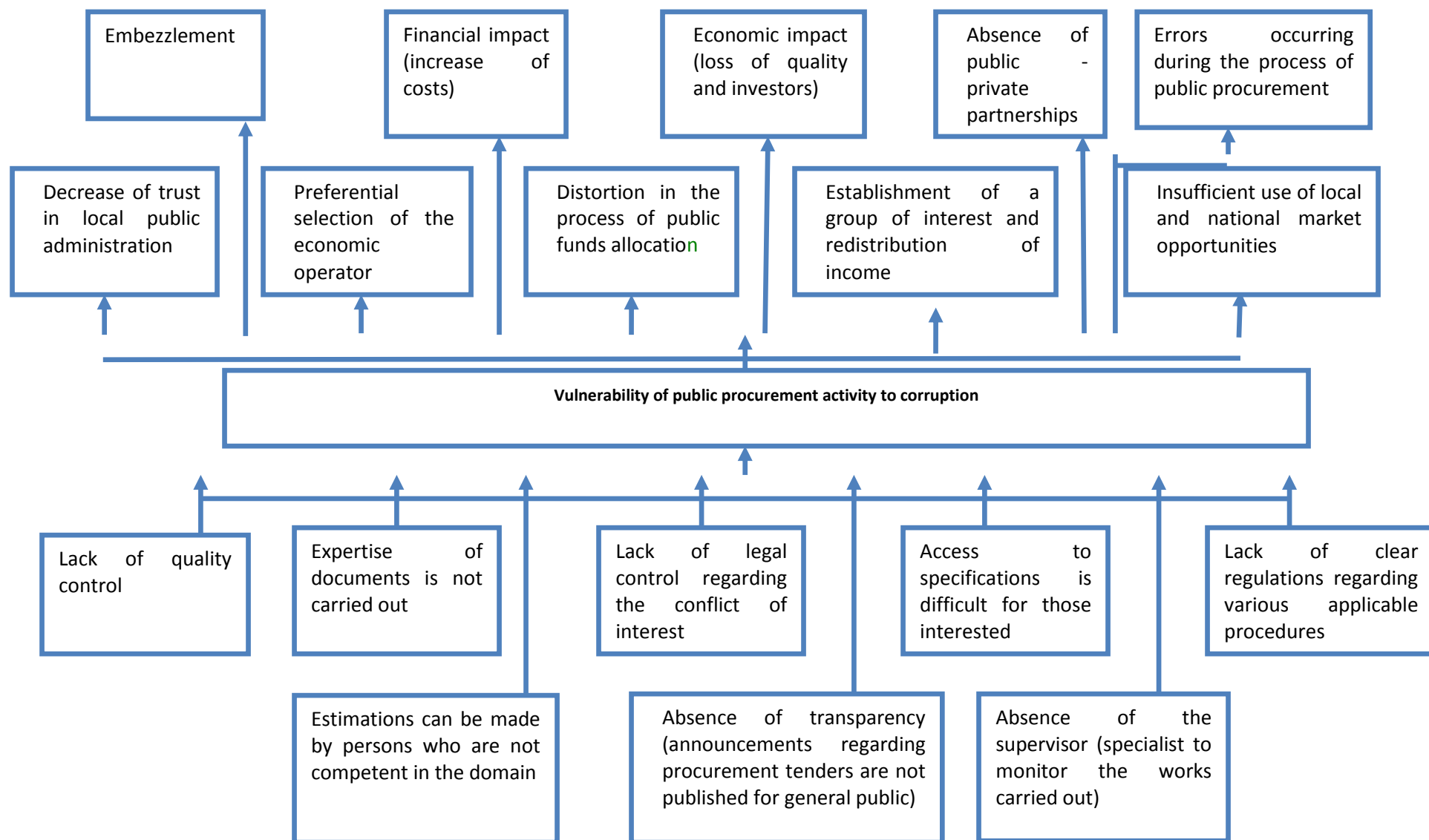
Annex 5. Scheme of Financial Management Procedure

Development	Approval	Execution	Reporting
<ul style="list-style-type: none"> • Providing information to trigger local budgetary procedures • Statement of basic principles of state policy in the field of budgetary income and expenditure for the following year(s), forecasts of norms on allocations from general state revenues to local budgets and specific aspects of calculation of transfers that are expected to be allocated to these budgets from district budgets; • Develop forecasts on fees and taxes to be collected in the following year(s) and the draft local budget, which is submitted for analysis to the district Department of Finance; • Coordination of necessary expenditures with LPA of level I • Analysis of fees and taxes forecast • Budget planning on the revenue and expenditure part • Submission of the draft budget to the Directorate of Finance • Endorsement or amendment of budget drafts. 	<ul style="list-style-type: none"> • (1) examination and approval of local budgets (budgets of villages / communes, towns / of the district and (2) examination and approval of the district budget; • Correlation of budget with the law on annual budget; • Adjustment of the draft budget in conformity with norms and requirements • Discussion of the draft budget at the specialised committee of the Council • Approval of the draft budget in first reading • Approval of the draft budget in second reading • Submission of the district budget to the Ministry of Finance for to be included in the national public budget. • Publishing of the budget in mass-media 	<ul style="list-style-type: none"> • Collection of revenues under budget classification structure; • Making expenditures within the limits of approved allocations and in conformity with established destination; • Control of the incurred expenses authenticity; • Analysis, development and promotion of applications on budget amendment. • Modification of the budget by the approval of the Council • Control of expenditures in institutions 	<ul style="list-style-type: none"> • Quarterly accumulation of relevant data, analysis of the budget execution mode and presentation of the progress report on the budget execution; • Analysis of budget execution as correlated with planned indices • Assessment of the causes of occurred deviations • Submission of the report on budget execution for the previous year at the end/beginning of the year. • Monitoring

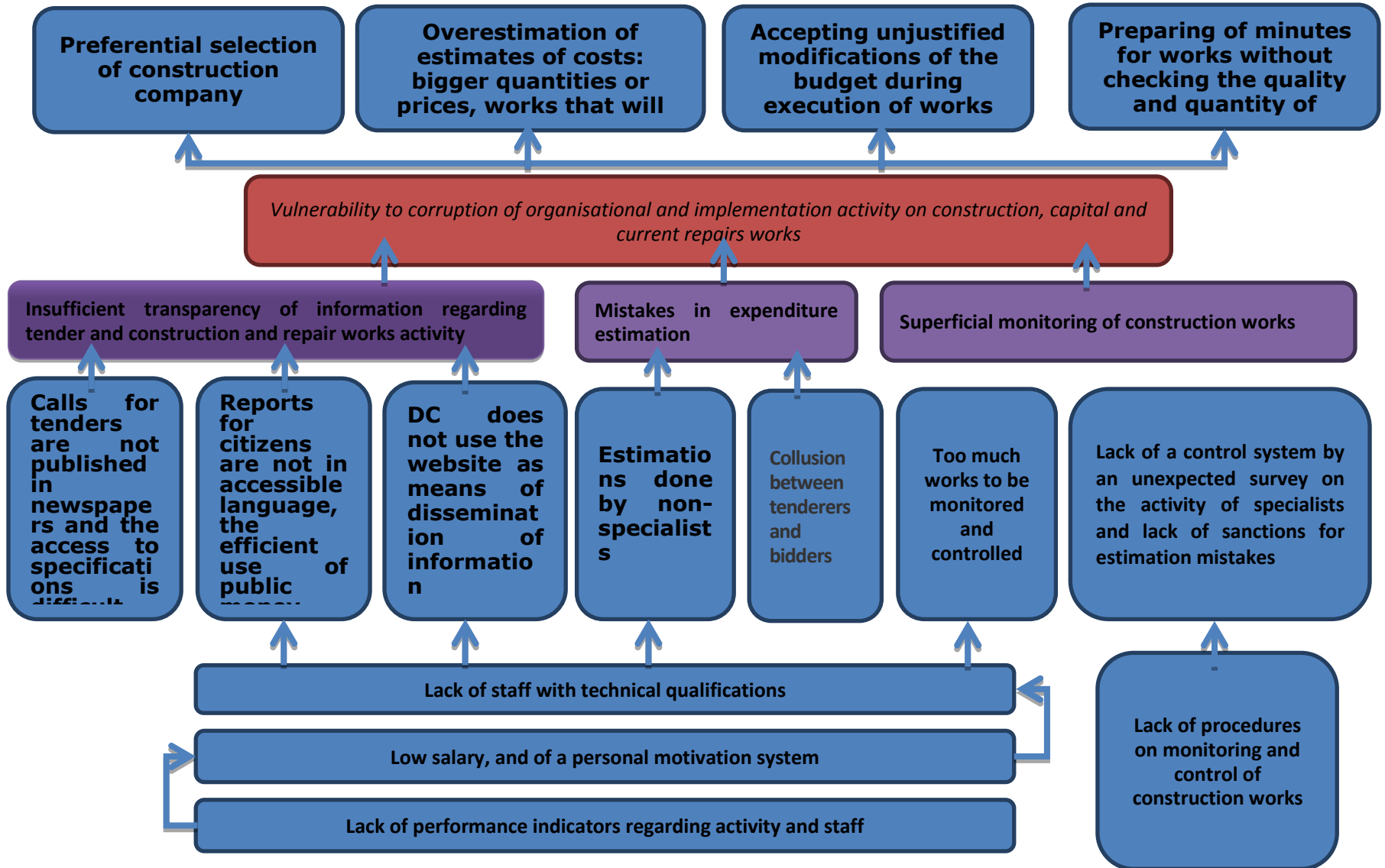
Annex 6: Social Aid Provision Scheme



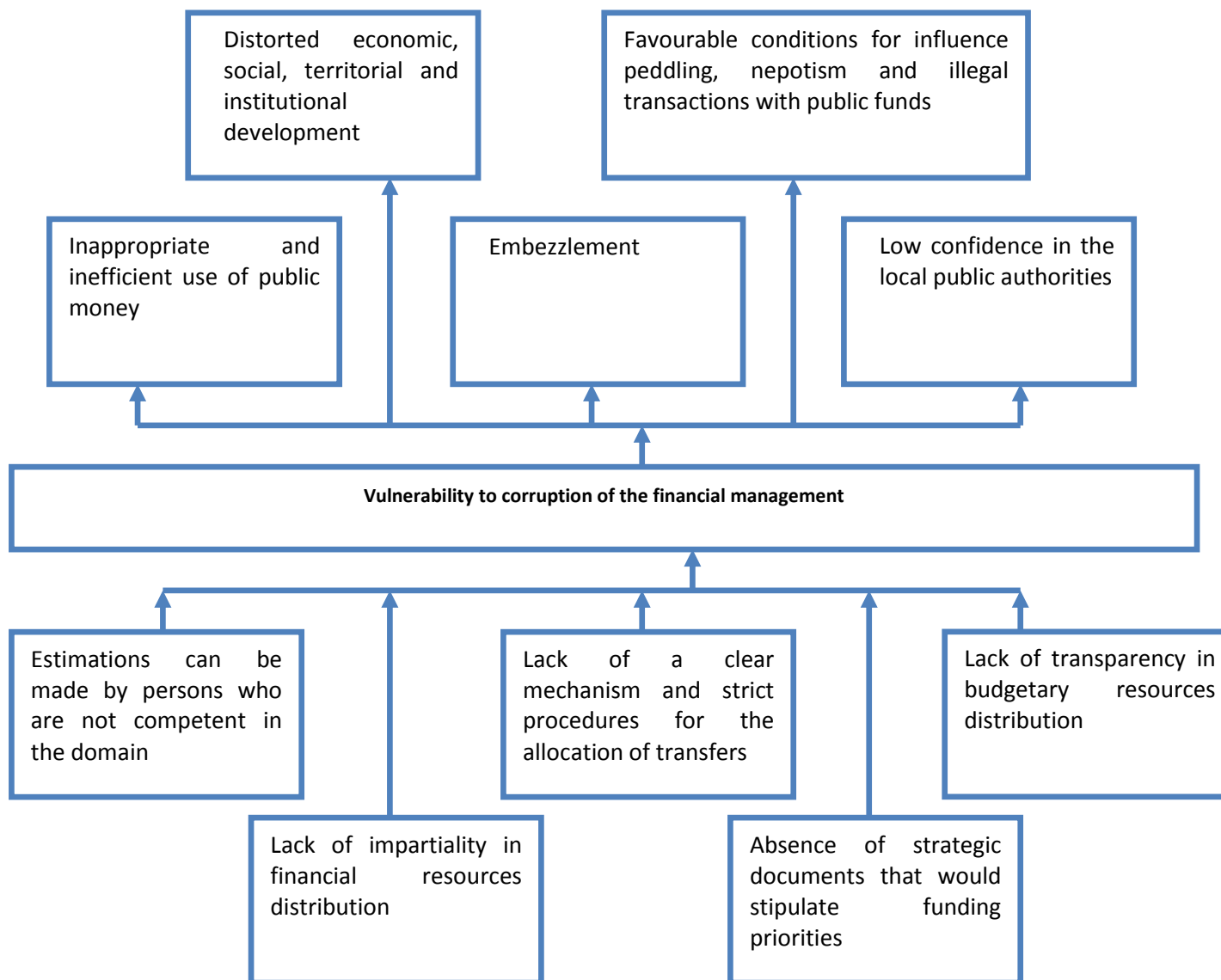
Annex 7. Problem Tree "Public Procurement"



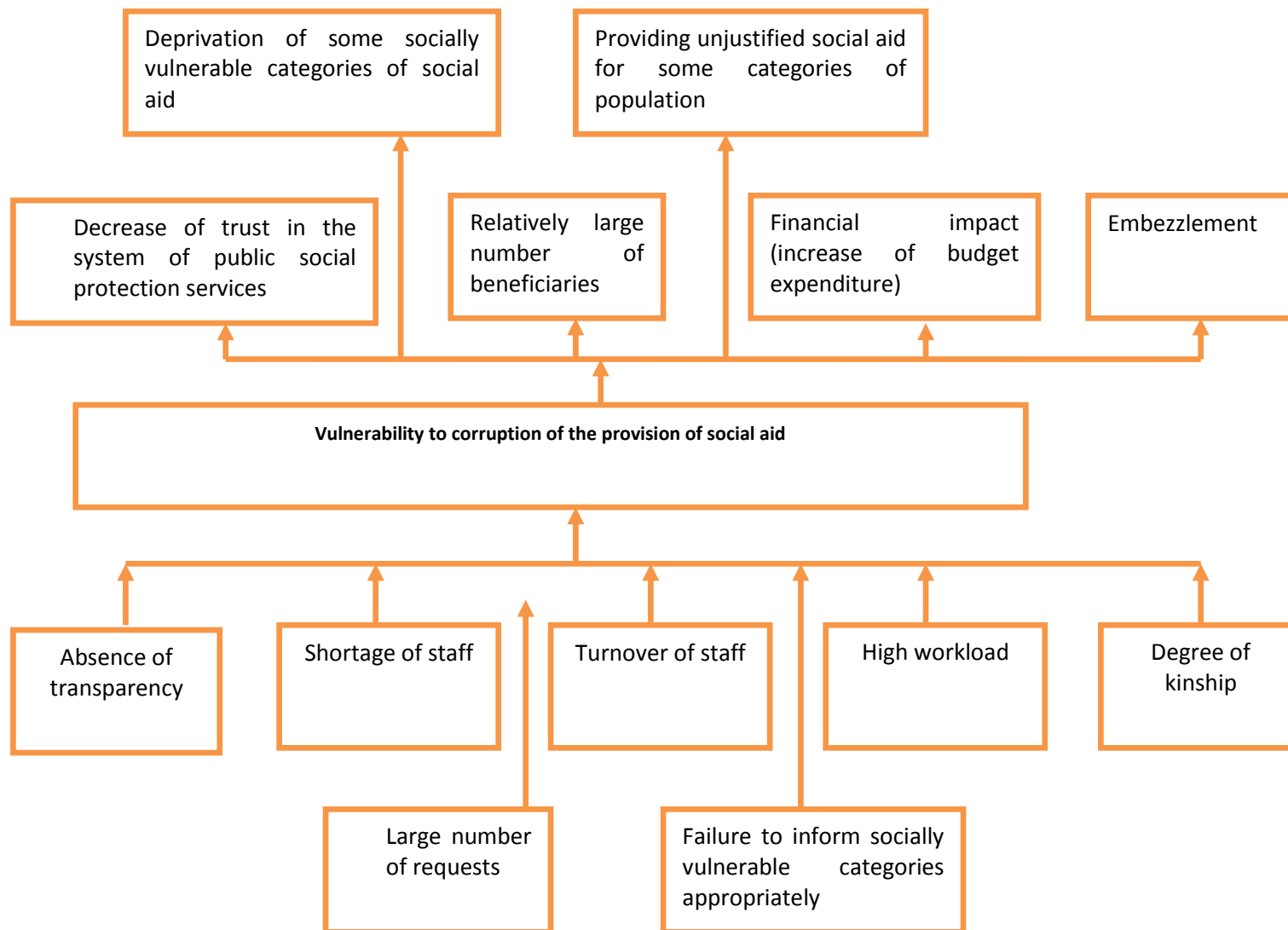
Annex 8. Problem Tree "Planning and Execution of Construction Works"



Annex 9. Problem Tree "Financial Management"



Annex 10. Problem Tree "Providing Social Aid"



7. PORTFOLIO OF PRIORITY PROJECTS

The following are some first project proposals by the Working Group of the Telenesti District Council which would – with funding from third parties/donors – support implementation of the action plan, or support achieving the overall goal of fighting corruption.

Project title: Increasing Transparency in Public Procurement

Project Idea:

Public procurement activity in Telenesti District Council was identified as vulnerable to corruption with an average vulnerability index higher than 5 points and assessed as having a significant negative impact of more than 4 points.

The District Council does not have a specialist responsible for ensuring transparency in public procurement. The project proposes creating adequate conditions and providing all technical facilities necessary for this purpose. The following activities will be carried out in the framework of the project:

ACTIVITIES/ACTIONS	2013				2014				2015			
	1	2	3	4	1	2	3	4	1	2	3	4
1.Publication of information on public procurement on the DC website	X	X	X	X	X	X	X	X	X	X	X	X
1.2. Delegation of the person responsible for preparing information		X										
1.2. Delegation of the person responsible for placing, updating, re-updating information		X										
2. Continuous training of staff in the domain of public procurement			X		X			X	X			X
2.2.Development of the training plan			X									
2.3. Delegation of the trained person			X									

RESPONSIBLE FOR THE PROJECT: *Head of the Economy Directorate*

REQUIRED RESOURCES

Experts - staff, information: *Institute for Urban Development; Technicians*

Involved staff (existing or new): *Public procurement specialist; Specialist in investment development and cooperation; Public relations specialist*

Equipment: *Laptops*

Estimated budget: 50 thousand MDL, including

Developing WEB-site -20 0000 MDL

Wi-Fi Routers -1000 MDL

Laptops - 30000 MDL

Project title: Creating a Centre of Information and Free Legal Assistance for Persons Affected by Corruption

Project Idea:

The project proposal is to create an Information Centre and provide free legal assistance for those affected by corruption. The newly created service would aim at cultivating the general public intolerance for corruption by involving the media and public officials in raising awareness of the population about human rights and providing free legal assistance to victims/witnesses of corruption. The main areas of activity of the Centre can be:

- Information about human rights and ways of exercising them free of corruption, as well as information about legislative innovations in the area;
- Increasing transparency of public authorities to discuss corruption affecting the realization of human rights;
- Providing public access to legal assistance in corruption cases affecting the of human rights.

ACTIVITIES	2013				2014				2015			
	1	2	3	4	1	2	3	4	1	2	3	4
Identification of office for the Centre	X											
Creation of the Centre		X										
Organisation of the contest for the employment of specialists		X	X									
Experts employment			X									
Technical and material equipment of the office			X	X								
Training of the Centre specialists				X								
Planning of the Centre activity				X								
Organisation and provision of assistance services					X	X	X	X	X	X	X	X

RESPONSIBLE FOR THE PROJECT: *Tudosan Oleg – Senior specialist DLPA Telenesti*

REQUIRED RESOURCES: Experts - staff, information:

Involved staff (existing or new): *Bercea Leonid - Head of the Construction Department of Telenesti District Council*

Equipment: *Advanced modern equipment: computer, multifunctional printer, accessible furniture...*

Space: *Office space lease at no charge in the business centre Telenesti*

Estimated budget: *99000 MDL, including:*

Salaries 72000 MDL;

Equipment 22000 MDL;

Other works -5000 MDL.

Project title: Developing of the Integrated Database of Construction Works

Project Idea:

The activity „Planning and execution of construction works” was identified as vulnerable to corruption with an index higher than 4,7 points. Factors that conditioned this situation are: high degree of discretion due to involvement of a small number of individuals in provision of this activity, complex procedure of accounting and monitoring of construction works, minimum transparency regarding provision of this activity, lack of standard monitoring forms. This projects creates instruments to eliminate the gaps and improve planning and management of construction works. The project includes activities on purchasing and installation of necessary computing equipment, development of the electronic Registry on recording and monitoring, training of specialists on registry operation, development of a standard model for monitoring that could later be used by other LPA.

ACTIVITIES	2013				2014				2015			
	1	2	3	4	1	2	3	4	1	2	3	4
Creation of the Project Implementation Unit	X											
Conducting the contest to select the company for the development of the electronic registry		X										
Conducting the contest to select the company to purchase from the necessary computing equipment and soft		X	X									
Purchase, installation and testing of computing equipment				X	X							
Gathering, ordering and processing of necessary information for the Registry				X	X	X						
Training of specialists to use the Registry						X	X					
Official launch of the electronic Registry							X					
Maintaining and continuous updating the information in the Registry							X	X	X	X	X	X

RESPONSIBLE FOR THE PROJECT: Head of the Directorate for Constructions

REQUIRED RESOURCES:

Experts - staff, information: expert in programming, instructor-trainer for training sessions, specialists to provide relevant information for the Registry

Involved staff (existing or new): Instructor for the initial period of the Registry's operation, responsible specialists from the Directorate

Equipment: 1 computer, soft, printer, scanner, fax, furniture

Space: Office planning for the new service

Estimated budget: 90000 MDL

4.6 Ukraine: Financial Supervision of Public Officials

Technical Paper
Country risk assessment – Ukraine

**Financial Supervision of Public Officials
("Income and Asset Declarations")**

prepared by

Tilman Hoppe, Project Long-Term Adviser
with input from Valts Kalniņš, Council of Europe Expert

December 2012

ECCU-EaP-7/2012

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1 SUMMARY

This assessment concentrates on the **financial** supervision of public officials through income and asset declarations. The assessment takes into account conflicts of interest to the extent that they are related to the finances of public officials.

Ukraine is – together with Belarus – one of the first two countries in the Eastern Partnership region introducing asset declarations in 1993. During the last 20 years, it has developed a mechanism of declarations. Its strength relies in particular on the following features:

- **All** civil servants are included;
- Declarations are to be made prior to appointment and during office **annually**;
- Declarations prior to appointment are being **verified**;
- All declarations are **accessible** under the Freedom of Information Law; those of high-level public officials are published in official gazettes;
- **Sanctions** for non-submission are being enforced;
- Declarations are a standard source of information for criminal **investigations**.

The declarations system would benefit from the following further **improvements** with regard to:

- Inclusion of all managers of state-owned or state-subsidised **companies**;
- Clear inclusion of officials upon **leaving office**;
- **Post-employment** engagements of public officials;
- Availability of distinct **descriptive** information complementing financial figures. Lowering the current reporting **threshold** of UAH 150,000 for certain expenditures;
- Publication of declarations by high-level public officials and judges on the agency's/court's **website**;
- Information on previous employments;
- Random and targeted **verifications** of declarations of public officials;
- Availability of a sanction for submitting **false** or incomplete information.

2 SCOPE OF THE ASSIGNMENT

This Paper is part of the Project's regional Activity 1.4 – “Risk Assessment: Typologies of underlying causes of corruption”. The aim of this activity is to analyse risks and causes of corruption, and to identify weaknesses in countermeasures and needs for action in integrity systems of the Eastern Partnership countries by addressing a specific sector in each country.

For Ukraine, “Income and asset declarations” has been chosen as a topic. The study analyses the system of income and asset declarations including its interfaces to other parts of the anti-corruption system. “Income and asset declarations” are closely related to conflict of interest, as private financial interests (for example, ownership in a company) can conflict with official duties. This assessment considers also the conflict of interest aspect of financial supervision. However, it does not look into the whole system of declaring and supervising **non-financial conflict of interest** in Ukraine, which would be a separate topic and would require an additional assessment of its own. It can be said though, that the current declaration system includes **almost no information** allowing for the supervision of non-financial conflict of interests (such as information on non-remunerated positions or on the identity of “close persons” as defined in Article 1 of Law 3206). In this context, obligation for reporting on conflict of interest under **international standards** should be mentioned, such as Article 8 par. 5 of the United Nations Convention against Corruption (UNCAC) and Article 14 of the Council of Europe Committee of Ministers Recommendation R (2000) 10.

This assessment is the result of the desk review of legislation by the Council of Europe experts, Tilman Hoppe and Valts Kalniņš, and in-country meetings with relevant government institutions and civil society representatives held in Kyiv on 25-27 September 2012.

3 DECLARATIONS

3.1 History

In 1993, for the first time Ukrainian law required civil servants to declare their income and assets (Article 13 of the former Law of Ukraine on Civil Service¹⁸⁶). Thereby, Ukraine is – together with Belarus – one of the first two countries in the Eastern Partnership region introducing asset declarations.¹⁸⁷ However, a practical mechanism was missing for its application. The Special Enactment of the Cabinet of Ministers and the Law on Combating Corruption of 1995 and its amendments in 1997 marked the first steps for establishing such a system. Eventually, in 1997, the Ministry of Finance endorsed a template asset declaration and the system of income and asset declarations became actually operational.

Several attempts have been undertaken in order to reform the system, such as through the Draft Law No. 4472 on Measures of the State Financial Control over Public Administration,¹⁸⁸ which Parliament never adopted, though.

¹⁸⁶ Law on Civil Service of 26 December 1993, # 3723-XII, http://nads.gov.ua/control/en/publish/article?art_id=41616&cat_id=38067.

¹⁸⁷ OECD, Asset Declarations for Public Officials – A Tool To Prevent Corruption (2011), p. 23, table 1.1, www.oecd.org/dataoecd/40/6/47489446.pdf.

¹⁸⁸ OECD, *ibid*, p. 140, footnote 2.

3.2 Legal basis

On 7 April 2011, the Parliament adopted the new **anticorruption law** “On Principles of Preventing and Combating Corruption” (No. 3206-VI). It entered into force on 1 July 2011, except for Articles 11 and 12. Article 12 “Financial control” concerns income and asset declarations and entered into force on 1 January 2012. However, according to a recent decision of the Constitutional Court of Ukraine,¹⁸⁹ no expenses had to be declared for the financial year of 2011 due to prohibition of retroactivity.

Law 3206 comprehensively regulates income and asset declarations, including the provision of a new template. Following its coming into force, and the subsequent alignment of related laws, the previous law ceased to exist.

Article 12 par. 4 of Law 3206 empowers the Cabinet of Ministers to regulate the following:

“Procedure for document storage and use of information specified in the declaration concerning their property, income, expenses, financial obligations and information provided for in paragraph three of this article [12].”

The Cabinet of Ministers passed the respective **Resolution** 16/2012 on 11 January 2012.¹⁹⁰

Article 11 par. 3 of Law 3206 empowers the President to regulate “the procedure of the special check” of candidates for public office including their financial status. The President decreed the respective **Order** 33/2012 on 25 January 2012¹⁹¹, which was amended on 18 May 2012 by Order 333/2012¹⁹².

Furthermore, there are two written **explanations** by the Ministry of Justice, one of 12 March 2012¹⁹³ on the income and asset declaration system in general and the other one of 19 July 2012¹⁹⁴ on the special checks. Their nature is non-binding, but recommendatory.

As for sanctions related to income and asset declarations (see below 3.10), they are regulated by Article 172-6 of the Code of **Administrative Offences**¹⁹⁵.

Currently, the Parliament is considering a “Draft Law on Amendments to the Law of Ukraine “On Principles of Preventing and Combating Corruption” of 5 July 2012 (No. 10718).¹⁹⁶ The amendments would clarify a few details in Article 12 of the Law and in the Template. In addition, the Ministry of Justice is working on a **draft law** aimed at further enhancing the system of income and asset declarations.

3.3 Persons covered

All persons performing state and municipal functions are obliged to submit declarations (Article 12 par. 1, Article 4 par. 1 and 2 lit. a of Law 3206). This includes judges and members of Parliament.

¹⁸⁹ Decision of 13 March 2012 No. 6-rp/2012, www.ccu.gov.ua/doccatalog/document?id=173718 (English summary).

¹⁹⁰ Resolution 16/2012 of 11 January 2012, <http://zakon2.rada.gov.ua/laws/show/16-2012-%D0%BF> (Ukrainian).

¹⁹¹ <http://www.president.gov.ua/documents/14428.html> (Ukrainian).

¹⁹² <http://zakon2.rada.gov.ua/laws/show/333/2012/paran2#n2>.

¹⁹³ <http://shevchenkovo.com.ua/deklarats%D1%96%D1%97%D1%97> (Ukrainian).

¹⁹⁴ <http://www.nau.ua/index.php?page=hotline&file=409702-19072012-0.htm> (Ukrainian).

¹⁹⁵ <http://zakon2.rada.gov.ua/laws/show/80731-10/page10> (Ukrainian).

¹⁹⁶ http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?id=&pf3511=43966 (Ukrainian).

Persons who render public services without being public officials, such as auditors, notaries, experts, appraisers, insolvency officers, independent intermediaries or members of council

of conciliation, arbitrators during performing their functions, etc. are not required to declare their assets (Article 12 par. 1, Article 4 par. 2 lit. b of Law 3206).

Officials of legal entities of private law (e.g. companies) owned, controlled or subsidized by the state are not covered either. This appears to be a significant gap because executives of such companies are exposed to high corruption risks. State-owned companies often have large amounts of public resources invested into them and the returns can be seriously endangered if executives abuse their positions for personal enrichment.

As under the previous law, financial information on family members has to be included. According to Article 1 of Law 3206 the following persons are members of a family:

“[P]ersons married to each other, their children, persons under custody and care, other persons who live together, are connected by common household, and have mutual rights and obligations, including persons who live together but are not married to each other.”

The above wording is a bit ambiguous: The addition “who live together ... and have mutual rights and obligations” might relate only to “other persons” or to all previously mentioned categories of persons. According to the Ukrainian authorities, the latter is the case. Hence, only the assets of those family members shall be declared who are members of the official’s household.

3.4 Frequency

All declarations have to be submitted **annually** until 1 April for the previous year (Article 12 par. 1 of Law 3206). The time limit is extended until 31 December for certain reasons (such as maternity leave).

Anybody who **applies** for a position, in which he would be obliged to declare his finances, has to provide a declaration prior to the appointment (Article 12 par. 5 of Law 3206; Article 22 par. 1 no. 4 (new) of Law on Civil Service¹⁹⁷).

For opening a **foreign bank** account, all persons obliged to declare their finances have to notify the tax administration within 10 days after opening the account (Article 12 par. 3 of Law 3206).

Public officials are not required to submit declarations when leaving public office. Such an **exit-declaration** is a requirement in some countries, which do have a declaration regime in place. As the Ukrainian law requires annual declarations, the whole time of an official in office is covered by the declarations. However, the wording of Article 12 par. 1 of Law 3206 is not fully clear, namely whether a person who has left office, for example in December, is still a “public official” by April of the following year in the sense of Law 3026, and is thus legally required to declare his/her assets for his/her last year in office.

An additional issue arises for the one-year period after leaving office. Article 10 of Law 3206 imposes certain **post-employment** restrictions for public officials to prevent certain **conflicts of interest**. In order to monitor post-employment engagements of public officials it would seem

¹⁹⁷ As amended by Law on 20 November 2011 № 5483-VI, coming into force on 1 January 2014, www.center.gov.ua/eng/main/download-document.html?qid=1090 (English).

recommendable to require an additional declaration for the one-year period stated in Article 10. This could be a simplified declaration concerning only activities listed in Article 10.

3.5 Receipt and storage

3.5.1 All state institutions

Employees file their declarations with their respective employer (Article 12 par. 1 Law 3206). Same principle applies to candidates and their aspired employers. Under Section 2 of the Cabinet of Ministers Resolution 16/2012, human resources departments store the declarations by employees and candidates. The declarations are kept in the human resources files of each staff member. There is no electronic system for the storage and processing of declarations. Such a system would facilitate the handling, but is not a necessity from an anti-corruption perspective. Human resources files are kept for 75 years after a person has left office or until his/her death.

3.5.2 Tax administration

The tax administration is the competent authority for receiving the notification (Article 12 par. 3 of Law 3206) and for storing it (Section 6 of the Cabinet of Ministers Resolution 16/2012) only in cases of opening foreign bank accounts.

3.6 Content

The 2011 Declaration Template (see Appendix 5.2) is an attachment to Law 3206. It covers income, immovable property, vehicles, financial assets and financial obligations.

The main novelties compared to the previous Declaration Template of 1997¹⁹⁸ are:

- **Income:** gifts, alimony, inheritance, prizes, winnings, lease and alienation of property, as well as income from **abroad** are now explicitly included;
- “Vehicles” include now means of **air transport** for officials and family members;
- Financial **expenditures** are listed for the first time;
- With the exception of financial assets, a catch up field “**other types** of” ensures that all financial information not fitting any other category is included.

Information on **family members** is now included in separate lines, thus the number of lines has roughly doubled compared to the previous Template. However, the category of “other spending” does not apply to family members without any apparent reason.

3.6.1 Descriptive information

Only **amounts** and **aggregated** figures of deposits, gross nominal value of securities, gross value of debts, etc. are to be declared. If one does not know the names of companies and individuals to whom these deposits, debts, etc. are related, one cannot verify the declaration. In addition, numbers without descriptive specification of the asset (name of share, etc.) are of little help for the control of conflict of interest.

¹⁹⁸ Order No. 58 of the Ministry of Finances, 6 March 1997, in: OECD, “Asset Declarations for Public Officials, A Tool To Prevent Corruption” (2011), p. 145 f., www.oecd.org/dataoecd/40/6/47489446.pdf.

As for **family** members, only an aggregated figure is shown for all family members. This could lead to somewhat inconclusive information whenever an official has more than one family member as the figure would not allow for allocating the respective parts to each family member. On the other hand, the declaration could become quite inflated, if the information would have to be broken down to each family member. It would probably suffice if information on finances of family members is accompanied by distinct identification information of the financial source. This would equip investigators with the data for following up on the declaration if need be.

3.6.2 Expenditures: reporting threshold

According to explanatory note 13 to the Template (see below Appendix 5.2), the public officials need to declare certain expenditures only if each single transaction exceeds the value of **UAH 150,000** (~ €14,000). This threshold applies to:

- Immovable property (line 23-28)
- Transportation/vehicles (line 35-39)
- Deposits, securities, company capital and maintenance (line 46, 48, 50, 56)
- Other expenditures (line 59 – such as e.g. watches, jewellery, luxury vacations, etc.)

The average monthly salary in public administration in 2012 was UAH 3,751¹⁹⁹ (~€350). The threshold of 150,000 UAH thus equals more than **three yearly salaries** before taxes.

Salaries vary and can reach up to UAH 10,000 for higher ranking civil servants in national state agencies.²⁰⁰ But even then, the threshold is more than one yearly salary before taxes.

After all, the threshold of UAH 150,000 seems certainly too high for lines 46-59.

Other countries, which require declaration of expenditures, such as for example Latvia, set the threshold at “twenty minimum monthly wages”.²⁰¹ In Ukraine this would equal to UAH 20*1,004²⁰², thus **UAH 20,080** (~€1,900), which is seven times less than the current threshold.

It is worth noting in this context that the Law “On the Judiciary and the **Status of Judges**”²⁰³ used to contain in its sect. 54 par. 5 a much stricter provision than Law 3206: expenses had to be declared “in the event of one-time expenses exceeding the amount of the **monthly salary**”. This provision has now been weakened in alignment with the new Law 3206, increasing the reporting threshold by more than 15 times.

¹⁹⁹ www.ukrstat.gov.ua/operativ/operativ2012/gdn/Zarp_ek_m/zpm2012_e.htm.

²⁰⁰ Last figures available on the webpage of the National Agency for Civil Service are for 2008: salaries rank between UAH 2,124 (~€200) on district level and UAH 8,359 (~€780) in State Agencies
http://nads.gov.ua/control/en/publish/article?showHidden=1&art_id=168792&cat_id=39078&ctime=1242723489001.

²⁰¹ Section 24 par. 9-11 Law “On Prevention of Conflict of Interest in Activities of Public Officials” of 25 April 2002 (as amended by law of 30 September 2010),
www.knab.gov.lv/uploads/eng/on_prevention_of_conflict_of_interest_in_activities_of_public_officials.pdf.

²⁰² KyivPost, 6 September 2011, Finance Ministry offers to raise minimum wages in 2012 by 9.4%,
www.kyivpost.com/content/ukraine/finance-ministry-offers-to-raise-minimum-wages-in--112298.html: minimum monthly wage until the end of 2011 is set at UAH 1,004.

²⁰³ Law No. 2453-VI of 7 July 2010, [www.venice.coe.int/docs/2010/CDL\(2010\)084-e.pdf](http://www.venice.coe.int/docs/2010/CDL(2010)084-e.pdf).

3.7 Public disclosure

All declarations of certain **high-level public officials** are published within 30 days after their submission in official gazettes (Article 12 par. 2 of Law 3206).

All other declarations are not published, but the human resources departments are obliged to **share** them with the following stakeholders:

- **Citizens** (natural and legal persons): under the Public Information Act²⁰⁴, all declarations are accessible from the respective authority. A Constitutional Court decision rendered on 20 January 2012 – generally – restricted access under the Public Information Act as it was in force then.²⁰⁵ However, in June 2012, the Freedom of Information Law was harmonised with Anti-corruption Law 3206, and Article 6 par. 6 now explicitly states that information from income and asset declarations is not confidential (except for certain personal information, such as address of residence):

“The information contained in the declaration of assets, income, expenses and financial obligations, executed in the form and in the manner established by the Law of Ukraine ‘On Principles of Preventing and Combating Corruption’ is not classified”.²⁰⁶

According to the interviews conducted with civil society, state bodies follow requests for asset declarations more or less satisfactorily.

- Specifically **authorized entities**: under section 3 of Cabinet of Ministers Resolution 16/2012 “specifically authorized entities” have access to declarations for their operational activities and preliminary investigations. Among such entities are (pursuant to Article 5 par. 5 of Law 3206) in particular:
 - o Prosecution service
 - o Special organized crime division of the Ministry of Interior
 - o Tax police
 - o Anti-corruption and organized crime divisions of Security Service of Ukraine
 - o Military Law Enforcement Service of the Armed Forces of Ukraine
 - o Internal security units of customs bodies
- **Courts** have access whenever they warrant the declarations in accordance with the law.

3.7.1 Internet

It would certainly facilitate access to asset declarations if they were all available online. However, putting asset declarations online would certainly have budgetary implications which might not be justified by the added value (there are some 290,000 civil servants alone). Furthermore, the public’s interest seems to be more focused on the high-level public officials whose declarations are published anyways.

²⁰⁴ No. 2939-VI of 13 January 2011, <http://zakon2.rada.gov.ua/laws/show/2939-17>.

²⁰⁵ No. 2-rp/2012 of 20 January 2012, www.ccu.gov.ua/doccatalog/document?id=169489.

²⁰⁶ Article 6 par. 6 as amended by the Law “On amendments to some legislative acts of Ukraine in connection with the adoption of the Law of Ukraine ‘On Principles of Preventing and Combating Corruption’ № 4711-VI of 17 May 2012, <http://zakon1.rada.gov.ua/laws/show/4711-17>.

Since declarations of high-level public officials are published in the agency's gazette anyways, it seems a bit outdated not to have them published on the agency's website as well. This is even more relevant, as not all state authorities seem to have "official printed editions" as foreseen in Article 12 par. 2 of Law 3206.

3.7.2 Judges

As for judges it seems justified to aim for a somewhat stricter publicity. The number of judges is much smaller than that of the general civil service. Furthermore, public trust in judges seems to be extremely low. According to Transparency International's Global Corruption Barometer 2010, the judiciary is perceived by citizens to be the most corrupt public institution in Ukraine, and more than half of the households interviewed in the survey consider the judiciary to be "extremely corrupt".²⁰⁷ A Council of Europe survey in 2009 found comparatively widespread offering and extortion of bribes in the judicial sector.²⁰⁸ From a technical point of view, all courts are online via "www.court.gov.ua", as are all their decisions. Most importantly, though, parties of court procedures have a vital interest in knowing about possible conflict of interests of the judge in question. After all, it would seem feasible to put online not only the declarations of high-level judges, but of all judges, as is for example reportedly the case in Armenia.²⁰⁹

3.7.3 Past employments

Another issue arises from keeping track with previous posts of officials: Asset declarations are stored at the human resources department of each respective agency. If a public official has worked for more than one agency, asset declarations might be stored at different human resources departments. If an interested party were not aware of all those previous employments, he/she would not know where to look. Therefore, information on previous employments of that official should also be public information under the Public Information Act, so the public can comprehensively follow up on an official should such need ever arise.

3.8 Verifications

As of 1 January 2011, there were 292,516 civil servants²¹⁰ subject to income and asset declaration requirements. In addition, about 8,823 judges²¹¹ and many other elected and non-elected officials who do not have the status of a civil servant shall submit declarations.

3.8.1 Ad hoc

Private stakeholders such as the media or citizen activists can compare all published declarations and all declarations accessible under freedom of information legislation with any knowledge that they might have about the official.

²⁰⁷ www.transparency.org/policy_research/surveys_indices/gcb/2010/in_detail.

²⁰⁸ Council of Europe Project against Corruption in Ukraine (UPAC), Corruption risks in criminal process and Judiciary, 2009, www.coe.int/t/DGHL/cooperation/economiccrime/corruption/Projects/upac/upac_en.asp.

²⁰⁹ United Nations Background Paper CAC/COSP/WG.4/2011/3 for the Conference of the States Parties to the United Nations Convention against Corruption, No. 47, www.unodc.org/documents/treaties/UNCAC/WorkingGroups/workinggroup4/2011-August-22-24/V1183638e.pdf.

²¹⁰ http://nads.gov.ua/control/en/publish/article?art_id=38051&cat_id=37022.

²¹¹ http://www.coe.int/T/dghl/cooperation/cepej/evaluation/2012/Ukraine_en.pdf

Furthermore, human resources departments could theoretically look into declarations upon receipt of complaints or in any case of suspicion of false information; however, they would lack the legal authority to do much more. Only law enforcement agencies would seem to have the necessary power to carry out meaningful investigations.

Specifically authorized entities (prosecutors, tax police, etc.) can verify the declarations whenever they are investigating the person concerned or any of its family members.

3.8.2 Systematic

Law 3206 does not foresee a systematic verification of declarations of all public officials. Hence, human resources departments check declarations only for their apparent completeness and consistency.

Only declarations of candidates for appointment or promotion are mandatorily checked. In this context, Article 11 par. 2 no. 3 of Law 3206 is complemented by Article 22 par. 1 no. 4 of (new) Law on Civil Service: candidates who wish to take part in the competition for vacant civil service positions have to submit

“a declaration of property, income, expenditures and financial liabilities as specified by the Law of Ukraine on the Principles of Preventing and Combating Corruption” (Article 22 par. 1 no. 4 of the Law on Civil Service)²¹²

Under Presidential Order 33/2012, section 7 no. 3, the special inspection on candidates is performed by

“the State Tax Service of Ukraine – about the authenticity of the information specified in the declaration of assets, income, expenses and financial obligations in the previous year”.

The State Tax Service uses all information from current and previous tax files, which is stored in a central electronic database. Tax information is available on all citizens of Ukraine, but tax declarations are only required from public officials if they hold more than one public post or if they generate a second income. In addition, during the interviews the State Tax Service pointed out its access to the database of the **land registry** services and to the police register of **vehicles**. As for the control of any hidden (i. e. undeclared) income, the State Tax Service would need access to bank information (for example under a future statutory exception to bank secrecy or with consent of the official in question).

It would seem advisable to verify not only the declarations of candidates for public office, but also a **sample** of the declarations submitted by officials already in office. For example, a small fraction of randomly selected declarations of all officials could be verified in combination with the declarations of officials holding posts with a high **corruption risk**, such as procurement, etc.²¹³ In Albania, 4% of all declaring subjects undergo a full audit on annual basis due to a random selection procedure.²¹⁴

²¹² As amended by Law on 20 November 2011 № 5483-VI, coming into force on 1 January 2014, www.center.gov.ua/eng/main/download-document.html?qid=1090 (English).

²¹³ See for example: World Bank, *Income and Asset Declarations: Tools and Trade-offs* (2009), p. 74, http://multimedia.unodc.org/documents/corruption/Publications/StAR/StAR_Publication_-_Income_and_Asset_Declarations.pdf; Habershon/Trapnell, World Bank Group: “Public Office, Private Interests: Accountability Through Income and Asset Disclosure” (2012), chapter 3.2, http://www1.worldbank.org/finance/star_site/documents/PublicPrivateInterests/Public-Office-Private-Interests.pdf.

²¹⁴ RAI, *Rules and experiences on integrity issues* (2012), page 55, http://www.rai-see.org/doc/Study-Rules_and_experiences_on_integrity_issues-February_2012.pdf.

3.8.3 Responsible unit

a. Civil service

There are mainly four entities that could verify the accuracy of declarations submitted by public officials already in office:

- Human resources departments
- Tax administration
- Civil Service Agency
- A new entity entrusted with oversight of conflict of interest, and income and asset declarations

Human resources departments are located within each respective agency and often personally know the staff they are dealing with. This advantage is at the same time a disadvantage. It might be too “uncomfortable” for human resources personnel to touch on certain staff within the agency’s structure, especially the higher the respective official is positioned within the hierarchy. In addition, human resources departments lack the powers to access relevant databases, and it might not be ideally efficient to build up the necessary financial investigative capacity at each department. Hence, human resources departments do not seem to be the recommendable unit for verifying income and asset declarations.

The **tax** administration would have the respective capacity to deal with the financial issues involved, as well as the powers and access to the necessary databases such as vehicles, land registry and suspicious financial transactions (Financial Intelligence Units)²¹⁵. At the same time, it would normally raise also tax issues if a public official has much higher wealth than his formally declared income: the income for acquiring this wealth would normally not have been declared for tax purposes. There are other countries such as Armenia, Belarus, Kazakhstan and “the former Yugoslav Republic of Macedonia” where the tax administration is (or has been) also the verifying unit and where all residents have to file tax declarations.²¹⁶

The National Agency on **Civil Service** is mandated among other with preventing corruption (in the civil service),²¹⁷ and carrying out inspections and investigations on corruption-related issues. This anti-corruption capacity combined with general civil service expertise and a certain independence from human resources departments in all ministries appears suitable for verifying asset declarations. However, the Agency would need access to the necessary databases.

The above-mentioned financial and anti-corruption capacity could also be built up within a **new entity** specifically entrusted with the oversight on conflict of interest, and income and asset declarations. However, given the budgetary implications there is no clear advantage of building up this capacity from anew, except for the possible independent set-up of such a new structure.

b. Judiciary

There are mainly six entities which could verify the accuracy of declarations of judges:

- Court Presidents

²¹⁵ See for example the cooperation between the Department of Asset Registration and the FIU in Afghanistan: www.anti-corruption.gov.af/Content/files/Asset.pdf.

²¹⁶ Fenner, Strategic Approaches to Corruption Prevention in the OSCE Region (September 2012), www.osce.org/eea/93910.

²¹⁷ No. 4 13) Presidential Decree 769/2011 of 18 July 2011, <http://www.president.gov.ua/documents/13815.html> (in Ukrainian).

- High Council of Justice
- High Qualification Commission of Judges
- State Judicial Administration
- Tax administration
- A new entity entrusted with oversight on conflict of interest, and income and asset declarations

The **Court Presidents** personally know the colleagues they are dealing with. Similar as with the human resources departments and civil servants (see above at a.), this advantage is at the same time a disadvantage. There might be too many interrelations between the Court President and the judges. In addition, Court Presidents usually lack the powers to access relevant databases, and it might not be ideally efficient to build up the necessary financial investigative capacity with each of them. Hence, Court Presidents do not seem to be the recommendable unit for verifying the accuracy of asset declarations.

As with the Court Presidents, the **High Council of Justice** does not have access to relevant databases, and it might not be ideally efficient to build up the necessary financial investigative capacity with it.

Similar holds true for the **High Qualification Commission of Judges** whose mandate is focused primarily on appointments.

The **State Judicial Administration** carries out anti-corruption activities in the judiciary to some extent, but does not have financial investigative capacities.

The **tax** administration would have the respective capacity to deal with the financial issues involved, as well as the powers and access to the necessary databases. At the same time, it would normally raise also tax issues if a judge has much higher wealth than his formally declared income: the income for acquiring this wealth would normally not have been declared for tax purposes. As judges declare their taxes with the tax administration anyways, there could hardly be an issue of judicial independence if the tax authorities would also verify their income and asset declarations.

As for a **new entity** the above considerations are equally true for judges.

c. Elected officials

For elected officials (Parliament, regional and local Councils), a **committee** of the respective body could verify their asset declarations. However, due to the politicisation of the body, a certain conflict of interest would be involved towards members of the own political direction and towards members of the opposite political direction. As for a **new entity** the above considerations are equally true for elected officials. The **Central Election Commission** would be another option, but for the aspect of financial verification it would probably rely to a large extent on the tax administration. The **tax** administration seems therefore to be the most appropriate entity for verifying asset declarations of elected officials.

3.9 Impact

3.9.1 Public stakeholders

The Prosecutor General's Office takes income and asset declaration as one of the starting points whenever it is **investigating** a public official. Declarations are useful for example if they show an apparent discrepancy between the official's income and wealth (or of his/her family). Such discrepancies can be produced as evidence in court when applying for investigative measures such as search warrants. Declarations are also useful as a source of information on the public official. The Prosecutor General's Office confirmed that adding further information in the declarations, such as concrete details of the bank accounts or other asset, which is not yet required under the current Template, would facilitate the investigations.

3.9.2 Private stakeholders

The interest of the public seems to be rather focused on high-level public officials. Discrepancies between income and asset declarations are repeatedly reported in the **media**.

However, it is not clear to what extent criminal investigations follow such accounts, or what their success is.

3.10 Sanctions

Law 3206 itself does not contain any sanctions for violating declaration obligations. Under Article 52 par. 3 no. 2 of the (new) Law on Civil Service²¹⁸, a civil servant can be held disciplinary liable for the "violation of internal service regulations", to which, however, Law 3206 does not belong to. It is interesting to note that there was an explicit reference to financial declarations in the previous version of the Law on Civil Service; a civil servant could be dismissed for

"not giving or giving [...] of false information concerning his income, envisaged by Article 13 hereinbefore."

An additional sanction seems to be the refusal of **appointment** or promotion due to a failed background check under Article 11 par. 3 of Law 3206 and Article 22 par. 1 no. 4 of the (new) Law on Civil Service.²¹⁹ Hence, anybody who does not submit a declaration is excluded from appointments to civil service or public positions referred to in Article 11 par. 1 of Law 3206.

According to Article 172-6 of the Code of Administrative Offences²²⁰, persons shall be subject to **fine** for non-submission or late submission of declarations as well as for non-reporting or late reporting of the opening of a foreign currency account in a non-resident bank. According to the information provided by the Prosecutor General's Office, 12 officials were **dismissed** from civil service for having refused to submit their declarations as required by the law. In addition to the dismissals, about 170 officials were fined.

There is no sanction in place for intentionally submitting **false** or incomplete information, as it the case in other countries²²¹ such as Albania, "the former Yugoslav Republic of Macedonia", Montenegro and Romania.²²²

²¹⁸ Of 17 November 2011, № 4050-VI, <http://www.center.gov.ua/eng/main/download-document.html?gid=1090>.

²¹⁹ See above at note 212.

²²⁰ See above at note <http://zakon2.rada.gov.ua/laws/show/80731-10/page10> (Ukrainian).

²²¹ Habershon/Trapnell, World Bank Group: "Public Office, Private Interests: Accountability Through Income and Asset Disclosure" (2012), chapter 3.3, http://www1.worldbank.org/finance/star_site/documents/PublicPrivateInterests/Public-Office-Private-Interests.pdf.

Closely related to the income and asset declaration system is the **criminal** offence of **illicit enrichment**.²²³ In this context, Ukraine has recently introduced section 368-2 to its Criminal Code. The offence is called “illicit enrichment” (“Незаконне збагачення”),²²⁴ but is not exactly illicit enrichment according to the international standard of Article 20 UNCAC. The Criminal Code defines illicit enrichment as the “obtainment by an officer of illegal benefit in substantial amount or transfer by the officer of such benefit to close relatives, in the absence of signs of bribery”. However, the advantage of this Ukrainian regulation lies in the fact that the burden of proof is still fully upon the prosecution: In contrast to Article 20 UNCAC section 368-2 Criminal Code would not require the official to “reasonably explain” his wealth in relation to his income. Hence there is no indication that a conviction of a public official based on a significant discrepancy of his or her actual and declared wealth and on an overall review of the facts would violate the presumption of innocence or the prohibition of self-incrimination. The addition “in the absence of signs of bribery” is reportedly meant to avoid double punishment in cases of bribery. The addition could be read in a broad way excluding the application of illicit enrichment whenever there is an indication of bribery. Such meaning would be problematic:

1. It is possible that a person has been prosecuted for bribery, but acquitted because the offence could not be proved beyond a reasonable doubt. In this case, the person should be tried for illicit enrichment, if he/she has inexplicable wealth. However, as there are “signs of bribery”, and even strong ones so, the defendant might raise the argument that illicit enrichment is not applicable.
2. Furthermore, it is not clear why illicit enrichment is only excluded “in the absence of signs of bribery”, but not also in “the absence of signs of” embezzlement or other economic crimes possible in office.
3. In any case, it is not clear why illicit enrichment and bribery should at all be exclusive to each other per se. If an official is convicted for example for taking a bribe of UAH 1,000, but has inexplicable wealth of UAH 1 Mio., there is no reason to not prosecute him/her at least for the illicit enrichment of UAH 999,000.

However, the Ukrainian authorities have stated that the addition applies only if both offences would apply to the same action and enrichment, but would not prohibit any of the three aforementioned cases to be prosecuted.

4 RECOMMENDATIONS

The current system of income and asset declarations has several sound features for enhancing integrity in public office. However, it would benefit from the following improvements:

Officials covered

Managers of state-owned or state-subsidised companies should declare their assets even when they are not civil servants.

²²² RAI, Rules and experiences on integrity issues (2012), page 55,

http://www.rai-see.org/doc/Study-Rules_and_experiences_on_integrity_issues-February_2012.pdf.

²²³ Habershon/Trapnell, World Bank Group: “Public Office, Private Interests: Accountability Through Income and Asset Disclosure” (2012), page 14, http://www1.worldbank.org/finance/star_site/documents/PublicPrivateInterests/Public-Office-Private-Interests.pdf.

²²⁴ Criminal Code as amended by Law No. 3207-VI

of 7 April 2011, <http://zakon2.rada.gov.ua/laws/show/2341-14/page11> (Ukrainian).

Frequency

It should be ensured that officials who have left office still fall under the declaration requirement of Law 3206 (concerning their last months in office) even if at the time of reporting they are no longer “public officials”. As an alternative, they could be required to submit a declaration right upon leaving office.

In order to monitor post-employment engagements of public officials it would seem recommendable to require an additional (possibly simplified) declaration for the one-year period stated in Article 10.

Descriptive information

Amounts and aggregated financial figures need to be complemented by distinct descriptive information (names of companies, details of domestic and foreign bank accounts, etc.). This information, for example the bank account numbers, would not necessarily need to be open to the public.

Reporting threshold

The current reporting threshold of UAH 150,000 for certain expenditures seems certainly too high in comparison to average yearly salaries earned in public administration (UAH 45,000 before taxes). International examples point more towards a threshold of UAH 20,000 (~€1,900), which is seven times less than the current threshold and more than double of the previous threshold for judges.

Public disclosure

Publication of declarations by high-level public officials in the agency’s gazette should be complemented by the publication on the agency’s website. As for judges, it would seem feasible and necessary to put the declarations of all judges online using the platform “www.court.gov.ua”.

Information on previous employments held by officials should also be public information under the Freedom of Information Law, so the public can comprehensively follow up on an official if his/her previous employments are unknown to the public at large.

Verifications

A random sample of the declarations submitted by more than 300,000 public officials in Ukraine should be verified with regard to accuracy, paying special attention to declarations of officials holding posts with a high corruption risk. The tax administration would seem to be the most suitable body for public officials from all three branches of government. Verifications should include checks of the databases for vehicles, land registry and suspicious financial transactions (Financial Intelligence Units).

Sanctions

There should also be a sanction in place for intentionally submitting false or incomplete information.

5 APPENDIX

5.1 Law 3206 (excerpt)

LAW OF UKRAINE

On Principles of Preventing and Counteracting Corruption

This Law establishes basic principles of preventing and counteracting corruption in the public and private spheres of social relations; of compensating for the losses and damages inflicted by commitment of corruptive offences; and of restoring infringed rights, freedoms, or interests of physical persons, rights or interests of legal entities, and interests of the State.

Section I GENERAL PROVISIONS

Article 1. Definitions

1. For the purposes of this Law, terms used shall have the following meanings:

Direct subordination: relations of direct organizational or legal dependence of a subordinate person on his/her superior including through the adoption of decisions (participation in the adoption of decisions) on matters of hiring, dismissal, application of incentives and disciplinary penalties, giving of instructions and commissions, and supervision over the fulfilment thereof;

Close persons: married couples, children, parents, whole brothers and sisters, grandfather, grandmother, grandchildren, adopters, adopted, as well as other persons who live together, are connected by common household and have mutual rights and obligations with the subject stipulated in part one of Article 4 of this Law;

Conflict of interests: contradiction between personal interests of a person and his/her official authority, the existence of which may affect the objectivity or impartiality of adopted decisions, as well as actions or lack of action in the course of performing the entrusted official duties;

Corruptive offence: deliberate action exhibiting signs of corruption, committed by a person stipulated by part one of Article 4 of this Law, for which the law established criminal, administrative, civil, and disciplinary liability;

Corruption: use by a person stipulated by part one of Article 4 of this Law, of entrusted official authority and of opportunities associated with such authority, for the purpose of gaining illegal benefit, or acceptance of a promise / offer of such benefit for him/herself or for other persons, or respectively, a promise / offer or provision of illegal benefit to a person stipulated by part one of Article 4 of this Law, or upon his/her demand, to other physical persons or legal entities, with the purpose of inducing such person to unlawfully use entrusted to him/her official authority and the opportunities associated with such authority;

Illegal benefit: pecuniary funds or other assets, advantages, perks, services, or non-

material assets which without lawful grounds are promised, offered, provided, or received without pay or at a price below the minimum market price;

Family members: persons married to each other, their children, persons under custody and care, other persons who live together, are connected by common household, and have mutual rights and obligations, including persons who live together but are not married to each other.

[...]

Article 4. Subjects of Liability for Corruptive Offences

1. Subjects of liability for corruptive offences shall be:

1) Persons authorized to perform functions of state or local government:

a) The President of Ukraine; the Chairperson of the Supreme Rada of Ukraine; his/her First Deputy and Deputy; the Prime Minister of Ukraine; the First Vice-Premier of Ukraine; Vice-Premiers of Ukraine; ministers and other heads of central executive bodies who are members of the Cabinet of Ministers of Ukraine, and their deputies; the Head of the Security Service of Ukraine; the Prosecutor-General of Ukraine; the Chairperson of the National Bank of Ukraine; the Chairperson of the Chamber of Accounts; the Supreme Rada of Ukraine's Human Rights Commissioner; the Chairperson of the Supreme Soviet of the Autonomous Republic of Crimea; and the Chairperson of the Council of Ministers of the Autonomous Republic of Crimea;

b) The People's Deputies of Ukraine, deputies of the Supreme Soviet of the Autonomous Republic of Crimea, and deputies of local councils;

c) Public servants and officials of local government;

d) Military officers of the Armed Forces of Ukraine and of other military formations created pursuant to statutes;

e) Judges of the Constitutional Court of Ukraine; other professional judges; the Chairperson, members, and disciplinary inspectors of the Higher Qualifying Commission for Judges of Ukraine; officers of the Secretariat of said Commission; the Chairperson, the Deputy Chairperson, and secretaries of sections of the Higher Council of Justice, as well as other members of the Higher Council of Justice; people's assessors and jurors (in the time of performance of these functions);

f) Persons of rank-and-file and commanding personnel of the bodies of internal affairs, the State Criminal-Executive Service, the bodies and units of civil defense, the State Service of Special Communications and Protection of Information of Ukraine, and persons of the commanding personnel of Tax Militia;

g) Officials and officers of public prosecutor's offices, the Security Service of Ukraine, the Diplomatic Service, the Customs Service, and the State Tax Service;

k) Members of the Central Electoral Commission;

l) Officials and officers of other bodies of state authority;

2) Persons who for the purposes of this Law, have been conferred the status of

persons authorized to perform functions of state and local government:

a) Officials of public law legal entities who are not stipulated by clause 1 in part one of this Article but receive salaries at the account of State or local budget;

b) Persons who are not public servants or officials of local government but render public services (auditors, notaries, and appraisers, as well as experts, arbitration managers, independent brokers, members of labor arbitration tribunals, arbitrators in the time of performance of these functions, other persons in cases established by law);

c) Officials of foreign states (persons who hold positions in legislative, executive, or judicial bodies of foreign states including jurors; other persons who perform the functions of the state on behalf of a foreign state, in particular, on behalf of a state agency or a state enterprise), as well as foreign arbitrators, persons who have powers to settle civil, commercial, or labor disputes in foreign states according to procedures that constitute alternatives to judicial procedure;

d) Officials of international organizations (employees of an international organization or any other persons authorized by such organization to act on its behalf), as well as members of international parliamentary assemblies in which Ukraine takes part, and judges and officers of international courts;

3) Persons who permanently or temporarily hold positions involving the performance of organizational-dispositive or administrative-economic functions, or persons who are specially authorized to perform such duties in private law legal entities irrespective of organizational-legal form thereof, pursuant to law;

4) Officials of legal entities and physical persons, in cases where persons stipulated by clauses 1 and 2 in part one of this Article, or with participation of such persons, other persons received illegal benefit from them.

[...]

Article 11. Special Screening of Persons who Aspire to Hold Positions Involving the Performance of State or Local Government Functions

1. In respect of persons who aspire to hold positions stipulated by clause 1 in part one of Article 4 of this Law (apart from candidates for the office of the President of Ukraine, candidates for People's Deputies of Ukraine, candidates for deputies of the Supreme Soviet of the Autonomous Republic of Crimea and local councils, and for offices of village, settlement and city mayors), a special screening shall be conducted including verification of the information submitted personally.

The organization of the conduct of special screening shall be entrusted to the head (deputy head) of the state authority or local government body for the office in which the person concerned aspires, apart from cases stipulated by law.

Induced to the conduct of the special screening shall be specially authorized subjects in the sphere of counteracting corruption, and should the need arise, other central executive bodies.

2. Subject to special verification shall be information on the person who aspires to hold a position stipulated by clause 1 in part one of Article 4 of this Law (apart from candidates

for the office of the President of Ukraine, candidates for People's Deputies of Ukraine, candidates for deputies of the Supreme Soviet of the Autonomous Republic of Crimea and local councils, and for offices of village, settlement and city mayors), specifically as regards:

1) The persons' having previously been brought to criminal justice including for corruptive offences; the existence of criminal record, removal or cancellation of it;

2) The fact that the person being screened was previously subjected to administrative punishment for corruptive offence;

3) The veracity of information entered in the declaration on property, incomes, expenses, and obligations of a financial nature;

4) The possession by the person of corporate rights;

5) The aspirant's state of health, the educational status, the possession of scientific degree, academic rank, and advanced training.

3. Special screening shall be conducted within a period of fifteen days upon written consent of the person aspiring for an office.

In case of failure on the part of the person concerned to give such consent, the matter of the appointment shall not be considered.

Where as a result of the special screening, a fact has been established of the submission by the aspirant for an office of fictitious information about him/herself, the official (body) who (that) effectuates the appointment (election) to the office concerned, shall refuse to the aspirant the appointment (election) to the office, and within a period of three working days shall inform of the detected fact the law-enforcement bodies, for their response in accordance with the procedure established by law, apart from cases stipulated by law.

A decision to refuse the appointment (election) to an office on grounds stipulated by the third paragraph of this part may be appealed in court.

The procedure for the arrangement of the conduct of special screening shall be subject to approval by the President of Ukraine.

4. For the conduct of special screening, the person who aspires to an office shall submit the following to the relevant body:

1) Written consent to the conduct of special screening;

2) Autobiography;

3) A copy of the certificate of identification;

4) A declaration on property, incomes, expenses, and obligations of a financial nature for the previous year according to the form appended to this Law;

5) Copies of documents certifying education, academic ranks, and scientific degrees;

6) Medical certificate on the state of health according to the form approved by the Ministry of Health of Ukraine;

7) A copy of military card (for military servicemen or reservists);

8) Certificate of the right of access to state secrets (if any).

5. Upon receipt of the written consent of the person aspiring to an office, to the conduct of special screening, the body for the office in which the person aspires, shall no later than on the following day dispatch to the relevant state authorities competent to conduct special check-ups on information stipulated by part two of this Article, a request to conduct check-ups on information concerning the person aspiring to the office in question.

The request shall be signed by the head of the body for the office in which the person aspires, and in his/her absence, by a person acting as head, or one of his/her deputies, in accordance with the division of functional duties.

Attached to the request shall be the copies of documents stipulated by part four of this Article.

6. Information on the results of special screening signed by the head of the body that conducted the screening, and in his/her absence, by a person performing his/her duties, or by a deputy head of the body in accordance with the division of functional duties, shall be submitted to the body that made the request, within a period of seven days from the date of receipt of the request.

The body for the office in which the person concerned aspires, on grounds of the obtained information, shall draw up a report on the results of the special screening.

Persons who were subjects of special screening, shall have the right to peruse the report on the results of the special screening, and in case of disagreement with the screening results, may submit to the said bodies their comments in written form.

7. Information on the results of special screening and documents pertaining to its conduct, are confidential, unless they contain information constituting state secret. Such documents shall be preserved according to the procedure established by law.

Article 12. Financial Supervision

1. Per
sons stipulated by clause 1 and sub-clause "a" of clause 2 in part one of Article 4 of this Law, shall be obliged annually by April 01 to submit at the place of their employment (service) a declaration on property, incomes, expenses, and obligations of a financial nature for the previous year according to the form appended to this Law.

Persons who were unable to submit by April 01 at the place of their employment (service) a declaration on property, incomes, expenses, and obligations of a financial nature for the previous year, for the reason of being on maternity leave or parental leave, of temporary disability, of sojourning beyond the bounds of Ukraine, or being under arrest, shall submit such declaration for the reporting year by December 31. Persons, who have failed to submit the declaration on property, incomes, expenses, and obligations of a financial nature for the previous year for the above-stipulated reasons and quitted their office, shall be obliged to submit such declaration prior to the termination of the contract of employment.

2. Info
rmation provided in a declaration on property, incomes, expenses, and obligations of a financial nature for the previous year of the President of Ukraine, the

Chairperson of the Supreme Rada of Ukraine, the People's Deputies of Ukraine, the Prime Minister of Ukraine, members of the Cabinet of Ministers of Ukraine, the Chairperson and judges of the Constitutional Court of Ukraine, the Chairperson and judges of the Supreme Court of Ukraine, chairpersons and judges of higher specialized courts of Ukraine, the Prosecutor-General of Ukraine and his/her deputies, the Chairperson of the National Bank of Ukraine, the Chairperson of the Chamber of Accounts, the Chairperson and members of the Higher Council of Justice, members of the Central Electoral Commission, the Supreme Rada of Ukraine's Human Rights Commissioner, The Chairperson and members of the Higher Qualifying Commission for Judges of Ukraine, heads of other state authorities and their deputies, members of collegiate bodies of state authority (commissions, councils), and heads of local government bodies and their deputies, shall be subject to promulgation within a period of 30 days from the date of submission thereof, by way of publishing in official printed editions of the relevant state authorities and local government bodies.

3. Wh
ere a person stipulated in clause 1 and sub-clause "a" of clause 2 in part one of Article 4 of this Law, opens a foreign currency account in a non-resident banking institution, that person shall be obliged within a period of ten days to notify in writing on that the body of State Tax Service at his/her place of residence, with indication of the account number and the location of the non-resident bank.

4. Th
e procedure for the preservation of the documents and for the use of information provided in the declaration on property, incomes, expenses, and obligations of a financial nature, and of information stipulated by part three of this Article, shall be approved by the Cabinet of Ministers of Ukraine in accordance with the requirements established by law.

5. A
person aspiring to hold an office stipulated by clause 1 and sub-clause "a" of clause 2 in part one of Article 4 of this Law, shall prior to the appointment or election to that office, submit according to the procedure established by Law the declaration on property, incomes, expenses, and obligations of a financial nature for the previous year executed according to the form attached to this Law.

[...]

Section VIII FINAL AND TRANSITIONAL PROVISIONS

1. Thi
s Law shall come into force on July 01, 2011, with the exception of Articles 11 and 12 that shall come into force on January 01, 2012.

2. In
the declaration on property, incomes, expenses, and obligation of a financial nature for 2011, information on expenses shall be provided from the date of coming into force of this Law.

3. The Cabinet of Ministers of Ukraine shall within a period of three months from the date of coming into force of this Law:

Submit to the consideration of the Supreme Rada of Ukraine the proposals regarding the harmonization of legislative acts with this Law;

Provide for the adoption of normative-legal acts stipulated by this Law;

Harmonize its normative-legal acts with this Law;

Provide for the harmonization with this Law of the normative-legal acts of ministries and other central executive authorities.

V.Yanukovych

President of Ukraine

The City of Kyiv, April 07, 2011

No. 3206VI

5.2 Declaration Template

Unofficial translation

Attachment

to the Law of Ukraine
„On principles of preventing and combating
corruption” from 07.04.2011

DECLARATION

on property, income, expenses and financial obligations

for 20.... year

Section I. General information

1. _____

(surname, first name, registration number of the registration form of taxpayer/ passport number of citizen of Ukraine of applicant)

2. Residence: _____

(postal code, oblast, district, settlement, street, number of: house, building, apartment of applicant)

3. Position: _____

4. Applicant's family members:

Degree of connection	Surname, initials	registration number of the registration form of taxpayer/ passport number of citizen of Ukraine

Section II. Information on income

A. Received (calculated) from all sources in Ukraine

List of income	Amount of income received (calculated)	
	applicant	Members of family
5. Total amount of gross income, UAH, including:		
6. wages, other benefits and rewards calculated (paid) to applicant according to employment or civil contract terms <i>(except benefits specified on positions 7, 8)</i>		
7. income from teaching, research and creative activities, medical practice, instructor and arbiter practice in sport		

(name of organization, institution etc. where income specified on this position received (calculated))

8.	author's royalty, other proceeds from the sale of intellectual property rights		
9.	dividends, interest		
10.	material aid		
11.	gifts, prizes, winnings		
12.	unemployment relief		
13.	alimony		
14.	inheritance		
15.	Insurance payments, insurance compensation, redemption sums and pension payments that were paid to applicant according to the insurance contract, non-state pension cover and pension deposit		
16.	alienation of movable and immovable property income		
17.	business activities and independent professional activity income		
18.	capital securities and corporate rights alienation income		
19.	lease of property (temporary possession and/or leasehold)income		
20.	other types of income (<i>not specified on positions 6–19</i>)		

B. Received (calculated) by applicant from sources abroad

	Country name	Level of income	
		In foreign currency	recalculated in UAH
21.			

C. Received (calculated) from sources abroad by applicant family members

22.

Country name	Level of income	
	In foreign currency	recalculated in UAH

Section III. Information about immovable property

A. Property that is owned, rented or held on other use right by applicant and his spending on acquisition or use of this property

23.

List of objects	Object location (country, address)	Total area (sq. m.)	Amount of spending (UAH) on	
			acquisition in ownership	Lease or other use right
Land plots				

25.	Apartments				
26.	Homestead (suburban) house				
27.	Garages				
28.	Other immovable property				

B. Property that is owned, rented or held on other use right by applicant family members			
	List of objects	Object location (country, address)	Total area (sq.m.)
29.	Land plots		

31.	Apartments		
32.	Homestead (suburban) house		
33.	Garages		
34.	Other immovable property		

Section IV. Information about vehicles				
A. Vehicles are owned, rented or held on other use right by applicant and his spending on its acquisition (use)				
List of vehicles	Brand/model (cylinder capacity, cc, engine power, kw, long, cm)	year	Amount of spending (UAH) on	
			acquisition in ownership	lease or other use right

35.	Passengers cars				
36.	Trucks (special)				
37.	Water transport				
38.	Air transport				
39.	Other transport				

B. Vehicles are owned, rented or held on other use right by applicant family members		
List of vehicles		year

41.	Trucks (special)		
42.	Water transport		
43.	Air transport		
44.	Other transport		

Section V. Information about deposits, capital securities and other assets			
A. Deposits, capital securities and other assets are owned by applicant and his spending on acquisition of these assets (UAH)			
	List	Total	Including abroad
45.	Funds in account of banks and other financial institutions, including:		
46.	deposited in reporting year		

47.	Nominal value of capital securities, including:		
48.	obtained in reporting year		
49.	Size of contribution to the registered capital of company, enterprise, organization, including:		
50.	inserted in reporting year		

B. Deposits, capital securities and other assets are owned by applicant family members (UAH)

	List	Total	Including abroad
51.	Funds in account of banks and other financial institutions		
52.	Nominal value of capital securities		
53.	Size of contribution to the registered capital of company, enterprise, organization		

Section VI. Information about financial obligations

A. Applicant financial obligations and his other spending (UAH)

	List of financial obligations	Total	Including abroad
54.	Voluntary insurance		
55.	Non-state pension cover		
56.	Property maintenance specified in sections III–V		
57.	Credit (loan main sum) repayment		
58.	Interest on credit redemption		
59.	Other spending not specified in sections III–V		

B. Applicant family member's financial obligations (UAH)

	List of financial obligations	Total	Including abroad

60.	Voluntary insurance		
61.	Non-state pension cover		
62.	Property maintenance specified in sections III–V		
63.	Credit (loan main sum) repayment		
64.	Interest on credit redemption		

I certify the accuracy of the information specified in this declaration

_____ (signature)

” _____ ” _____ 20 _____

Note. 1. Declaration to be completed and filed by the persons referred to in Item 1 and subparagraph "a" of Item 2 of Part 1 Article 4 and the persons referred to in paragraph one of Article 11 of the Law of Ukraine "On Principles of Preventing and Combating Corruption". However, the person referred to in Part one of Article 11 of this Law, information on expenditures (investments /contributions) are not specified in the declaration.

2. Applicant fills out the declaration on his own with ink or ballpoint pen of blue or black color in a way that provides free reading included information.

3. In position 1, if the applicant in the reporting year changed name, surname, a new name, middle name are to indicate first and in brackets — the previous surname, name, middle name.

If the applicant, who by their religious beliefs refused to accept the registration number of taxpayer registration card, and reported this to the appropriate state tax authority and has a mark on the passport of citizen of Ukraine — the declaration shall contain passport number of citizen of Ukraine.

4. Position 2 contains information on place of residence with indicating the address of housing at the end of the year.

If the name of administrative unit (home address) has changed in the reporting year that is not reflected in the citizen of Ukraine passport, - the title at the date of declaration filling to be indicated.

5. The post occupied or post applied by the applicant to be specified in position 3.

6. Information pursuant to paragraph nine of the first part of article 1 of the Law of Ukraine "On Principles of Prevention and Combating Corruption" to be specified in position 4.

7. Average income of applicant for the reporting year is calculated by dividing the total gross income specified in position 6 into 12 and to be written in position 5.

8. Information concerning registration card account number of taxpayer or passport number of citizen of Ukraine which are specified in positions 1 and 4 and concerning location of the object specified in positions 2 and 23-34 is undisclosed information.

9. In case of absence of certain information a dash is to be put in the field.

10. Information on financial sums to be written in UAH to the integer.

11. In the field "recalculated in UAH" of positions 22-23 and in the field "including abroad" of positions 46-60 and 62-66 information according to the official UAH rate in respect to foreign currency established by the National Bank of Ukraine on the day of the financial transaction.

12. The field "Amount of spending on acquisition for ownership/lease or other use right" in positions 23-28, 35-39 and the field "Total" in positions 46, 48, 50, 56 and 59 to be filled if single charge (deposit / contribution) for each of these positions equals or exceeds 150 thousand UAH.

13. The accuracy of the information included in declaration to signed by applicant and date of its completion.

14. Forms of declaration made in way defined by the Cabinet of Ministers of Ukraine.

5.3 Interviews

Tuesday, 25 September 2012, Kyiv
<ul style="list-style-type: none">- TORO Creative Union – Transparency International Ukraine- Department for Anti-corruption Legislation and Legislation on Judiciary, and Department of International Law and Co-operation, Ministry of Justice- Human Resources Department of the Ministry of Justice, Ministry of Foreign Affairs and Ministry of Regional Development
Wednesday, 26 September 2012, Kyiv
<ul style="list-style-type: none">- State Tax Service- Secretary of the National Council of Security and Defence as the Executive Secretary of the National Anti-Corruption Committee Secretariat of the National Anti-Corruption Committee- Prosecutor General's Office
Thursday, 27 September 2012, Kyiv
<ul style="list-style-type: none">- Consultant (Anti-Corruption Network for Eastern Europe and Central Asia)- Council of Europe Office in Kyiv- Department for Anti-corruption Legislation and Legislation on Judiciary, Ministry of Justice- USAID FAIR Justice Project