SYSTEM STUDIES REPORT

Ethics for the Prevention of Corruption in Turkey

T.C. BAŞBAKANLIK
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AN EVALUATION OF THE EFFECTIVENESS OF ANTI-CORRUPTION MEASURES IMPLEMENTED IN RECENT YEARS, INCLUDING THE CODE OF ETHICS, THE PUBLIC INFORMATION ACT, CRIMINAL LAW MEASURES AND DISCIPLINARY PROVISIONS

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The overall objective of TYEC is to contribute to the prevention of corruption in Turkey in accordance with European and other international standards through the implementation and extension of the code of conduct, and the development of anti-corruption measures.

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1. INTRODUCTION: THE AIM, SCOPE AND METHODOLOGY OF STE REPORT

This Report relates to Output 8 and 9 (on the basis of the original project specification; the Outputs are now merged in the revised specification) as follows:

Output 8:	The effectiveness of codes of conduct and other anti-corruption measures in Turkey will have been evaluated. Recommendations for future prevention strategies are made and coordinated to promote ethics with other anti-corruption measures in Turkey.
Activity 8.1	Carry out system studies evaluating the effectiveness of anti-corruption measures implemented in recent years, including criminal law measures, the public information act, the Code of Ethics
Activity 8.2	Submission of proposals on specific anti-corruption measures based on the Study outcomes
Activity 8.3	Develop proposals for improved management, coordination and monitoring of anti-corruption strategies in Turkey
Output 9:	Coordination of measures to promote ethics with other anti-corruption measures in Turkey ensured
Activity 9.2	Develop proposals for improved management, coordination and monitoring of anti-corruption strategies in Turkey

The (revised) Output 8 will involve the System Studies Report (Activity 8.1) and the Report on the anti-corruption strategy for Turkey (Activity 8.2 and Activity 8.3; Activity 9.2). The Report on the anti-corruption strategy for Turkey will draw on this Report - the System Studies Report whose activities are as follows:

Activity 8.1	Carry out System Studies evaluating the effectiveness of anti-corruption measures implemented in recent years, including Criminal Law measures, the Public Information Act, the Code of Ethics	System Study No. 1: Effectiveness of AC measures through Code of Ethics System Study No. 2: Effectiveness of AC measures through the Public Information Act System Study No. 3: Effectiveness of AC measures in Criminal Law System Study No. 4: Effectiveness of AC measures through disciplinary provisions in the legislation and existing structures
Activity 8.2	Submission of proposals on specific anti-corruption measures based on the Study outcomes	Report on specific anti-corruption measures based on the Study outcomes
Activity 8.3	Develop proposals for improved management, coordination and monitoring of anti-corruption strategies in Turkey	Submit proposals/recommendations on: ▪ Management; ▪ Coordination; ▪ Monitoring Tools of Anti-corruption Strategies in Turkey

The background to the identification of these areas – described as anti-corruption measures – in part comes from the 2006 GRECO Evaluation Report which notes (para 18) the "variety of efforts to fight corruption", including anti-corruption laws, freedom to public information and reform to criminal law.

The Output is therefore intended to review the effectiveness of key measures implemented in recent years, such as the reforms of the Code of Ethics (issued by the Council of Ethics for the Public Service), the Public Information Act (i.e. the Law

about the Right to Access to Information) and Criminal Legislation (i.e. the new Penal Code). Drawing on the results of these analyses, the Project will support the development of new proposals for further anti-corruption measures and strategies and the coordination of measures to promote ethics with other anti-corruption measures (i.e. Outputs 8 and 9 in the Workplan of Activities of Project). So, at the first stage of this Report (i.e. Section 2), the landscape of current legislation (rules and procedures) and institutions with a direct and indirect involvement in corruption and unethical conducts and the prevention of corruption has been mapped. The purpose of this stage is to assess the integration or divergence of legislation and institutions-mechanisms in terms of an anti-corruption framework. The result of this assessment has enabled a more detailed review about the effectiveness of anti-corruption measures implemented in recent years under the headings of four System Studies.

The following methodology has been used for each System Study. The legal and institutional landscape or infrastructure of ethical administration (e.g. existing laws, by-laws, regulations, codes, institutions, strategies, procedures and mechanisms concerning with corruption and public service ethics) has been mapped. Interviews have been undertaken with related parties in the areas concerned. Finally, the effectiveness of the various means to address or prevent corruption and unethical conducts have been evaluated, together with recommendations aimed at improving the management, coordination and monitoring of anti-corruption strategies have been made.

2. THE LEGAL AND INSTITUTIONAL INFRASTRUCTURE OF ETHICAL ADMINISTRATION IN TURKEY

2.1. National Legislation

There is no a "general code of conduct for all public officials", but several laws and by-laws in the Turkish national legislation comprise a number of important rules of conduct for civil servants and other public servants to secure ethical conducts and combat corruption.

The legislative framework of ethical administration in Turkey is as follows:

- The 1982 Constitution
- **The Civil Servants' Law (the CSL) (*Devlet Memurları Kanunu*) dated 1965 and numbered 657**
- **The Turkish Penal Code (the TPC) (*Türk Ceza Kanunu*) dated 2004 and numbered 5237**
- **The Law for Financial Disclosure and Combating Bribery and Corruption (*Mal Bildiriminde Bulunulması, Rüşvet ve Yolsuzluklarla Mücadele Kanunu*) dated 1990 and numbered 3628**
- The Law concerning Prohibited Activities of Former Public Servants (*Kamu Görevlerinden Ayrılanların Yapamayacakları İşler Hakkında Kanun*) dated 1981 and numbered 2531
- **The Law concerning the Trials of Civil Servants and Other Public Servants (*Memurlar ve Diğer Kamu Görevlilerinin Yargılanması Hakkında Kanun*) dated 1999 and numbered 4483**
- **The Law concerning the Use of Right to Petition (*Dilekçe Hakkının Kullanılmasına Dair Kanun*) dated 1984 and numbered 3071**
- **The Law about the Right of Access to Information (*Bilgi Edinme Hakkı Kanunu*) dated 2003 and numbered 4982**
- **The Law concerning the Foundation of the Council of Ethics for the Public Service (*Kamu Görevlileri Etik Kurulu Kurulması Hakkında Kanun*) dated 2004 and numbered 5176**
- **By-Law concerning the Principles of Ethical Behaviour of the Public Servants (*Kamu Görevlileri Etik Davranış İlkeleri Yönetmeliği*) dated 2005**
- The Law about the Prevention of Money Laundering (*Karaparanın Önlenmesine Dair Kanun*) dated 1996 and numbered 4208 and the Law about the Prevention of Laundering Income comes from Crime (*Suç Gelirlerinin Aklanmasının Önlenmesi Hakkında Kanun*) dated 2006 and numbered 5549
- The Public Procurement Law (*Kamu İhale Kanunu*) dated 2002 and numbered 4734 and the Public Procurement Contracts Law (*Kamu İhale Sözleşmeleri Kanunu*) dated 2002 and numbered 4735
- The Law about Public Financial Management and Control (*Kamu Mali Yönetimi ve Kontrol Kanunu*) dated 2003 and numbered 5018.

[Those highlighted are considered as directly part of the System Studies]

The major pieces of Turkish national legislation comprise various necessary legal instruments for preventing many kinds of corruption. Various instruments took place in different codes of conducts for public servants developed by the regional or international organisations are also prescribed in this legislation. For example, the CSL contains many principles of conduct and disciplinary penalties for misconducts

(see System Study No.1) to prevent bribing and conflict of interests. Many other provisions of the CSL are also taken more seriously (legally and practically) in terms of personnel performance reports, disciplinary and criminal investigations in Turkey. Those provisions are also mentioned and discussed in detail in System Study No.3 and 4. The By-Law issued by the Council of Ethics for the Public Service (CEPS/ *Kamu Görevlileri Etik Kurulu-KGEK*) in 2005 also determined quite similar principles of ethical behaviour (see art. 5 to 22) to those prescribed by the CSL. These principles support the present legislative framework for an ethical environment (see System Study No.1). The TPC, the Law for Financial Disclosure and Combating Bribery and Corruption, the Law about the Prevention of Money Laundering and the Law about the Prevention of Laundering Income comes from Crime prescribed various heavy penalties for different kinds of bribe and money laundering. The Law concerning Prohibited Activities of Former Public Servants aims to prevent and reduce conflict of interest. The Law concerning the Trials of Civil Servants and Other Public Servants and the Law for Financial Disclosure and Combating Bribery and Corruption regulates different investigation and trial procedures for public servants in the case of corruption allegations (see System Study No.3). Finally, the Law concerning the Use of Right to Petition, the Law about the Right of Access to Information, the Public Procurement Law and the Public Procurement Contracts Law aim to prevent all sorts of unethical conducts including bribing and conflict of interest through increasing transparency in the public sector.

In addition to these major legal regulations, various ethical principles and rules of conduct can also be detected in the organisational laws of many public bodies and the laws and by-laws of many professions (e.g. the Banking Regulatory and Supervision Agency, the Public Procurement Agency, customs officers, police officers, internal auditors). However, they are scattered around the national legislation and need to be recodified in accordance with the guideline of a general code for all public servants.

2.2. International Conventions ratified by Turkey

In addition to these national legislation, various international conventions (the UN, the Council of Europe and OECD conventions) about combating corruption were signed and ratified by the Turkish authorities in recent years. They are as follows:

- OECD Convention of 1997 on Combating the Bribery of Foreign Public Officials in International Business Transactions (ratified in 2000)
- 1997 Council of Europe Civil Law Convention on Corruption (ratified in 2003)
- 1998 Council of Europe Criminal Law Convention on Corruption (ratified in 2004)
- United Nations Convention against Corruption (ratified in 2006)

In addition, Turkey approved the recommendations made by “OECD Financial Action Task Force on Money Laundering” (FATF) in 2003. As a consequence of the ratification of the 1997 Council of Europe Civil Law Convention on Corruption by the Turkish Parliament in 2003, she has become a member of GRECO, which aims to monitor the implementation of anti-corruption measures developed by the Council of Europe, in 2004. She also participates in monitoring the application of anti-corruption measures taken by the “OECD Working Group on Bribery in International Business Transactions” (see European Commission, 2002, 2003, 2004 and 2005; and Başbakanlık, 2004).

Meanwhile, some principles of international conventions have been partly incorporated into the Turkish domestic legislation (e.g. the new TPC and the Law Amending Certain Laws for the Prevention of Bribing Foreign Public Officials dated 2003 and Numbered 4782).

2.3. Institutions

2.3.1. Institutions Responsible for the Laws

In Turkey, the provisions of laws are, in principle, executed by the Council of Ministers. Public bodies are usually not assigned to execute particular laws since laws (e.g. the CSL and the TPC) often regulate an area in which the jurisdictions of different public bodies are overlapped. However, as explained below, various expert public bodies are responsible to monitor and/or investigate cases within the framework of certain laws which are closely related to their missions (e.g. CEPS-the Law concerning the Foundation of the Council of Ethics for the Public Service; the Examination Board for Financial Crimes-the Law about the Prevention of Money Laundering and the Law about the Prevention of Laundering Income comes from Crime; the Public Procurement Agency-the Public Procurement Law and the Public Procurement Contracts Law).

2.3.2. Control Institutions

As a consequence of increased international concern for corruption and other kinds of unethical conducts, new institutions have been established in both developed and developing countries in order to determine ethical codes of conduct for public servants and monitor their applications in practice. A special institution for such a kind (i.e. CEPS) was newly established in Turkey. The legislative, executive and judicial organs of the Turkish polity are, however, directly or indirectly authorised for combating corruption in the way of establishing an ethical administration in Turkey.

The ways of control of corruption can be usually categorised into three: “legislative control”; “judicial control” and “administrative control”. In addition to these conventional ways of control, the “control of public opinion” (mass media and the institutions of civil society) over corruption can be counted as a new and developing way of control (see Gözübüyük and Tan, 2001, Vol.1: Chp. 8/1 and 3) in the face of increased public reaction against widespread corruption in Turkey as well as many other countries. “International control” through “the European Court of Human Rights” is another new control mechanism for Turkey. Another significant control institution, “ombudsman” is not existent in Turkey in spite of recent legislative attempts.

Legislative control, which is especially crucial for political corruption, is exercised by “the Parliament” (*TBMM*), “the Parliamentary Commission for Petitions” (*TBMM Dilekçe Komisyonu*) and “the Parliamentary Commission for Human Rights” (*TBMM İnsan Hakları İnceleme Komisyonu*). If we put legislative control, control of public opinion and international control aside, judicial and administrative controls are important mechanisms for combating bureaucratic types of corruption.

When it comes to judicial control, there is not any specialist court for the judicial supervision of corruption in Turkey. The legal proceedings about corruption cases are, however, carried out by both the constitutional higher courts and judicial, administrative and military courts. Corruption cases within the framework of the TPC are in the jurisdiction of the courts of justice. “The High Court of Appeal” (*Yargıtay*) is the last instance for reviewing decisions and adjustments given by courts of justice

and which are not referred by law to the other judicial authority (the Constitution, art. 154).

Administrative control contains the ways of “internal control” and “external control”. Internal control means that the activities of a public organisation are controlled by itself (i.e. auto-control). The “hierarchical control” of superiors over subordinates is a conventional but important way of internal control. “Internal agency inspection through inspection boards” is also a strong controlling tradition in Turkey.

Inspection boards in the Office of the Prime Ministry and in every ministry/agency and autonomous public bodies play a significant role in terms of internal control in Turkey. All these inspection boards execute their inspection functions quite autonomously mainly in the light of the TPC, the Laws numbered 3628 and 4483 and the CSL (disciplinary provisions). They are closely attached to and report to the minister/head of agency, carry out audits and investigations with similar powers as the police. They also work to prevent crime, including corruption within the agency and review rules and regulations to that aim. Any inspection board that comes across instances of corruption, is obliged to report directly to the public prosecutor in accordance with the Law numbered 3628. Inspection boards have to coordinate with the “Inspection Board of the Office of the Prime Ministry” (*Başbakanlık Teftiş Kurulu*), for instance, submitting annual reports to and carrying outs investigations upon requests from the Inspection Board of the Office of the Prime Ministry. This Board is hierarchically superior to the other inspection boards. It inspects both central and local governments. The scope of its control goes so far as to the conduct of all types of investigations, inspections, auditing and inquiries and it has the widest legal authority to carry out its tasks. The Board establishes general principles of investigation and auditing for the whole inspection system in Turkey, excluding the judiciary. It supervises the ministry/agency inspection boards and carries out multi-agency investigations. In particular, the Inspection Board of the Office of the Prime Ministry has recently been assigned to a new role: so-called “central co-ordination unit for implementing anti-corruption policies”. Also, the “Inspection Board of the Ministry of Finance” (*Maliye Bakanlığı Teftiş Kurulu*) has a specific mandate to fight corruption (particularly in the fields of tax evasion, customs and in the banking sector) in addition to its main functions of financial and tax audit. Unfortunately, information about corruption cases investigated by inspection boards (e.g. type, number and what happens to the cases) are not institutionally and centrally collected on a regular basis and then released to the public.

External control means that the activities of a public organisation are controlled by the authorities outside the public organisation concerned. The “administrative tutelage” of the central government over local governments in Turkey is a good example for external control. “Control by special public bodies” are carried out by certain expert public bodies authorised in specific areas or issues such as the “Audit Court” (*Sayıştay*), “the State Supervisory Council” (*Devlet Denetleme Kurulu*), “the Higher Supervisory Board of the Prime Ministry” (*Başbakanlık Yüksek Denetleme Kurulu*), “the Banking Regulation and Supervision Agency” (*Bankacılık Düzenleme ve Denetleme Kurumu-BDDK*), “the Public Procurement Agency” (*Kamu İhale Kurumu*), “the Examination Board for Financial Crimes” (*Mali Suçlar Araştırma Kurulu-MASAK*) and the CEPS in Turkey. Since the role and duties of CEPS and “Board of Review of Access to Information” (*Bilgi Edinme Değerlendirme Kurulu-BEDK*), which is responsible for better use of the right to access to information have been examined in detail in the following sections, only other control institutions should be mentioned here briefly.

"The Audit Court" (the Court of Accounts/*Sayıştay*) is a supervisory body with both administrative and judicial functions. This constitutional institution is charged with auditing, on behalf of the Turkish Parliament, all the accounts relating to the revenue, expenditure and property of public bodies financed by the general government budget and to those of local governments, with taking final decisions on the acts and accounts of the responsible officials, and with exercising the functions required of it by law in matters of inquiry, auditing and judgement. The Audit Court has been assigned recently to do performance audit as well (see the Constitution, art. 160; and the Law about the Audit Court dated 1967 and numbered 832).

"The State Supervisory Council" (*Devlet Denetleme Kurulu*), which is attached to the Office of the Presidency of the Republic (*Cumhurbaşkanlığı*) and constitutional supervisory institution, is established with the aim of performing and developing the regular and efficient functioning of the administration and its observance of law. It is empowered to conduct upon the request of the President of the Republic all kind of inquiries and supervisions on all public bodies except the armed forces and judicial organs (see the Constitution, art. 108; and the Law concerning the Establishment of the State Supervisory Council dated 1981 and numbered 2443).

"The Higher Supervisory Board of the Prime Ministry" (*Başbakanlık Yüksek Denetleme Kurulu*) has power to monitor and supervise state economic enterprises, social security institutions, and some certain organisations which were subject to the supervision of the Board by their specific laws in terms of economic, financial, legal and technical points. It is also empowered to conduct inquiries upon the request of the Prime Minister. Although the main duty of the Board is the supervision of the performance of economic public organisations, all illegal issues emerged in the course of inspections and investigations are passed by the Office of the Prime Ministry (*Başbakanlık*) to the administrative and judicial authorities concerned (see the Decree having the force of law dated 1983 and numbered 72).

"The Banking Regulation and Supervision Agency" (BRSA) (*Bankacılık Düzenleme ve Denetleme Kurumu-BDDK*) is a product of highly volatile and corrupt environment in the Turkish banking sector in the 1990s. In year 2000, The Coalition Government under the premiership of Bülent Ecevit decided to remove the fragmented structure in banking regulation and supervision, and to establish an autonomous body which will be the sole authority in the banking sector. This Agency as a public legal entity with administrative and financial autonomy was established according to Banks Act (*Bankacılık Kanunu*) numbered 4389 and began to operate in 2000. BRSA with its regulation and auditing functions tries to combat corruption and all sorts of unethical conducts in the baking sector. It has undertaken an important mission as regards the prevention of corruption and developed an institutional code of ethics.

"The Public Procurement Agency" (PPA) (*Kamu İhale Kurumu*) was established as a public legal entity with administrative and financial autonomy in 2002 in order to ensure transparency and combat corruption in public procurements in accordance with the Public Procurement Law numbered 4734 and the Public Procurement Contracts Law numbered 4735. Although it is linked to the Ministry of Finance, PPA is autonomous in the fulfilment of its duties. In addition to its duties and authorities with respect to tender procedures, PPA examines all kinds of complaints, notices and allegations about the procurement process and then produces reports about them. With this function, PPA's role in combating corruption in such a highly delicate field is quite crucial.

Multidisipliner bir kurum olarak, yükümlülüklerin denetimini maliye müfettişleri, hesap uzmanları, gelirler kontrolörleri, bankalar yeminli murakıpları, hazine kontrolörleri, SPK ve BBDK uzmanlarından yararlaarak yerine getirir.

"The Examination Board for Financial Crimes" (EBFC) (*Mali Suçlar Araştırma Kurulu-MASAK*) was established in 1997 as a FIU in Turkey according to the Law about the Prevention of Money Laundering numbered 4208 and then its duties and authorities were rearranged with the Law about the Prevention of Laundering Income comes from Crime numbered 5549. Although it is directly related with the Minister of Finance, EBFC works with a highly autonomous manner in accordance with FATF's standards. As a multidisciplinary body, it undertakes the auditing of obligations through Ministry of Finance inspectors, auditors, revenue comptrollers, sworn bank auditors, treasury comptrollers and capital market board and BRSA experts. EBFC tries to develop policies and regulations in order to prevent money laundering, examines suspicious transactions and supervise necessary units and then it conveys the results to the related authorised bodies. When EBFC concludes that a crime has been commited, the case is submitted to the public prosecutor. Thus, the close connection between money laundering and corruption gives an important role to EBFC in combating corruption.

2.4. Issues

Both the national legislation and international conventions provides not only various rules of conduct but also procedures and proceedings concerning the different types of corruption and unethical conducts. However, the coordination among rules prescribed by various legal documents for different aims at different times; and overlaps and/or conflicts among rules and procedures are still serious problems in the Turkish public administration. The effective application of such rules and procedures in practice is another and culturally-bounded problem which is still waiting to be resolved. All these issues will be particularly examined within the framework of four System Studies.

It should be, however, pointed out that institutions mentioned above are not deliberately established for preventing and combating all kinds of corruption and unethical conducts and monitoring the issues of public service ethics. Although many of them do their supervisory functions indirectly, they are not always effective enough to achieve this aim (see Başbakanlık Yüksek Denetleme Kurulu, 1989). The daily workload of the Audit Court and the Higher Supervisory Board of the Prime Ministry prevents these bodies to examine corruption cases properly. The Audit Court does not have any co-operation with departmental inspection boards, although the Law about Public Financial Management and Control numbered 5018 regulates that the Audit Court has access to reports prepared by the internal audit. If the Court needs an in-depth investigation, it requests the relevant inspection board for assistance. The Audit Court does not have investigative powers either and whenever it suspects a criminal offence, it either reports to public institution or public agency (henceforth public agency for all public organisations) concerned or to the public prosecutor. Some of these institutions (e.g. BRSA, PPA and EBFC) are authorised in highly limited fields and jurisdictions which do not cover different aspects of unethical conducts. BRSA could not handle properly the Imarbank Scandal in the early 2000s (see Ömürgönülşen and Ömürgönülşen, 2009). Although PPA's role in combating corruption is highly crucial, it has preferred to play a low-profile role in practice since 2002. Furthermore, the supervisory report of the State Supervisory Council is not mandatory for public organisations either. If the public organisation concerned considers the information in this report as denunciation, it may start investigation about the civil servant(s) concerned (Gözler, 2002: 51). One of the most serious

deficiencies in the supervisory activities of these institutions is that the results of supervision are not publicly known enough (Aktan, 1992: 110-111).

Another significant control institution, “ombudsman” is not existent in Turkey in spite of recent legislative efforts to establish such an institution at both national and local levels. The execution of “the Law about Omdusman” (*Kamu Denetçiliği Kurumu Kanunu*) dated 2006 and numbered 5548 was halted and then totally annuled by the Constitutional Court (*Anayasa Mahkemesi*). However, the establishment of an ombudsman as a constitutional body is one of the lively issues in recent debate on constitutional amendment and/or preparing a brand new constitution.

2.5. Summary

Within the framework of System Study No.1, the legal and institutional infrastructure of ethical administration in Turkey (e.g. existing laws, by-laws, regulations, codes, institutions, strategies, procedures and mechanisms concerning with corruption and public service ethics) has been mapped through analysing legal documents and conducting interviews with related parties in terms of contribution to or participation in anti-corruption strategies, procedures and operational activities. It has been figured out that the Turkish bureaucracy is equipped with necessary legal instruments and institutional mechanisms (i.e. hard measures of compliance based ethics management) against many kinds of corruption in the way of establishing an ethical administration in spite of some deficiencies in terms of international standards (i.e. there is no a special code of conduct for all public servants and an ombudsman for ethical issues). A special institution for monitoring the issues of public service ethics (i.e. CEPS) was newly established and some legal regulations and institutional arrangements on the issues of right to information, transparency, and financial management and control were recently completed in the process of accession to the European Union (EU) (also see Ömürgönülşen and Öktem, 2005 and 2007: Chp.5; Ömürgönülşen, 2008a, 2008b and 2008c). However, this fragmented ethical structure (i.e. many legal documents and control institutions) is probably one of the main obstacles in enforcing anti-corruption policy in Turkey.

3. SYSTEM STUDIES - SYSTEM STUDY NO.1: EFFECTIVENESS OF AC MEASURES THROUGH CODE OF ETHICS

3.1. Introduction

As mentioned above, there is not any "general code of conduct for all public officials" in Turkey. However, various ethical principles and rules of conduct can be found in the major legislation in this field (e.g. the Constitution, the CSL and By-Law concerning the Principles of Ethical Behaviour of the Public Servants) and in the organisational laws of many public bodies and the legal regulations about many professions in the public sector. So, not only the effectiveness of anti-corruption measures in the By-Law concerning the Code of Ethical Conduct for Public Servants but also that of the related legislation should be taken into consideration in order to get a broad and true picture of the issue.

3.2. Ethical Principles and Rules of Conduct for Public Servants in the Turkish National Legislation

Since the full examination of the provisions in the Turkish national legislation related with conducts of public servants (mainly civil servants) goes beyond the scope of this Report, only fundamental principles, which aim to secure the proper and ethical conducts of public servants and to prevent different types of corruption, taken place in the Constitution, the CSL, the By-Law concerning the Principles of Ethical Behaviour of the Public Servants and some other closely related legal documents, have been mentioned.

The CSL comprises comprehensive rules, which describe conducts of civil servants in Part I (Section 2, 3 and 4); indeed the code of conducts in the CSL are taken more seriously (legally and practically) in terms of personnel performance reports, disciplinary and criminal investigation in Turkey than the legally weaker document of By-Law dated 2005. Most of the articles in these sections have been amended for last three decades. However, the most important amendments have been made with the Law dated 1982 and numbered 2670. Such amendments made with the effect of the military regime of early 1980s can be criticised that some legal guarantees of civil servants have been restricted and the civil service regime has become militarised (see Ömürgönülşen, 1989: Chp.III/V). But, it can also be argued that such amendments have brought some affirmative elements for the proper conducts of civil servants. Thus, the CSL tries to establish a delicate balance as much as it can among fundamental administrative principles (e.g. rule of law, security of tenure, service effectiveness) and ethical conduct (see Tutum, 1972; Ömürgönülşen, 1989).

The provisions of the CSL and other constitutional and legal regulations related with the duties and responsibilities of civil servants and prohibitions for public servants in accordance with the internal order of CSL are as follows:

3.2.1. Duties and responsibilities of public servants (particularly for civil servants):

The provisions of the CSL and other constitutional and legal regulations related with the duties and responsibilities of civil servants in accordance with the internal order of CSL are as follows:

- Merit principle (the CSL, art. 3/C)
- Loyalty to the Constitution and the laws (the Constitution, art. 129; the CSL, art. 6, 7)

- Respect to impartiality, equality, the rule of law, democracy and human rights (the CSL, art. 6)
- Impartiality (the Constitution, art. 10; the CSL, art. 7)
- General principles of conduct and co-operation (the CSL, art. 8 and 9)
- Duties and responsibilities of supervising officers (the CSL, art. 10)
- Implementation orders but objection to illegal orders (the Constitution, art. 137; the CSL, art. 10 and 11)
- Financial liability of civil servants for damages done to the administration or the third parties (the Constitution, art. 40, 125 and 129/5 and the CSL, art. 12 and 13)
- Declaration of assets" (the CSL, art. 14, the Law numbered 3628 and the Law numbered 5176)
- Restrictions on releasing information and making statement through the press about public affairs" (the CSL, art. 15)
- Proper use of official documents, materials and instruments" (the CSL, art. 16)

3.2.2. Prohibitions for public servants (particularly for civil servants):

The provisions of the CSL and other legal regulations related with prohibitions for civil servants in accordance with the internal order of CSL are as follows:

- Prohibition against engaging in trade and other profit-making activities (the CSL, art. 28)
- Prohibition against accepting gifts or obtaining benefits (the CSL, art. 29)
- Prohibition against obtaining benefits from an enterprise under his/her control (the CSL, art. 30)
- Prohibition against revealing secret information (the CSL, art. 31)
- Prohibition on business activities of former public servants (the Law numbered 2531, art. 2)

3.3. The By-Law

After the establishment of CEPS, a brand new By-Law, which contains the principles of ethical behaviour, was prepared by CEPS in 2005.

The principles determined by the By-Law are as follows:

- Public service consciousness in performing a duty (art. 5)
- Consciousness of serving the community (art. 6)
- Compliance with the service standards (art. 7)
- Commitment to the objective and mission of public agency (art. 8)
- Integrity and impartiality (art. 9)
- Respectability and confidence (art. 10)
- Decency and respect (art. 11)
- Notification to the authorities (art. 12)
- Avoiding conflict of interest (art. 13)
- Prohibition against the misuse of duty and authority for deriving benefits (art. 14)
- Prohibition of receiving gifts or deriving benefits (art. 15)
- The proper use of public properties and resources (art. 16)
- Avoiding extravagance and waste (art. 17)
- Unauthorised and factitious statement(art. 18)

- Notification, transparency and participation (art. 19)
- Accountability of administrators (art. 20)
- Restrictive relations with former public servants (art. 21)
- Declaration of assets (art. 22)

Although terminology used in the By-Law is quite NPM-oriented, this By-Law determined quite similar principles of ethical behaviour to those prescribed by the CSL. However, the term, “conflict of interest” has been used first time in a Turkish legal document.

In addition to those principles determined in the By-Law, public agencies can submit their own principles of ethical behaviour, in accordance with the nature of service or duty they perform, to the examination and approval of CEPS (art. 26).

3.4. The Institution

With “the Law concerning the Foundation of the Council of Ethics for the Public Service” dated 2004 and numbered 5176, a specialised council (i.e. CEPS) for supervising the ethical conducts of public servants was establihed for the first time in Turkey. The recommendations of regional and international organisations such as the EU, the Council of Europe and the OECD was influential in the establishment of CEPS as an important part of the ethical infrastructure of Turkey.

CEPS consists of 11 members elected by the Council of Ministers for a period of four years (art. 2). The current composition of CEPS is mainly made up of retired senior bureaucrats, such as former governors, judges, ambassadors. CEPS is commissioned and authorised to “determine the principles of ethical behaviour” to be abided by public servants while performing their duties, “perform the necessary examination and research” (i.e. ethical review or inquiry) with the personal claim that the ethical principles are violated or the same based on the complaints to be received, to “inform the relevant authorities” regarding the result of such examination and researches, “perform or make performed studies to establish the ethical culture” within the public and to “support the studies to be performed” in this regard (art. 3). CEPS is also authorised to examine, when necessary, the declarations of assets of public servants (art. 8). In order to achieve those aims, a small secretariat (1 administrator, 2 experts, 5 assistant experts, 7 administrative and auxiliary staff and 3 inspectors who are all temporary secondees from the Office of Prime Ministry) is assigned.

Allegations about ethical violations are reviewed as to the rank of the public official involved and the nature of the possible offence. CEPS reviews claims about senior public officials with a minimum rank of general director or equivalent. Claims about other public officials are reviewed by institutional disciplinary boards (art. 4). CEPS is obliged to finalise the examination and research process within at most 3 months (at. 5). All public organistions are obliged to provide the information and documents required by CEPS regarding the subject of application (art. 6). CEPS informs the result of the examination and research to the relevant entities and the Prime Ministry in a written form. If CEPS determines an ethical violation, the name of public official concerned is announced by the Prime Ministry to the public as a CEPS decision via the Official Gazette (*Resmi Gazete*). However, if this decision is annuled via adjudication, the adjudication executes its verdict and makes it published at the Official Gazette (art. 5). The details of review procedure undertaken by CEPS and institutional disciplinary boards are regulated by the By-Law dated 2005.

In addition to CEPS at national level, institutional “ethics commissions” are established with the By-Law dated 2005 (art. 29). An institutional ethics commission consisting of at least 3 people from the institution concerned is established by the highest administrator of the institution in order to establish and develop ethical culture, to advise and direct about problems the public servants face with about the principles of ethical conduct and to evaluate ethical practices. The highest administrator determines how long the members of commission will work and other related matters. The information about those members is notified to the CEPS and the commission works in cooperation with CEPS. Although these commissions are crucial for increasing ethical awareness at both general and institutional levels, it can be said that most of them are not active in practice. Even the ethics commission in the State Personnel Department (SPD) (*Devlet Personel Başkanlığı*), which can organise ethical awareness campaings at whole civil service level or give many kinds of official views about ethical conducts (e.g. return of public servants to their previous posts after electoral failure), is not a exception of this general trend. The links between ethics commissions and CEPS could not be established. Furthermore, in terms of ethical inquiry, disciplinary boards rather than ethics commissions are authorised for evaluation of claims about unethical conducts of public servants (art. 4 of the Law numbered 5176). This legal arrangement substantialy limits the span of duty and then the importance of commissions.

3.5. Issues

As the most important codified document in the Turkish public personnel regime, the CSL prescribes fundamental ethical principles and rules fo conduct for public servants. In accordance with the administrative understanding of the time that the CSL was enacted (in the mid-1960s), such values, principles and rules are more state-oriented ones and they are ensured through either disciplinary penalties or the sanctions of the TPC.

In fact, the principles determined by the By-Law prepared by CEPS in 2005 are quite similar to those prescribed by the CSL. Therefore, it can be argued that such principles, in essence, support the present national legislation in this issue. However, there are some criticisms about the various aspects of this By-Law (see Yılmaz and Arap 2005; Yüksel, 2005).

Firstly, those ethical principles (rules of conduct) are regulated through a by-law rather than a law. It is quite easy to change by-laws in the Turkish legal and administrative system; and it is not in accordance with the tradition of regulating issues related to the status of civil service in Turkey either.

Secondly, the contents of some principles (e.g. respectability and confidence; decency and respect) like some in the CSL (e.g. loyalty, respect and cooperation) are not clear enough.

Thirdly, the reflections of the new public management and governance approaches can easily be detected in the terms and language (e.g. continuous improvement, results-driven, commitment to mission, compliance with service standards, transparency, accountability, citizen-focused, co-operation with the civil society) used in the By-Law. The state-oriented values and principles (of the CSL) and such managerial and governance-type values and principles are together taken place in the By-Law. Unfortunately, the By-Law cannot provide administrators and public servants with a clear guideline when those different values are contradict.

Fourthly, the By-Law, in principle, envisage a prohibition against accepting gifts or obtaining benefits but not accept a "zero-tolerance" policy (art. 15). Small and symbolic gifts and various donations (there is no clear-cut monetary limit) are not covered by this general prohibition; and therefore, it is the weakest point of the system brought by the By-Law.

In spite of such criticisms, the By-Law has brought some important concepts and mechanisms. For example, as mentioned above, conflict of interest which is one of the fundamental principles of ethical conduct has entered to the national legislation for the first time thanks to this By-Law (art. 13). Public servants within the scope of the Law are responsible to abide by the principles determined in this By-Law and to sign the document "ethical contract" (art. 23). However, to what extent these contracts are signed by public servants consciously and how far this measure help the prevention of corruption is another questionable issue.

As partly mentioned above, the establishment of such a national ethics council represents an important step in improving ethical record of Turkish public administration. With the duty of establishing and enhancing ethical culture, CEPS represents a smooth transition to integrity based ethics management as a complementary element to the compliance based ethics management. On the other hand, there are some criticisms about the way of its establishment, the structure, the span of duty, authorities, and its administrative capacity and functioning of CEPS (see Yılmaz and Arap, 2005; Yüksel, 2005; Demirci and Genç, 2007; and Ömürgönülşen, 2008a, 2008b, 2008c).

Since CEPS is structured within the Office of Prime Ministry, its members are elected by the Council of Ministers and its staff are secondees of the Office of Prime Ministry, CEPS' administrative and budgetary autonomy is questionable. The narrow span of authority of CEPS (politicians, military-judical-academic personnel and cases already transferred to courts are not covered by the Law) is another significant criticism. Furthermore, its institutional relations with disciplinary boards and institutional ethics commissions are really weak. Since the duties and functions of CEPS are actually restricted by the Turkish penal law (i.e. civil and administrative courts deal with cases transferred to courts) and disciplinary law (i.e. disciplinary superiors and boards have authority to investigate disciplinary matters and to use disciplinary measures), the role of CEPS in combating corruption and unethical conducts can be questioned. Finally, the size of secretariat is too small to carry out duties properly given to CEPS.

It is, however, still early to evaluate the effects of the works of CEPS since it was put into force in late 2004. Nowadays, CEPS is heavily occupied with conducting a project called "Ethics for the Prevention of Corruption in Turkey" (*Türkiye'de Yolsuzluğun Önlenmesi İçin Etik Projesi*), in co-operation with the Council of Europe (see http://www.coe.int/tyec). In its first years, CEPS was mainly occupied with creating ethical awareness in the public sector. Between the years of 2005-2008, 265 applications were made about unethical allegations to CEPS covering personnel issues (30), violations of the general principles of ethical behaviour (31), negligence or misuse of duty (48), misuse of public resources (36), academic plagiarism (5), nepotism-cyronism (19), practices against fairness and neutrality (30), violations of access to information (9), corruption and irregularities (39), and miscellaneous (18). However, most of them could not be reviewed because they were out of CEPS' span of authority. 16 out of 253 applications were reviewed and no single breach of Code was determined (Başbakanlık Kamu Görevlileri Etik Kurulu (2008). Since the late 2008, 2 cases about mayors and 4 cases about senior bureaucrats violating ethical principles (e.g. avoiding conflict of interest, integrity and impartiality, prohibition of receiving gifts and deriving benefits, decency and respect, making use of public

domain and resources) have been announced by the Prime Ministry to the public as a Council decision via the Official Gazette (see http://www.etik.gov.tr/kurulkararlari/kurulkararlari.htm, 02.07.2009).

3.6. Summary

Although founding a national ethics council (i.e. CEPS) and codifying main principles of ethical behaviour (i.e. the By-Law dated 2005) can be considered as important steps in establishing an ethical administration in Turkey, CEPS and the Code designed by the By-Law have their own deficiencies. The effectiveness of CEPS can be questioned in terms of the way of its establishment, structure, span of duty, authorities, and its administrative capacity and functioning. The review procedure followed by CEPs and institutional disciplinary boards about unethical conducts is not very effective either in the face of unclear position of CEPS in terms of its investigation, awareness and prevention roles.

4. SYSTEM STUDIES - SYSTEM STUDY NO.2: EFFECTIVENESS OF AC MEASURES THROUGH THE PUBLIC INFORMATION ACT

4.1. Introduction

Right to access to information is a significant instrument to establish a transparent government and public administration. Expanding the exercise of right to access to information forces public agencies to adopt a more open management style thus allows the public to learn about secret even corrupt transactions. With this feature, right to access to information is also quite important instrument to combat corruption and to establish a transparent and ethical administration.

4.2. The Law

In compliance with equality, impartiality and clarity principles which are the fundamental requirements of democratic and transparent government, principles and procedures concerning the usage of persons' right to access to information in Turkey are regulated with the Law on the Right to Access to Information (so-called the Public Information Act) dated 2003 and numbered 4982. In accordance with the Law, all public agencies (even the Parliament) and many professional associations having public character have established separate units (Access to Information Unit/*Bilgi Edinme Birimi*) within the public relations departments to deal with requests for information. Furthermore, regulations on the right to access to information force that most of the public agencies in central government or many in local governments have had their own special web pages on this issue. Access to information units are usually established within public relations departments and operated by either full-time public relations officials or part-time ordinary public officials.STE is informed that reliable statistical data about the number of units and personnel employed in those units are not available.

The Law numbered 4982 provides the legal basis for all public agencies when responding to requests for information. The main principle of the Law is that everybody, both citizens and foreigners resident in Turkey and foreign legal entities operated in Turkey (the existence of personal or operational area links and in accordance with the principle of reciprocity), has the right to any information (art. 4). Only in cases dealth with administrative acts which affect working life and professional honour of a person and which are out of the jurisdiction of judicial review, and with information subject to state secrets and national security, economic interests of the country, civilian or military intelligence, administrative investigations and judicial investigations and proceedings, personal privacy, privacy of correspondence, commercial secrets, literary and artistic works, internal agency regulations and memoranda, and recommendation and consultation requests are the exemptions of the right to access to information (art. 15-27). Information already available to the public with various ways (e.g. official publications, leaflets, internet) is not within the scope of the Law either (art. 8). If some part of the information requested be confidential, it is removed and the requester is informed of its reason for removal in writing (art. 9).

Within the framework of the Law, applications to get information must be made in writing including electronic mail and the requested information should be indicated clearly in the petition. There is also a legal obligation to indicate the name, signature and address of the petitioner, but no obligation to state the reason for the request (art. 6). Public agencies are required to apply administrative and technical measures to provide every kind of information and document to applicants and to review and decide on the applications promptly, effectively and correctly (art. 5). Public agencies

are obliged to process the request within 15 working days. Such a term may be extended to 30 working days if the content concerns more than one public agency or consultation of another public agency is required or another unit of the agency hold the information (art. 11). If the information requested is required for further or special work or analysis to be done by public agencies, such applications may be turn down. If information requested is hold by another public agency, the application is directed to that agency and the situation is notified in written form to the requester. Public agencies should state the reason for refusing to disclose information requested in their decisions and the ways of review for those decisions (art. 12). Public servants who do not properly practice the provisions of the Law with negligence, fault and malicious act are subject to the general provisions of the TPC and the disciplinary provisions of their status (at. 29).

A decision to reject a request for information, which was given by superior who has the authority for appointment based on the view of access to information unit concerned, may be appealed by the applicant within 15 days to the "Board of Review of Access to Information" (BRAI) (*Bilgi Edinme Değerlendirme Kurulu-BEDK*) and, ultimately, before an administrative court. An appeal to BRAI halts the official time for appealing to administrative court. BRAI has to take its decision with 30 working days. Public agencies are obliged to provide all kinds of information and documents required by BRAI within 15 working days. (art. 13). The decision of BRAI can also be appealed to the court.

4.3. The Institution

BRAI was set up and started to operate in 2004 (art.14) with the Law numbered 4982. Although BRAI is not a special institution for combating corruption or monitoring unethical conducts, it should be mentioned among institutions which has contributed to the establishment of ethical infrastructure in Turkey since right to information is an important instrument to establish a transparent public administration. BRAI was founded with a view to reviewing decisions made in accordance with the Law numbered 4982 upon appeals concerning right to access to information as well as with a view to making decisions on the exercise of right to information by public agencies. The structure and operation methods of BRAI are quite similar to those of CEPS. BRAI have 9 members who are appointed by the Council of Ministers for a period of four years (art. 14) and a similar number of staff in the Secreteriat who are all secondees from the Office of Prime Ministry. BRAI may invite the representatives of public agencies and civil society organisations concerned to its meetings in order receive more information about certain issues.

BRAI reviews administrative decisions made in accordance with the Law upon appeals about right to access to information. Public agencies may also ask BRAI for its opinion in specific cases. The STE was informed that during the period of 2004-2008, 4962 applications were submitted to BRAI. 2086 applications were rejected; 1676 applications were totally and 702 applications were partially accepted. On 144 applications, public agencies demanded the view of BRAI on particular issues. Some precedent decisions of BRAI are displayed in its website in order to provide useful hints for both people and public agencies in this field. This also creates a psychological effect over public servants to make them behave in compliance with legal and ethical rules. The number of applications/opinion demanded under review were 38 in the end of 2008. Most of the appeals submitted to BRAI were made by public servants about public payments, contracts, appointments, transfers and administrative investigations. Each public agency also submits an annual report to BRAI on statistics, such as the number of applicants received, totally or partially accepted, refused and directed to another public agency. BRAI submits these reports

annually to the Parliament with its general report. All those reports are released to the public by the Parliament (The Law art. 30 and the By-Law art. 44). The details of annual report is regulated by the Circular of the Office of Prime Ministry (*Başbakanlık Genelgesi*) dated 2005 and numbered 2005/3.

With these features, the Law on the Right to Access to Information, was put into effect in 2004, is a significant step forward to increase transparency of Turkish public administration. The Law has generally been implemented well and this has encouraged a more positive approach by the Turkish public administration to proactive release of information via the internet.

4.4. Issues

In spite of this positive aspect, there are some deficiencies in the system mainly stem from the structure of the Law. In terms of the definitions of public agency, applicant, information and document (art.3), there is a serious lack of clarity in the scope of the Law. The lack of clarity in these legal definitions could be leading to an unnecessarily conservative attitude by public agencies to information requests. However, many categories (even legislative and judicial branches of government and municipal firms) and many activities of the public sector are included in the practice of the Law with a highly liberal understanding of the related By-Law dated 2004 and the Circular of the Office of Prime Ministry dated 2004 and numbered 2004/12. The STE was informed that during the preparation period of the Law, which goes back to the late 1997, the scope of the Law was deliberately kept large, even larger than those of similar laws in many EU countries. Furthermore, the draft law had been ready before the EU demanded such law from the Turkish government. If public money is used in an activity in the public sector, this activity is considered within the scope of the Law by bureaucrats who prepared the technical base of the Law. It should be stated that such a broad approach in making the Law has caused, in practice, many irrelevant applications (e.g. asking jobs or any other kinds of favour, asking help for doing homeworks) as well as relevant applications. Since the provisions of the Law concerning the Use of Right to Petition dated 1984 and numbered 3071 are in reserve (art. 2), even applications which indicate no name and signature are taken into consideration by access to information units. This caused an enormous workload for those units and public agencies, in particular, in the early years of the implementation of the Law. The number of application increased rapidly in those years and then normalised.

All applications within the framework of Law numbered 4982, the Law numbered 3071 and the Law numbered 5176 can also be made to the “Communication Centre of Prime Ministry” (*Başbakanlık İletişim Merkezi-BİMER*) which is situated within the Public Relations Department of Prime Ministry (*Başbakanlık Halkla İlişkiler Dairesi Başkanlığı*) in person, by letter, telephone (*Alo 150*) and internet. Thus, in addition to access to information units, BİMER network with its 25,000 units and 29,000 authorised staff throughout the country is an important facility in terms of the use of right to access to information in Turkey.

Although the scope of the Law is larger than those of similar laws in many EU countries, applications and their results were not publicised often in the Turkish mass media. This situation can be explained in a way that most of the applications have been accepted by the access to information units of public agencies; so, only in fewer cases, appeals were made to the Board and administrative courts.

There are other uncertainties in the Law as well. It is not clear that the decisions of BRAI are binding for public organisations or not. There is no consensus on this topic

in the literature either. If a public organisation does not put BRAI's decision into practice, the applicant has right to go to an administrative court. So, BRAI has no real ability to control the practice after its verdict. There is no clear guideline about the amount and collecting way of the fees for requesting information either (see art. 10 and 11). Information about the classification of applications in accordance with their subjects is provided neither by the units nor BRAI.

BRAI has been quite active since its establishment in considering appeals and has also taken a proactive role in advising public agencies on the interpretation of ambiguities in the Law. However, BRAI's formal status is unclear. It has neither its own budget nor permanently assigned staff. This has effect its independence negatively. Given the importance of BRAI in terms of directly enhancing transparency and indirectly helping ethics, its independence from the Office of Prime Ministry and its relations with CEPS should be more articulated.

4.5. Summary

The Law on the Right to Access to Information numbered 4982 is a crucial cornerstone in establishing a transparent and ethical administration in Turkey. Direct and indirect effects of the Law and BRAI on public service ethics and anti-corruption measures can be summarised as follows: In terms of indirect effects, many kinds of information in the hands of public agencies are now accessible for the public. Any piece of information can be used against a public servant anytime; so, public servant prefers to obey the code of conducts by themselves. In terms of direct effects, if a person receives enough information through his/her application on corruption or any kinds of irregularities, he/she has the right to go the court. In spite of the positive effects of this Law, there are some problems about the structure and authority of BRAI and collection and classification of data about applications made to the units and BRAI.

5. SYSTEM STUDIES - SYSTEM STUDY NO.3: EFFECTIVENESS OF AC MEASURES IN CRIMINAL LAW

5.1. Introduction

Since combating corruption mainly deals with preventing and reducing corruption crimes through various penalties (sanctions), criminal legislation which regulates the rules and procedures of criminal proceedings in respect to corruption crimes and the roles of law enforcement bodies, public prosecutors and judges in applying such rules and procedures are prominent ones among AC measures.

5.2. The Legislation: Rules and Procedures

The "Turkish Penal Code" (TPC) (*Türk Ceza Kanunu*) dated 2004 and numbered 5237 and the "Code of Criminal Procedure" (*Ceza Muhakemesi Kanunu*) dated 2004 and numbered 5271, which were enacted in the accession process to the EU, the "Law for Financial Disclosure and Combating Bribery and Corruption" (*Mal Bildiriminde Bulunulması, Rüşvet ve Yolsuzluklarla Mücadele Kanunu*) dated 1990 and numbered 3628 and the "Law concerning the Trials of Civil Servants and Other Public Servants" (*Memurlar ve Diğer Kamu Görevlilerinin Yargılanması Hakkında Kanun*) dated 1999 and numbered 4483 are the main pieces of legislation regulate the rules and procedures for criminal proceedings about public officials in respect to corruption crimes.

5.2.1. Criminal proceedings about civil servants:

Among various rights and guarantees granted to civil servants one particular right is very important in terms of combating bureaucratic corruption: "guarantee provided for civil servants in criminal proceedings about offences and crimes committed by them in relation with their duties". This guarantee is usually considered as the main obstacle in combating bureaucratic corruption in Turkey.

There are three possibilities in the application of criminal proceedings about civil servants who commit crimes or offence as follows:

5.2.1.1. Criminal proceedings according to general principles:

If civil servants commit crimes or offences, which are not covered by the Law numbered 4483 and some special laws such as the Law numbered 3628 mentioned below, they will subject to the general principles of criminal proceedings. It means that there is no difference between civil servants and ordinary citizens in terms of investigation due to such ordinary crimes or offences.

5.2.1.2. Criminal proceedings according to some special laws:

According to the Laws numbered 5816, 298, 1402, 3628, 3713, 625 and 4081, the Law numbered 4483 is not applied to the investigation of crimes and offences taken place in these laws; and public prosecutors start investigations about civil servants who commit these crimes and offences without having any permission from any administrative authority. Direct prosecution procedure is used for organised crime and smuggling due to some laws which are put in practice time to time. For the purpose of this Report, the "Law for Financial Disclosure and Combating Bribery and Corruption" dated 1990 and numbered 3628 is very important because it brings a special investigation procedure for offences and crimes described in this Law (e.g. unjust enrichment, untrue declaration of financial assets) and for many kinds of

corruption crimes (e.g. extortion, peculation, embezzlement, bribery, smuggling, fraudulent act in public contract and procurement, revealing the secrets of the State). The Law numbered 4483 is not applied to the investigation of such crimes and offences; and public prosecutors are given some special authorities in the investigation process. Public prosecutors start investigations about civil servants who commit these crimes and offences without having any permission from any administrative authority but inform the concerned superiors who are authorised for appointment (art. 17-21). The investigation and trial of civil servants about aforementioned offences and crimes are undertaken by judicial authorities. It should be noted that this exception in having permission from administrative authorities is not in contradiction with the provision of the 1982 Constitution (art. 129) mentioned below. It can be regarded as a consequence of the modernisation of a century-old legislation on investigation of civil servants (GRECO, 2006: 9).

5.2.1.3. Criminal proceedings according to the Law concerning the Trials of Civil Servants and Other Public Servants dated 1999 and numbered 4483:

The Temporary Law concerning the Trials of Civil Servants (*Memurin Muhakematı Hakkında Kanunu Muvakkat*) dated 1913 brought a special procedure for the investigation of crimes and offences committed by civil servants in relation to their duties and in the course of carrying out their duties. In fact, this Temporary Law of the Ottoman Empire was the traditional source of the general provisions about special investigation procedure for civil servants in the 1982 Constitution and the CSL.

With the 1982 Constitution, a special investigation procedure for civil servants is the first time constitutionally guaranteed in Turkey. According to the 1982 Constitution (art. 129), “prosecution of civil servants and other public servants for alleged offences shall be subject, except in cases prescribed by law, to the permission of the administrative authority designated by law”. In accordance with this Constitutional sentence, the CSL (art. 24) prescribes that “the investigation, prosecution and trial which shall be carried out because of offences caused by civil servants in relation with their duties or in the exercise of their duties shall be subject to the special provisions”.

With these provisions, the Constitution, the CSL and the Temporary Law dated 1913 altogether aim to protect civil servants against any sort of claims about their duties and to subject them to a special criminal investigation procedure. Civil servants cannot be subject to criminal investigation, except in some cases, without the permission of administrative authorities concerned. These constitutional and legal provisions are actually an extension of the principle of “security of tenure” prescribed in the 1982 Constitution (art. 128 and 129) and the CSL (art. 18).

The scope of the Temporary Law dated 1913 was first restricted by the Law numbered 3628 in terms of crimes and offences closely related with corruption and permission system was abolished for such crimes and offences as mentioned above. Eventually, the Temporary Law, which was long seen as the main obstacle to the transparent and ethical administration in Turkey, was abolished by the “Law concerning the Trials of Civil Servants and Other Public Servants” numbered 4483 in 1999. With this Law, the permission system has, in principle, been kept but it has been modestly changed by taking such criticisms into consideration to a certain extent. The scope of the system has been narrowed in terms of persons, and crimes and offences subject to the Law; and the administrative investigation process has been shortened and renamed as “pre-inquiry” and criminal investigation process has

been accelerated (see Aslan, 2000; Gözler, 2002: 539-541; and Gözübüyük and Tan, 2001, Vol.1: Chp. 6).

It should also be mentioned that some special investigation techniques can be used for organised crime. The "Act on Combating Organisations Pursuit Illicit Gain" (*Çıkar Amaçlı Suç Örgütleriyle Mücadele Kanunu*) dated 1999 and numbered 4422 provided such techniques which were only applicable to corruption as part of organised crime. Those measures were often used by bodies such as the ASOC (KOM). This Law was also often used by public prosecutors during the Banking Crisis in the years of 1999-2001 in order to collect evidence directly without getting any permission.

The "Code of Criminal Procedure" numbered 5271, which replaced the Law numbered 4422 has also introduced similar special investigation techniques which can be applied in any type of bribery case. Secret investigations can only be applied for corruption as part of organised crime.

5.2.2. Penalties prescribed in the TPC related with the violations of ethical principles and rules of conduct and various corruption crimes:

Various penalties (imprisonment and fine) are determined by the TPC for different types of violations of ethical principles and rules of conduct prescribed in the Turkish legislation. For example, civil servants who accept any gift or obtain any benefit are subject to penalties according to the TPC (art. 250, 252, 254 and 255 about the offences of extortion and bribery). Civil servants who release secret information of the State are put on trial according to TPC (within the framework of felonies against the secrets of State in Part Four, Chapter Seven of Book Two of the TPC).

Also, various heavy penalties (fine, heavy imprisonment, imprisonment with enhanced sentences for certain categories, suspension, debarment from holding public office, etc.) are determined by the TPC for various corruption crimes and offences committed by public servants. Penalties which are determined for crimes and offences of "embezzlement" (art. 247), "peculation" and "extortion" (art. 250), "bribery" (art. 252), "negligence in the duty of control" (art. 251), "obtaining benefits from an unauthorised duty" (art. 255), "misuse of authority" (art. 257), "revealing secret information about the duty" (art. 258), "public servants' engaging in trade" (art. 259), "money and assets laundering" (art. 282) are the most important ones among them within the framework of felonies against the State (felonies against the reliability and functioning of public administration in Part Four, Chapter One of Book Two of the TPC). Also, heavy penalties which are determined for crimes and offences of "qualified fraud" (art. 158) and "founding an organisation to commit crime" (art. 220) are other important pieces of criminal legislation to combat corruption.

The civil servants who are punished due to such crimes and offences are also deprived from the public service temporarily or in perpetuity. In a similar way, the civil servants concerned lose their one of the prerequisites for civil service employment due to these heavy penalties given them and then terminated from the Civil Service according to the CSL (art. 48/5 and 98/b). This is one of the serious measures taken against corruption in the way of establishing an ethical administration.

According to the Law numbered 4483, in circumstances deemed necessary for the safety of public services, civil servants for whom criminal investigations are being carried out by public prosecutors may be suspended by the administrative authorities (art. 6/1). Civil servants for whom disciplinary or criminal investigations are being carried out can also be suspended from their offices as a precautionary measure in the interest of the public service (the CSL, art. 137 and 140).

5.3. The Institutions

The law enforcement system of Turkey consists of a number of actors. There is no specific public body devoted to combat corruption. Instead, there are a number of public bodies which have the authority to detect corruption within their respective jurisdictions of competence.

Since corruption crimes and offences under Turkish legal system are linked to public officials, the investigation of corruption cases often start from the public agency concerned. As described in System Study No.4, all public agencies have their own investigation systems, usually carried out through their "inspection boards" (*teftiş kurulları*). An inspection board is a kind of internal police, which is equipped with similar investigation authority as the ordinary police bodies. In the Turkish public administration, criminal offences are, in principle, therefore "pre-investigated" (pre-inquired) internally before the administrative authority concerned gives permission to submit the case to prosecution. The police and the prosecution service are involved only after the permission is granted. It is true that suspicions of corruption and similar crimes and offences are submitted to prosecution without getting any permission from the administration in accordance with the Law numbered 3628, whereas other crimes and offences such as misuse of powers and negligence are covered by the permission system providing a kind of immunity for public officials. Departmental inspectors are legally obliged to report corruption cases, found out during their routine inspections or their investigations, directly to public prosecutor.

The "Ministry of Interior" (*İçişleri Bakanlığı*) is responsible for the maintenance of public order through the "General Directorate of the National Police" (*Emniyet Genel Müdürlüğü*) (for urban areas) and the "General Command of Gendarmerie" (*Jandarma Genel Komutanlığı*) (for rural areas). Both these bodies have preventive as well as detective police authority and they have units dealing with corruption despite no units coping exclusively with corruption. Those specialised units, i.e. the "Department of Anti-Smuggling and Organised Crime"-ASOC (*Kaçakçılık ve Organize Suçlarla Mücadele Dairesi*"-*KOM*) in both the National Police and the Gendarmerie (approx. having 4000 staff and 800 staff respectively) are established to investigate organised crime, trafficking and smuggling and financial crimes, including money laundering and corruption in addition to "EBFC" (*MASAK*) (authorised to investigate money laundering crimes, approx. having 60 experts) and the "the Customs" (*Gümrük Müsteşarlığı*) (authorised to investigate smuggling crimes, approx. having 100 inspectors). The level of specialisation of the law enforcement bodies regarding corruption not linked to organised crime is, however, less developed. There is no specialised body of the police or within the prosecution service dedicated to corruption investigations alone. When corruption crimes are un-related to organised crime, they are dealth with by the ordinary police branches.

The "prosecution service" (*cumhuriyet savcılığı*) is organised provincially, each headed by a chief public prosecutor. There are chief public prosecutor offices in all provinces and districts where there is a court. Larger districts have a number of public prosecutor but smaller districts may have only one public prosecutor. For example, in Ankara Court-House, at the present time, 162 public prosecutors are in office. There is no centralised unit of the prosecution service, particularly responsible for dealing with corruption crimes. However, in some large provinces/cities, such as Ankara and İstanbul, there are public prosecutors who are specialised on either offences committed by public officials or smuggling. For example, in Ankara, there are offices for offences committed by public officials (*memur suçları soruşturma bürosu*) and smuggling (*kaçakçılık ve mali suçları soruşturma bürosu*); and 6 and 7

public prosecutors are employed in those offices respectively at the present time. Each office receives approximately 3,500 cases for each year. Regarding their judicial functions, public prosecutors are authorised to oversee the investigation, indictment and prosecution of any case. The law gives public prosecutors authority to collect and present evidence and safeguard the rights of defendants. The public prosecutor is particularly authorised to conduct the preliminary investigation, determine the jurisdiction for the case and supervise the police during the pre-trial investigation period (art. 160 and 161 of the Code of Criminal Procedure). The public prosecutor is also authorised to ask help from ASOCs of the police and the gendarmerie and from the inspection boards of public bodies during comprehensive investigations about large-scale and multi-dimensional corruption cases.

5.4. Issues

The special investigation procedure (internal pre-investigation/pre-inquiry and permission system) is a highly controversial aspect of criminal proceedings in respect to civil servants. It is, in fact, not a privilege provided for civil servants but it should be regarded as a guarantee for the well functioning of the public service. The aggravating effect of being a civil servant in criminal law can be balanced in this way. Putting civil servants in front of judicial authorities immediately after a just or unjust complaint may humiliate them, delay public services, and weaken the authority of the State. Therefore, the permission system and the protection of civil servants against untrue claims and calumnies (the CSL art. 25) are indispensable parts of the security of tenure regime (see Tutum, 1972: 45-49; and Ömürgönülşen, 1989: 70-74, 76, 280). As a matter of fact, the Constitutional Court rejected many claims of constitutional contradiction about the Temporary Law dated 1913 on the ground of equality of citizens before law both in the periods of 1961 and 1982 Constitutions (see Aslan, 2000: 61-62).

In spite of the decisions of the Constitutional Court in favour of the permission system, this system is often criticised by some jurists, academics and foreign experts on the technical ground: contradictions with the principles of the unity of judicial power and the separation of power and equality of citizens before law. It is also argued that the investigation of crimes or offences committed by civil servants is the fundamental task of judicial authorities as a significant requirement of the rule of law. Only judicial authorities, not administrative authorities, are able to judge whether necessary conditions are exist for filing a suit against a civil servant. Corruption in itself is a crime which is very difficult to detect at the preparatory stage of investigation. Whereas the permission system provides a kind of immunity for civil servants and gives law enforcement officials and public prosecutors a secondary role in investigating crimes and offences in public administration as investigations pass through the internal inspections. Furthermore, this authority of permission and internal pre-investigation/inquiry may be regarded by the public as an indirect protection of civil servants who commit crimes or offences by their administrative authorities. This gives rise to speculation about corruption within the administration (see Özek, 1961; Mumcu, 1971; Kunter, 1974: 94-99; also see Ömürgönülşen, 1989: 74-76). The possibility of evasion of civil servants from investigations and trials through the permission system even in the cases of serious corruption and human rights violations is severely criticised by civil society institutions and international organisations as well as some jurists and academics (see Selçuk, 1997; GRECO, 2006).

Although the system of administrative preliminary investigation/inquiry and permission for prosecution is not applied in corruption cases, it indirectly affects the capacity of the law enforcement and prosecutorial authorities to investigate and

prosecute criminal offences which may be committed in connection with corruption. It should not be forgotten that the direct prosecution system of the Law numbered 3628 is not applicable to a number of high-level public officials such as under-secretaries, governors and district governors and public officials who are subject to a special investigation and prosecution procedures (art. 17). This exception is certainly a significant gap in the direct prosecution system of the Law. Furthermore, the definition of bribery has been modified and its scope has been restricted with the recent changes in the national legislation. Some actions are no longer considered as bribe but misuse of authority. Since they have been taken out of the scope of the Law numbered 3628, getting administrative permission for investigating such actions is now necessary. Although departmental inspectors are legally obliged to report corruption cases directly to public prosecutor, they may prefer to receive the consent of their departmental heads in some politically sensitive cases.

Law enforcement officials in the National Police and Gendarmaire receive a comprehensive initial training in all forms of crime, including organised crimes and corruption crimes. However, more specialised training is necessary to those officials dealing with corruption crimes, in particular, in the fields of corruption detection and investigation techniques. The level of specialisation of public prosecutors and judges in the fields of corruption, financial crime and money laundering needs to be improved; and new forms of training needs to be provided to them in respect to the prosecution and adjudication of corruption crimes.

There is no organic connection or co-operation between CEPS and the prosecution service in terms of investigating and combating corruption crimes. As explained in detail in System Study No.4, links among disciplinary proceedings, criminal proceedings and ethical inquiry are not legally clear either. Such links needs to be clarified and modified in favour of independent ethics inquiry since the slow-working of Turkish judicial system and general amnesties practised quite often are likely to be most significant obstacles in the effectiveness of ethics inquiry.

5.5. Summary

The permission (immunity) system for investigating public officials for certain categories of crimes and offences, the level of specialisation of law enforcement officials, public prosecutors and judges in respect to corruption crimes, and the level of co-operation between CEPS and the prosecution service in terms of investigating and combating corruption crimes are important aspects of criminal proceedings in terms of AC measures.

Although the system of administrative pre-investigation/inquiry and permission for prosecution is not applied in many corruption cases, it indirectly affects the capacity of the law enforcement and prosecutorial authorities to investigate and prosecute criminal offences which are committed in connection with corruption.

Since there is no specialised law enforcement officials (except ASOC staff), public prosecutors and judges in respect to corruption crimes, there is a need for new forms of training for them.

The lack of co-operation between CEPS and the Prosection Service in terms of investigating and combating corruption crimes is a serious defect in the system.

6. SYSTEMS STUDY - SYSTEM STUDY NO.4: EFFECTIVENESS OF AC MEASURES THROUGH DISCIPLINARY PROVISIONS IN THE LEGISLATION AND EXISTING STRUCTURES

6.1. Introduction

AC measures in the disciplinary system of Turkish public personnel regime are mainly prescribed by the statements of the CSL numbered 657 and the "By-Law about the Disciplinary Boards and Disciplinary Superiors" (*Disiplin Kurulları ve Disiplin Amirleri Hakkında Yönetmelik*) dated 1982 within the framework of the main principles of article 129 of the Constitution. In addition, there are few other special legal arrangements for certain categories of civil servants (e.g. policemen, teachers or civil servants employed in the Ministry of Interior). As a matter of fact, the CSL clearly states that the provisions of special laws about disciplinary offences and penalties (sanctions) (art.125) and about disciplinary superiors and boards (art.126) are in reserve. Thus, the provisions of those special laws are implemented for some categories of civil servants if they are not compatible with the provisions of DMK. However, the effectiveness of AC measures in this area should be mainly assessed within the framework of provisions, structures and procedures of CSL and their applications.

6.2. The Legislation: Rules and Procedures

The most important pieces of legislation in this area are, without any doubt, the CSL and the related By-Law. The structure (e.g. disciplinary authorities) and procedure (e.g. the ways of rending judgement of disciplinary boards, hearing, appeal, lapse of time, implementation of penalties, deletion of penalties, amnesty for penalties, relations between criminal and disciplinary proceedings) of disciplinary proceedings in the Turkish public personnel regime is formally designed by the CSL and the related By-Law. Therefore, they need to be reviewed and assessed in terms of AC measures.

6.2.1. Disciplinary investigation:

Since there is no clear statement in the CSL or in other pieces of the legislation related with the disciplinary system about the details of investigation procedure carried out by administrative superiors and/or inspectors in practice, disciplinary investigation is usually carried out in accordance with traditional investigation procedures. When disciplinary authorities receive information about disciplinary offences by means of complaints, notices, inspection or administrative investigation reports or criminal proceedings, they immediately start disciplinary investigation; they use all sorts of documents they have; and listen witnesses and take the views of experts.

Procedures which are followed by disciplinary boards and especially by the high disciplinary board of public agency are formally determined, but the ways of rending judgement of disciplinary superiors are not clear. So, those superiors also make their decisions about light penalties in accordance with traditional procedures.

6.2.2. Disciplinary offences and penalties (sanctions):

The CSL comprises some comprehensive rules which describe conducts of civil servants in Part I (Section 2, 3 and 4). The CSL has also comprehensive sections about discipline (Part IV, Section 7) and suspension (Part IV, Section 8) (see DPB, 2002; also see Gözübüyük and Tan, 2001, Vol.1: Chp. 6; and TODAİE, 2002: Chp.

IV). In order to maintain proper and ethical conducts in the public service, 5 categories of disciplinary offences and disciplinary penalties (warning, reprimand, deduction from monthly salary, delay in the salary step increase, and discharge from the civil service), varying according to the nature and seriousness of the case, are prescribed one by one for civil servants who fail to comply with the orders given them, to carry out the duties imposed upon them or who do things which are forbidden. Matters of aggravation and extenuation are also prescribed in the CSL (art. 125). Thus, no discretionary power is recognised to disciplinary superiors or disciplinary boards. Civil servants for whom disciplinary proceedings is being carried out can also be suspended from their offices as a precautionary measure in the interest of the public service (art. 137). The disciplinary penalty of "discharge from the civil service" is the heaviest penalty among such penalties and also the most important one for both the security of tenure and anti-corruption policies.

Disciplinary offences and penalties, which are related with the violations of ethical principles and rules of conduct, prescribed in the CSL are as follows:

- Disciplinary offences and penalties related with the violations of duties and responsibilities of civil servants: Various penalties according to the article 125 of CSL are applicable to civil servants who violate provisions about "impartiality" (art. 7), "general principles of conduct" (art. 8 and 9), "responsibility towards supervising officer and implementation of orders" (art. 10 and 11), "personal financial liability of civil servants for damages done to the administration or the third parties" (art. 12 and 13), "declaration of assets" (art. 14), "restrictions on releasing information and making statement through the press about public affairs" (art. 15), and "restrictions on the use of official documents, materials and instruments for private aims" (art. 16).

- Disciplinary offences and penalties related with the violations of prohibitions for civil servants: Various penalties according to the art. 125 of CSL are applicable to civil servants who violate provisions about "prohibition against engaging in trade and other profit-making activities" (art. 28), "prohibition against accepting gifts or obtaining benefits" (art. 29), "prohibition against obtaining benefits from an enterprise under his/her control" (art. 30), and "prohibition against revealing secret information" (art. 31).

6.2.3. Authorities entrusted with determination of disciplinary penalties:

As explained in detail in the following section of institutions, disciplinary authorities in the disciplinary system of CSL are determined in accordance with the nature of offences, the type of penalties, and the types and location of public agencies. In general, ministers, superiors authorised for the appointment (e.g. ministerial undersecretaries and general directors), governors, district governors, mayors, superiors authorised for performance appraisal, disciplinary boards and high disciplinary boards are all defined as disciplinary authorities. According to the CSL (art.134), there is a disciplinary board and a high disciplinary board at the centre of each public agency.

6.2.4. Decision-making procedure of high disciplinary board and the right to hearing:

As the discharge from the civil service is a gross disciplinary penalty, imposing this penalty is subject to a difference procedure and basic procedural guarantees are granted to civil servants. According to the CSL (art.126), this penalty is determined by the high disciplinary board of public agency on the demand of disciplinary superior

concerned. This board does not have the authority to determine another penalty; it either accepts the penalty suggested or rejects it. In the case of rejection, the superior authorised for appointment is free to determine another penalty within 15 days.

Before imposing this penalty, high disciplinary board make a detailed examination on related documents and listen witnesses and expert witnesses (art. 129). This board has to make its decision within 6 months (art. 128). Also, civil servant concerned has the right to access to the investigation documents with exception of his/her personal performance record file, to call witness and to defend himself/herself before the board either orally or in writing, either in person or through a representative (art. 129). In fact, the CSL, in principle, prescribes that no civil servant can be punished unless he/she has an opportunity for a hearing. The civil servant is given no less than 7 days by the superior who carries out invesitigation or authorised disciplinary board to defend himself/herself in disciplinary proceedings (art.130).

6.2.5. Appeal against disciplinary penalties:

According to the article of 129 of the Constitution, civil servants shall not be subject to disciplinary penalty without their being granted the right to defence. Disciplinary decisions shall be subject to judicial review, with the exception of warnings and reprimands. The right to administrative appeal is also granted to civil servants for the penalties of warning and reprimand in the CSL. Civil servants can appeal to administrative courts for judicial review of penalties of delay in the salary step increase, deduction from monthly salary, and discharge from the civil service (art. 135).

Civil servants can appeal to a higher disciplinary superior or disciplinary board for disciplinary decisions (art.135). Appeals must be filed to disciplinary penalties within 7 days from the time the civil servant has been notified of the decision. Authorised disciplinary superiors and boards review the original decision and then they can accept, extenuate or annul it within 30 days. If no appeal is filed against a decision on a disciplinary penalty within its prescribed period or a decision is sustained in spite of appeal, those decisions are final and conclusive decisions; and they are not subject to administrative judicial review (art.136). However, this provision is contradictory with the Constitution.

6.2.6 Lapse of time in disciplinary offences and penalties:

The principle of lapse of time (prescription) in starting of disciplinary proceedings (from 1 month to 6 months, depending on the type of penalty) and in determining disciplinary penalty (within 2 years) is accepted. Thus, civil servants are protected from the long-term threat of punishment (art. 127).

6.2.7. Implementation of disciplinary penalties:

According to the article 132 of CSL, disciplinary penalties are put into effect on the date of determination and they are implemented immediately, in principle, by superiors who are authorised for appointment. This arrangement that does not consider the result of the appeal against disciplinary penalty may cause tension between the administration and civil servants particularly in respect to the issues of security of tenure and unethical conducts.

Superiors who are authorised for performance appraisal and SPD (only in the case of penalty of discharge from the civil service) are informed about disciplinary penalty imposed on the civil servant.

6.2.8. Deletion of disciplinary penalties:

Disciplinary penalty (excluding discharge from the civil service) which is registered to the personal record of civil servant may be deleted from this record by superior authorised for appointment after a certain period (5 years for warning and reprimand; 10 years for other penalties) on the request of civil servant concerned (art. 133). Superior who is authorised for appointment monitors and considers the conducts of civil servant concerned within such periods. So, discretionary power is given to the administration of public agency concerned. In the case of penalty of delay in the salary step increase, the view of disciplinary board is also taken. With this procedure, civil servants are protected from the unfavourable effects of disciplinary penalties on their career prospects as disciplinary penalties constitute an obstruction for their appointment to particular offices (art.132). The ways of administrative hearing and judicial review over decision taken against the request for the deletion of a disciplinary penalty are also available for civil servant concerned.

6.2.9. Amnesty for disciplinary penalties:

In Turkey, in almost every decade, disciplinary penalties are pardoned with all of their results except the penalties of permanent discharge. On one hand, those amnesties try to reestablish organisational harmony by reducing tensions and conflicts between civil servants and their superiors; on the other hand, they provide an important opportunity for civil servants who are sorry for their faults (Korkmaz, 1987: 72-73). However, it should not be forgotten that such amnesties may weaken the hand of administration in anti-corruption effeorts.

6.2.10. Central data collection for disciplinary offences and penalties:

With the Circular of SPD dated 2008 and numbered 2008/1, a new system for central data collection for offences and disciplinary penalties at national level has been established in accordance with GRECO's recommendation based on OECD Convention of 1997. According to the Circular (art.13), public agencies report all disciplinary penalties which are imposed by disciplinary superiors or disciplinary boards and all disciplinary penalties which are deleted by the authorities concerned to SPD. With the Circular, statistical data about all disciplinary penalties imposed between the years of 2005-2008 are also demanded from public agencies. Public agencies use the official online report form in the web-site of SPD and personnel defined by the authorised webmaster of public agency concerned enter and then continuously update the data about disciplinary penalties online through the internet. In online form, all kinds of disciplinary offences and penalties are taken place. All transactions in this system must be done in accordance with the principle of secrecy.

6.3. The Institutions

SPD, which was originally established in 1960 with the Law No. 160, was reorganised by the Government in 1984 with the Decree having the force of law dated 1984 and numbered 217 and then named as the "State Personnel Presidency" (SPP). It is administratively related to the Office of Prime Ministry; so it has not any autonomy in personnel affairs in the public sector. Approximately 450 staff are currently employed in SPP, including 60 state personnel experts and 20 assistant state personnel experts.

Although it has always shared its authority for directing the public personnel regime with the Office of Prime Ministry and the Ministry of Finance, SPP has been

considered as an assistant body to the government in establishing and applying the state personnel policy. As a general monitoring and co-ordinating body for the public personnel regime, SPP is assigned to establish the basic principles of the legal and financial status and applications of all public servants, to work to improve them through preparing draft documents and reviewing the proposals of other public organisations to the Office of Prime Ministry with its views and proposals; to provide coherence, balance and co-ordination among the different sub-systems of Turkish public personnel regime; to eliminate any discrepancies encountered in their applications; evaluate the applications of public organisations concerning the principles and procedures of public personnel regime; to establish the basic principles concerning the preparation, implementation and evaluation of pre-service and in-service training programmes for public servants and pursue and monitor related applications of public organisations; to evaluate and improve current personnel administration techniques and procedures; to conduct all kinds of research and inquiry related to its functions, including standardisation of cadres and titles, job analyses, and manpower planning; and to collect all kinds of statistical data on civil servants and keep general personnel records centrally (art. 1 and 3 of Decree No. 217). In spite of such a broad span of duty, it is highly difficult to say that SPP does protect and accomplish all its duties and responsibilities properly. For example, it has just started to collect statistical data about all disciplinary penalties given to civil servants. Furthermore, it should also be admitted that SPP has no organic connection with or an authority on the personnel offices and personnel applications of public organisations in some respects such as no having direct links with institutional performance appraisal and disciplinary superiors and disciplinary boards.

In the disciplinary system of CSL, the disciplinary authorities which are entrusted with determination of disciplinary penalties, are determined in accordance with the nature of offences, the type of penalties, and the types and location of public agencies rather than in accordance with the class, grade or title of civil servants. However, in certain departments or agencies (e.g. the Ministry of National Education, local governments and agencies with revolving funds), disciplinary authorities can be determined in a slightly different way by taking the locations and hierarchical levels of sub-units of public agencies and the title of civil servants into account (the By Law art. 8).

In general, ministers, superiors authorised for the appointment (e.g. ministerial undersecretaries and general directors), governors, district governors, mayors, superiors authorised for performance appraisal, disciplinary boards and high disciplinary boards are all defined as disciplinary authorities. According to the CSL (art.134), there is a disciplinary board and a high disciplinary board at the centre of each public agency. At the centres of provincial or regional units of public agencies and the provincial directorates of the Ministry of National Education, a disciplinary board also exists. Both high disciplinary board and disciplianry boards are composed of five members.

According to the article 134 of CSL, the details about disciplinary superiors and boards are determined by a by-law. This by-Law was issued by the Council of Ministries in 1982. The significant features of By-Law with respect to both security of tenure and ethical inquiry about civil servants are as follows:

- Almost all of the senior administrators are defined as disciplinary superiors (art.16). As the Prime Minister and the ministers are also defined as disciplinary superiors, high and middle level civil servants may face politically-driven decisions about their disciplinary (and also ethical) responsibilities.

- Disciplinary superiors who are prescribed by special by-laws (according to the article 124 of CSL) are determined by public agencies concerned in accordance with their organisational and professional characteristics (art.16). Thus, special features of public agencies and public services are taken into consideration in this process. In order to prevent the arbitrary attitudes of public agencies, the view of SPD is taken in the preparation process of those special by-laws. In fact, SPD always give its official view on disciplinary issues on the request of public agencies.

- The provision of the CSL (art. 126) about the reservation of statements of special laws about disciplinary superiors and boards is also confirmed (art. 8 and 16).

- Disciplinary boards are composed of 5 high-level administrators of the public agency concerned (art. 4). The commission period of board members is 2 years and they can be reappointed for the same period (art. 7).

- With the purpose of maintaining the impartiality of and preventing conflict of interest in disciplinary boards, the members of boards are not allowed to participate in the decision-making process about their relatives and civil servants about whom they have demanded a disciplinary penalty or they have carried out disciplinary investigation or they are authorised for appointment (art. 6).

- Disciplinary superiors must use their disciplinary authorities by considering the rights that are granted to civil servants by the legislation and the principles of equity and justice. Both disciplinary superiors and boards have to follow certain procedural rules (e.g. starting investigation in time, considering hearing principles, imposing appropriate penalties, considering the lapse of time in disciplinary offences and penalties) strictly as well (art. 19).

6.4. Issues

There are some important issues in the areas of disciplinary rules (offences and penalties), institutions and procedures in terms of the effectiveness of AC measures.

Although serious disciplinary penalties are prescribed in the CSL in order to combat various types of corruption, some of them do not work properly in practice due to some cultural reasons. For example, according to the CSL (art. 29), “it is forbidden that civil servants shall request any gift, directly or indirectly, and even when they are not on official duty, accept gifts for the aim of obtaining benefits or ask the people with whom they have official relations to lend them money and take money”. Civil servants who obtain any benefit are subject to a disciplinary penalty (deduction from monthly salary) according to the CSL (art. 125/D). Although gifts and benefits are the most common tools of bribery, gift giving is, in particular, still a well-established tradition in the Turkish bureaucracy as well as in many other countries’ public bureaucracies. In societies where this tradition continues to be effective, individuals do not regard to give gifts to civil servants as against the rules, and civil servants are not averse to receive them either. This tolerance stemming from traditions creates an appropriate ground for corruption (Berkman, 1983: 71-73). Therefore, the degree of conventional hospitality and the value of a minor gift should be determined by law in order to prevent misuse for this tradition. A similar rule is brought by the Law numbered 3628 (art. 3) for civil servants who receive small gifts (up to ten times of net minimum wage) from foreign people, government or institutions. The By-Law concerning the Principles

of Ethical Behaviour of the Public Servants dated 2005, in principle, envisage a prohibition against accepting gifts or obtaining benefits but not accept a “zero-tolerance” policy (art. 15). Small and symbolic gifts and various donations (there is no clear-cut monetary limit) are not covered by this general prohibition.

In terms of institutional structure, it can be argued that the existence of various disciplinary authorities makes the disciplinary system too complex. Furthermore, disciplinary boards have been transformed into advisory boards in favour of disciplinary superiors in time due to some modifications made on the related articles of CSL. This transformation is quite problematic in terms of objectivity, even in the disciplinary proceedings carried out about the cases of unethical conducts of disciplinary superiors. It should also be pointed out that SPD has no organic links with disciplinary superiors and boards of public agencies.

Some issues are directly related with the procedures of disciplinary proceedings. Although there are various provisions about the different stages of disciplinary proceedings, as mentioned above, there is no clear statement about the details of investigation procedure carried out by administrative superiors and/or inspectors in practice in the CSL or in other pieces of the legislation related with the disciplinary system. Therefore, disciplinary investigation is usually carried out in accordance with traditional investigation procedures. In the same way, although procedures which are followed by disciplinary boards and especially by the high disciplinary board of public agency are formally determined, the ways of rending judgement of disciplinary superiors are not clear. It can be said that those superiors also make their decisions about light penalties in accordance with traditional procedures. In fact, the degree of reliability of disciplinary proceedings, particularly with respect to ethical inquiry, is closely related with the actual practice of investigation process.

In terms of deletion of disciplinary penalties and amnesties for disciplinary penalties, there are some controversial issues. For example, the situation of ethical violations which caused certain disciplinary penalties remains quite controversial even if such penalties are legally deleted. Amnesties for disciplinary penalties which are practised very often may reduce the corrective effects of disciplinary system and ethical inquires in the long run.

Until last year, there was not any central mechanism or even an attempt to collect data about disciplinary penalties imposed apart from the penalties of discharge from the civil service which are reported to SPD. There was not any coordination and information exchange in this field among public agencies either. However, SPD has just started to collect statistical data about disciplinary penalties given to civil servants for certain disciplinary offences. Since the beginning of 2008, approximately 100 public agencies have been registered in the system and the names of personnel defined by the authorised webmaster of public agency concerned have been reported to SPD. Within the same period, information about disciplinary offences and disciplinary penalties imposed for such offences about 300 civil servants were sent to SPD. Most of penalties are in the types of warning and reprimand which are not subject to the review of administrative justice. However, there are some gaps in the system. Not only disciplinary penalties which are deleted by administrative authorities but also those which are abolished by administrative courts on the appeals of civil servants for judicial review should be reported. Any information about general and disciplinary amnesties in the past are not mentioned in the form. So, the system does not provide any information about the past. There is no mechanism for the verification of data quality is established in the system either.

There are also some other issues about the relations between disciplinary proceedings and criminal proceedings and the relations between disciplinary & criminal proceedings and ethical inquiry.

For the same action of a civil servant, both disciplinary proceedings and criminal proceedings can be carried out independently but simultaneosly. Disciplinary proceedings carried out about a civil servant does not prevent to start a criminal proceedings for the same action of civil servant, if that action is the scope of TPC (CSL, art. 125). Criminal proceedings carried out about a civil servant does not postpone disciplinary proceedings carried out due to the same action of civil servant concerned either. Also, a court decision about the conviction or acquittal of civil servant cannot prevent the implementation of disciplinary penalty (CSL, art. 131). The latter provision is usually defended on the ground that the action of civil servant which may not breach the provisions of TPC, may harm the internal harmony of a public agency. This is, in fact, controversial for the security of tenure. It is not compatible the principle that the administration, in any case, must respect the court verdicts either. In spite of these provisions, it is generally accepted in the literature that if a civil servant is acquitted at the end of criminal proceedings, this court verdict binds disciplinary authorities. Therefore, it is argued that any disciplinary penalty cannot be imposed on the civil servant (see Onar, 1966: 1190; Dinçer, 1976: 86; Alikaşifoğlu, 1977: 36-37; Baskın, 1985: 7). If a disciplinary penalty is given by taking the conviction verdict of court in accordance with the TPC into acount, a general amnesty should also abolish such a disciplinary penalty (Onar, 1966: 1190-1191).

Since disciplinary boards, which is entitled to give penalty of delay in the salary step increase according to the decision of CEPS, are authorised to review claims about ethical violations according to the Law numbered 5176 and the related By-Law, there is an inherent relation between disciplinary proceedings and ethical inquiry. However, legal and administrative connections between disciplinary and criminal proceedings and their relations with ethical inquiry is controversial or at least unclear. An ethical inquiry can be carried out independently from criminal proceedings and even from disciplinary proceedings since unethical conducts do not always breach legal or disciplinary rules. As it is stated in the Law numbered 5176, ethical inquiry (examinations and investigations) performed by CEPS or disciplinary boards in accordance with this Law does not constitute a hindrance for criminal or disciplinary proceedings either (art.5). So, it can be argued that decisions made at the end of an ethical inquiry should be independently taken and implemented from connections between criminal and disciplinary proceedings mentioned above. During routine administrative inspections or legal investigations, inspectors should review cases not only in terms of legal, administrative or disciplinary responsibilities but also “ethical” responsibilities. If a public servant’s conduct is regarded as unethical as a consequence of such an inspection or an investigation, the investigation file should be sent to the CEPS or the authorised disiciplinary board for further ethical inquiry.

However, a civil servant who is found and then publicised as ethically faulty can appeal to administrative courts against that decision about ethical violation, if i) he/she is not given any disciplinary or legal penalty as a consequence of disciplinary or criminal proceedings; ii) a disciplinary penalty is deleted from the personal record of the civil servant on his/her request or he/she is pardoned due to an amnesty for disciplinary penalties; and iii) a legal penalty (and then disciplinary penalty) imposed on the civil servant is abolished by a general amnesty.

As mentioned above, the acts and actions of public servants violating ethical principles are announced by the Prime Ministry to the public as a Council decision via the Official Gazette (The Law numbered 5176, art. 5). If such a decision of CEPS is

annuled via adjudication, KGEK executes this verdict and makes it announced at the Official Gazette. Since this is a heavy penalty and the way for judicial review is open against it, CEPS did consciously refrain to use this way for its first 4 years. Although this attitude was generally perceived by mass media and public opinion as a political timidity of CEPS, CEPS almost totally preferred soft measures rather than hard measures. Only recently CEPS's decisions about few cases were announced by the Prime Ministry to the public as a via the Official Gazette. In order to sort out this problem, various and lighter penalties (e.g. ethical warning or reprimand) should be prescribed in the Law rather than relying only on the announcement of heavy ethical violations in the Offical Gazette. As a result of ethical inquiry, these lighter penalties, apart form disciplinary penalties, can be imposed on public servants. As an alternative way, ethical penalties or sanctions can be accommodated within disciplinary penalties through changes to be made in the article 125 of CSL. Such lighter penalties can be filed to the personal performance records of public servants. In fact, according to article 23 of the By-Law dated 2005, authorised superiors for performance appraisal also evaluate the personal performance of public servants in terms of compliance with the principles of ethical behaviour arranged in this By-Law.

6.5. Summary

The actual operation of disciplinary system and its connection with "unethical conducts" are in a questionable situation in Turkey.

The existence of various disciplinary superiors and boards at different levels; and the existence of special provisions for certain categories of civil servants have made the system complex and confused the authorities of various disciplinary bodies from time to time. Transformation of disciplinary boards into advisory boards in time and the lack of representation of civil servants or their unions in disciplinary boards have made such boards ineffective within disciplinary system. At least, the representation of a member of departmental ethics commission in disciplinary boards may be a guaranatee for civil servants since the level of ethics training of disciplinary boards' members is generally not enough.

Determination of the details of disciplinary system (disciplinary superiors and boards and the procedures they follow) by the By-Law dated 1982 can be considered as a deviation from the principle of the regulation of the statutory affairs of civil servants by law.

The development of legal procedure for whistleblowing and the protection mechanism of whistleblower in disciplinary proceedings in compliance with GRECO's recommendation based on OECD Convention of 1997 has gradually been becoming a necessity.

The connections among disciplinary proceedings, criminal proceedings and ethical inquiry are still not clear legally.

7. REVIEWING THE FINDINGS FROM THE STUDIES IN TERMS OF THE RECENT DEVELOPMENTS IN THE ETHICAL INFRASTRUCTURE OF TURKEY FOR THE PREVENTION OF CORRUPTION

Turkish public administration has experienced serious and gradually expanded ethical crises since the second half of the 1970s (see Aktan, 1992: Chp.2 and 1999; İTO, 1997; TÜGİAD, 1997). These crises are not only a part of global ethical crises in public administration, but also a result of a broad structural and operational degeneration of Turkish political-bureaucratic system (Emre, Hazama and Mutlu, 2003: 438). The side effects of neo-liberal economic policies and new managerial techniques, conducted since the early 1980s without questioning enough their philosophical essence and preparing their legal infrastructure, have contributed to the erosion of social values in Turkey. Such corrupt social values have also influenced all activities of Turkish bureaucracy. Therefore, the widespread bureaucratic corruption has become an internal feature of political-administrative culture of Turkey (see Ömürgönülşen and Öktem, 2005 and 2006).

However, a new wave of ethics has emerged in Turkey for the last decade. Both recent struggles for accession to the EU and serious economic crisis of 2001 are real turning points in Turkey's combating corruption. On the one hand, Turkish governments are required to adjust Turkish national anti-corruption legislation to that of the EU in the process of accession to the EU. Developing ethical legal-institutional infrastructure is seen one of the significant criteria for enhancing the administrative capacity of Turkish public administration. On the other hand, Turkish governments are strongly asked to take some institutional and legal-administrative measures for anti-corruption in order to get financial aid from international financial institutions such as the IMF and the World Bank in the process of economic recovering. In addition, widespread political and bureaucratic corruption is regarded by the Turkish public opinion as the main cause of economic and financial crisis of 2001 (see Ömürgönülşen and Öktem, 2005 and 2007: 112-113). Thus, the 2000s seem to be the period in which some serious steps taken to combat corruption and establish an ethical administration in Turkey.

The Coalition Government under the premiership of Bülent Ecevit felt necessary to take some measures to fight against this endemic disease in the years of 2001 and 2002. The Coalition Government adopted the "Action Plan for Increasing Transparency and Good Governance in the Public Sector" (*Kamuda Saydamlığın ve İyi Yönetişimin Artırılması Eylem Planı*) in the early 2002. This Plan contained a number of measures to combat corruption: the enacting of laws about ethical codes of public servants, the establishment of specialised judicial police force and courts on corruption, the establishment of a transparent public contract awarding system; making new regulations in order to increase the effectiveness of financial disclosure, money laundering, and financial control mechanims in the public sector (Başbakanlık, 2002). In spite of these anti-corruption measures, only partial progress has been achieved in some certain areas. Moreover, the number of corruption allegations and administrative and judicial investigations and the number of suits against corruption offences has increased steadily (see European Commission, 2002). The most paradoxical is that some of those corruption allegations were about certain members of the Coalition Government. The results of 2002 general parliamentary elections (i.e. the failure of Coalition parties in passing over the national threshold to be represented in the Parliament) can be regarded as a reflection of common discontent of public from serious economic crisis and widespread corruption in all areas of society.

The Justice and Development Party (*Adalet ve Kalkınma Partisi*) (JDP/*AKP*) under the premiership of Abdullah Gül, which came to the power with an overwhelming

majority with the commitment of combating poverty, injustice and corruption, immediately launched the "Urgent Action Plan" (*Acil Eylem Planı*) (Başbakanlık, 2003) in the late 2002. In this Plan, some "anti corruption measures" were taken place: the ratification of several anti-corruption conventions prepared by the Council of Europe; increasing penalties for combating corruption; broadening the list of restricted activities of former public servants; redefining and restricting the meaning of the concept of "secret" in various legal documents; decreasing red tape and increasing transparency and accountability in administrative and financial activities of government; and enhancing dialogue among government, public bureaucracy, judiciary, mass media and civil society on combating corruption.

Within the framework of reform efforts aimed at restructuring the public sector in the light of general principles determined by the Urgent Action Plan, the JDP Government under the premiership of Recep Tayyip Erdoğan has enacted several laws and prepared some draft bills concerning the establishment of an ethical administration. The "Law on the Right to Information" (*Bilgi Edinme Hakkı Kanunu*) numbered 4982 was enacted in 2003 and it was put into force in 2004. This Law regulates the right of access to public information except the secrets of the state in the light of the principle of transparent administration. The Office of Prime Ministry issued a By-Law in 2004 to facilitate the implementation of this Law. The "Law about the Foundation of the Council of Ethics for the Public Service" (*Kamu Görevlileri Etik Kurulu Kurulması Hakkında Kanun*) numbered 5176 was enacted in 2004 in order to supervise the ethical conduct of public servants. The Office of Prime Ministry also issued a By-Law (*Kamu Görevlileri Etik Davranış İlkeleri Yönetmeliği*) in 2005 to determine and clarify the codes of conduct and facilitate the smooth implementation of this Law. According to this By-Law, every public servants has to sign an "ethical contract" with government. A new "Turkish Penal Code" (TPC) (*Türk Ceza Kanunu*) numbered 5237, comprising various crimes and penalties about corruption, was also enacted in 2004. Some significant international conventions about combating corruption were also signed by the JDP Government, ratified by the Turkish Parliament and necessary modifications were made in the Turkish domestic legislation.

The JDP Government also prepared a general draft bill, the "Law for Combating Corruption", (*Yolsuzlukla Mücadele Kanunu*) in accordance with the Urgent Action Plan and the decisions taken by the National Security Council (*Milli Güvenlik Kurulu*) on combating corruption and submitted to the Parliament in 2004. However, this draft bill was withdrawn by the JDP Government since various newly enacted laws including the new TPC comprise various crimes and penalties about corruption. An initiative for establishing a special central unit for combating corruption (related with the Inspection Board of the Office of the Prime Ministry/*Başbakanlık Teftiş Kurulu* within the framework of a EU Project) failed either. In addition to these legislative works, some public agencies, in which corruption is seen widespreadly (e.g. the Undersecretary for Customs/*Gümrük Müsteşarlığı*), adopted codes of conduct concerning bribery in 2004 and on (see European Commission, 2004).

Meanwhile, the "Parliamentary Inquiry Commission on Corruption" (*TBMM Yolsuzlukları Araştırma Komisyonu*) set up in early 2003 by the JDP Government completed its inquiry on political and bureaucratic corruption allegations through summoning former prominent politicians, senior bureaucrats and famous businessmen. This Commission submitted a Report containing a number of reform proposals in detail to the Presidency of the Grand National Assembly in mid-2003 in order to eradicate corruption in the public sector including some significant amendments in various laws. The Commission also requested parliamentary investigations for two former prime ministers and a number of former ministers and

criminal proceedings for a number of present and former senior bureaucrats who were mainly in charge of the management of economy during the 2001-2002 economic crisis (see *Hürriyet*, a Turkish daily, 17, 24, 27 July 2003). In 2004, the Grand National Assembly voted to authorise the High Tribunal (*Yüce Divan*) to try four former ministers (see European Commission, 2004).

As for the fight against corruption, aforementioned efforts are significant developments. However, corruption still remains a serious problem requiring major efforts both in legislative and institutional aspects. (European Commission, 2003, 2004 and 2005). According to the EU Commission, the independence, competence and effectiveness of various political, administrative and judicial bodies established to combat corruption remains a matter of concern. The consistency of the related policies and the degree of co-ordination and co-operation among them are weak. Turkey is invited to set up an "independent anti-corruption body" and adopt the "anti-corruption law". "Ombudsman" is considered as an important institution for combating corruption. Furthermore, the dialogue between the parliament, government, public administration and civil society needs to be strengthened and a "code of ethics" both for elected and appointed public servants should be developed. In addition, more actions should be taken to raise public awareness of corruption as a serious criminal offence. For the EU Commission, continuous support of the highest political level for the fight against corruption would be welcome (European Commission, 2004: 146; and 2005: 13, 125, 128-129). The expectation of EU authorities from Turkey is not only the adjutments of political, economic and administrative regulations but also the proper and effective application of those regulations in practice (see *Hürriyet*, a Turkish daily, 18 October 2003). This expectation is also valid for combating corruption.

As an outcome of Four System Studies, it can be said that, which are also quite parallel with the criticisms and suggestions of EU, the Turkish bureaucracy is equipped with some necessary legal instruments and institutional mechanisms against many kinds of corruption in the way of establishing an ethical administration in spite of some deficiencies in terms of international standards (e.g. there is no a general code of conduct for all public servants and an ombudsman for ethical issues; weakness in the autonomy and formal structures of CEPS and the Board of Review of Access to Information)). As a special institution for monitoring the issues of public service ethics, CEPS was newly established and some legal regulations and institutional arrangements on the issues of right to information, transparency, and financial management and control were recently completed in the process of accession to the EU. However, this fragmented ethical structure (i.e. many legal documents and control institutions) is probably one of the main obstacles in enforcing an anti-corruption policy in Turkey. Although CEPS can be considered as an important step in establishing an ethical administration in Turkey, the effectiveness of CEPS can be questioned in terms of the way of its establishment, structure, span of duty, authorities, and its administrative capacity and functioning. The review procedure followed by CEPs and institutional disciplinary superiors and boards about unethical conducts is not very effective either in the face of unclear position of CEPS in terms of its investigation, awareness and prevention roles. The connections among disciplinary proceedings, criminal proceedings and ethical inquiry are still not clear legally. Therefore, the CSL, the Law numbered 5176 and the By-Law dated 2005 need to be modified to clarify links among disciplinary proceedings, criminal proceedings and ethical inquiry.

Whether or not aformentioned attempts of the JDP Government produce intended results in practice in near future, without any doubts, depends on the strength of political will of the JDP Government in this issue (Ömürgönülşen, 2003: 40). In spite

of progress in recovering the loss occurred for government because of some bankrupt banks and firms, some irregularities are still seen in some national and local privatisation and public contract bids. Various corruption allegations about national and local politicians of the governing party have increased recently. Particularly in the eve of March 2009 local elections, allegations about various illegal or at least unethical and partisan behaviours of some higher level bureaucrats and governors were the hot issue on the agenda of opponent parties and the media. There is no progress can be reported either concerning the issue of changes to the extent of parliamentary immunity. This is, of course, not a good record for the Government. Furthermore, the control function of public administration has been reorganised on the basis of performance auditing rather than traditional legal expediency through new arrangements in the "Public Financial Management and Control Law" (*Kamu Mali Yönetimi ve Kontrol Kanunu*) dated 2003 and numbered 5018 and the "Law concerning the Fundamental Principles and the Restructuring of Public Administration" (*Kamu Yönetiminin Temel İlkeleri ve Yeniden Yapılandırılması Hakkında Kanun*) dated 2005 and numbered 5227. This can cause serious legal-administrative obstacles in fighting against corruption in the short term.

8. CONCLUSION: SOME REMARKS AND SUGGESTIONS IN THE LIGHT OF FINDINGS OF FOUR SYSTEM STUDIES: HOW CAN THE EFFECTIVENESS OF ANTI-CORRUPTION MEASURES BE IMPROVED?

The Turkish public administration is equipped with necessary legal instruments and institutional mechanisms (i.e. hard measures of compliance based ethics management) against many kinds of corruption in the way of establishing an ethical administration (see Öktem and Ömürgönülşen, 2007: Chp.5; Ömürgönülşen, 2008a, 2008b and 2008c) in spite of some deficiencies in terms of international standards (i.e. there is no a general code of conduct for all public servants and an ombudsman for ethical issues). Furthermore, a special institution for monitoring the issues of public service ethics (i.e. CEPS) was newly established and some legal regulations and institutional arrangements on the issues of right to information, transparency, and financial management and control were recently completed. In other words, the insufficient aspects of ethical infrastructure have been rectified partly in the process of accession to the EU (see Ömürgönülşen and Öktem, 2005 and 2007: Chp.5).

The most important aspect of the fight against corruption is, of course, not only enacting anti-corruption legislation, but also the enforcement of legal provisions and continuous monitoring of activities of all public servants in the light of this legislation. In spite of improvements which were recently made in the legal and institutional infrastructure, most of the legal-administrative institutions and mechanisms are not operated properly in practice. In addition to the fragmented ethical structure (i.e. many legal documents and control institutions), enforcement is one of the most serious obstacle, which mainly stems from “cultural factors” in establishing an ethical administration in Turkey (see, Ömürgönülşen and Öktem, 2005 and 2006).

Within this framework of findings of Four System Studies, some remarks and suggestions can be made to develop an ethical administration in Turkey through improving the effectiveness of AC measures as follows:

- Instead of fragmented laws and regulations, a comprehensive “anti-corruption law” should be enacted; structure and language of the present national legislation should be simplified; and the links between this general anti-corruption law and other national legislation should be clearly regulated.

- A general “code of conduct” for all elected and appointed public officials should be prepared. In the light of this general code and international standards, special codes of conduct for certain categories of public servants may also be regulated or rearranged.

- The role of CEPS (awareness, prevention and investigation roles) and its relations with other existing auditing and supervisory bodies should be clarified; and the structure (autonomy), authority (monitoring or investigating), span of duty (categories of public servants) and capacity (administrative and technical capacity) of CEPS should be improved.

- Links between CEPS and BRAI should be established; the accommodation of the Board within CEPS should be seriously considered.

- Links among CEPS, institutional ethics commissions, disciplinary boards and authorised superiors for personal performance appraisal should be reconsidered; necessary steps (e.g. merging or mixing ethics commissions and disciplinary boards) should be taken; and relations among criminal

proceedings, disciplinary proceedings and ethical inquiry should be clarified by changing the related legislation.

- The consistency of the related policies and the degree of co-ordination, co-operation and even integration among policies and institutions should be enhanced; the links among responsible authorities for ethical conducts, law enforcement bodies (particularly the national police, the gendarmerie and the customs control officers), public prosecutors and courts should also be clarified and strengthened.

- In addition to the enactment of new anti-corruption legislation, the enforcement of legal provisions and continuous monitoring of activities of all public servants in the light of this new legislation should be improved.

- Institutional and central data collection systems about various AC measures (e.g. applications to access to information unit, information about disciplinary actions and sanctions) should be developed.

- More specialised ethics training should be provided to the members of institutional ethics commissions and disciplinary boards; and particularly to law enforcement officials, public prosecutors and judges dealing with corruption cases.

It should always kept in mind that developing an infrastucture for establishing an ethical administration is a long term and hard task. It necessitates not only legal and institutional reforms but also transformation in mentality and attitude. Experience of other countries provide insightful hints for any national reform attempt in this area but it is clear that most of solutions come from national experience just like problems stems from. Therefore, dialogue between national actors (e.g. the parliament, government, public administration and civil society) should be strengthened; trust between public servants and citizens should be established. Continuous will, decisiveness, support and honesty of the political power for the fight against corruption (e.g. restrictions on political immunities and financing political activities) should always be welcome.

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10. INTERVIEWS FOR SYSTEM STUDIES

1. The Council of Ethics for the Public Service (about the Council and code of ethics)

July 2008-July 2009 (various times)

Exchange views with the Head of the Council, the members of the Council and specialists and assistant specialists of the Secreteriat of the Council in various meetings organised by the CEPS.

2. The State Personnel Department (about disciplinary measures and central data collection about disciplinary sanctions)

December 2008 (1/2 working day)
May 2009 (1/2 working day)

-Hanife Özer (state personnel specialist, Head of Human Resources Department; member of institutional ethics commission)
-Mehmet Hanefi Özdemir (state personnel specialist, member of institutional ethics commission)
-İsmail Oral (state personnel specialist)
-Murat Bilgen (state personnel specialist)
-Murat Yılmaz (computer specialist on personnel data and records)

3. The Board of Review of Access to Information (about public information act)

December 2008 (1/2 working day)
May 2009 (1/2 working day)

-Uğur Kılınç (specialist at the Office of Prime Ministry)

4. The Examination Board for Financial Crimes (about money laudering and criminal investigation)

March 2009 (1/2 working day)

-Administrators and specialists for combating money laundering from EBFC

5. Ankara Public Prosecution Office (about criminal investigation and relations with the Police-KOM)

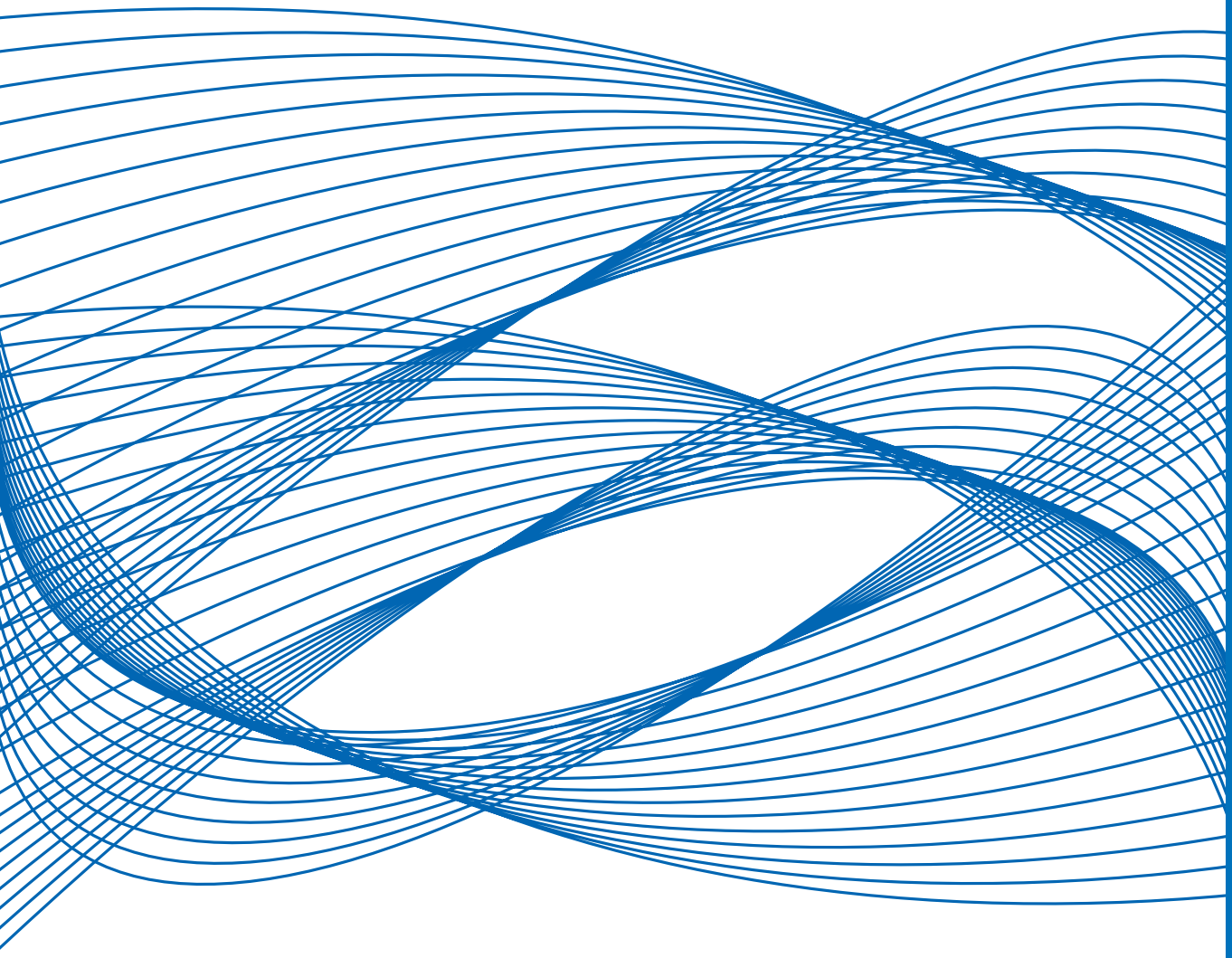
May 2009 (1/2 working day)

-Hüseyin Boyrazoğlu (Chief Public Prosecutor of Ankara) and public prosecutors from Units of Smuggling and Financial Crimes and Investigation of Crimes committed by Civil Servants

6. Inspectors of various public institutions and agencies (about disciplinary investigation and disciplinary measures)

July 2008-July 2009 (various times)

Exchange views with inspectors of various public institutions and agencies in various meetings and training programmes organised by the CEPS.



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