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TECHNICAL PAPER

**COMMENTS AND RECOMMENDATIONS ON THE DRAFT TEACHERS'
CODE OF CONDUCT AND REGULATORY MECHANISM**

Prepared by:

John Anderson, Council of Europe Expert

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Annexes provided separately:

Annex 1	GTCS Code of Professionalism & Conduct (CoPAC)
Annex 2	GTCS Standard for Full Registration (SFR)
Annex 3	GTCS update article on Social Networking
Annex 4	UNESCO appraisal of CoPAC

For any additional information please contact:

Corruption and Fraud Unit
Economic Crime Division
Directorate of Co-operation - DG-HL
Council of Europe
F-67075 Strasbourg Cedex FRANCE
Tel +33 388 41 29 76/Fax +33 390 21 56 50
Email: ado.lalovic@coe.int
Web: www.coe.int/economiccrime

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EXECUTIVE SUMMARY

This Technical Report examines the Albanian Teachers' Code of Conduct and its Regulatory Mechanism ("the Code") of July 2008. This is done against the backdrop of regulatory mechanisms elsewhere and in particular that of the General Teaching Council for Scotland (GTCS) (www.gtcs.org.uk) and its Code of Professionalism and Conduct (CoPAC).

The report recognises the strengths of the Code in regard to content and scope. As a result the recommendations focus mostly upon presentation, structure and approach and in that light, it is recommended that consideration is given to:

- Reviewing the Code's format to make it more succinct, easier to read and understood by both teachers and the public;
- Inclusion of the concept of 'Fitness to practice'
- Differentiation between conduct and competence through a set of separate competence standards for teachers and leaders/managers;
- Re-focusing the Code's somewhat prescriptive approach by introducing a set of overarching, professional principles as a means of reducing some negative aspects of the language used;
- Examining the merits or otherwise of using sets of prescriptive misconduct lists and discussing the associated drawbacks and risks;
- Setting out more clearly the Code's purpose, status and scope;
- Promotion of the notion of personal regulation and professional judgment to be exercised by teachers **themselves**;
- Teachers' entitlement to a private life and setting the associated expectations;
- The logic of 'future-proof' the Code;
- Including "Professional', 'Professionalism' or similar in the title.

1 INTRODUCTION AND BACKGROUND

1.1 Context for the Technical Report

This Technical Report reflects many aspects of professional regulation across other professions such as Law, Medicine, Nursing and Social Work within Scotland and the rest of the UK. For many years there have been professional regulatory bodies for the professions, which as their core duties, carry out many (and more) of the

functions that are proposed for the Teachers' Conduct Council in Albania. These bodies include for example the General Teaching Council for Scotland (GTCS) and the General Medical Council (GMC) established by statute in 1965 and 1858 respectively. In common with other regulators, the GTCS and GMC (and not government) hold registers of individuals who are deemed to be fit (in regard to qualifications, training and conduct) to practice their respective professions.

In recent years the whole issue of professional self-regulation in Scotland and in the UK has come under scrutiny following the Shipman enquiry. The main concerns were based on the reality/or perception that self-regulation is too 'cosy', and that the profession through its self-regulator will put the interests of the teacher or doctor member before that of the public. This has resulted in a fresh approach to regulation, part of which is the production of Codes of Practice/Conduct to give guidance to professionals and manage the expectations of the public and consumers in regard to those professionals in which they, quite properly, are entitled to place a high degree of trust.

In compiling this report, the author has also taken endeavoured to take into account:

- the fact that there has already been wide discussion and debate which has brought the July 2008 draft of the Albanian Code thus far;
- (to the best of the author's knowledge and understanding), the cultural and context of Albania and
- the project's principal aim in regard to 'petty corruption'

1.2 The Philosophical Perspective Of Regulation And Codes Of Conduct

The Regulatory Mechanism detailed in part II of the Code has quite a lot in common with the self-regulation models in other parts of the world comprising the following key elements:

- Central Institute/organisation which is separate from Government (eg MoES)
- Works closely in the discharge of its functions with local stakeholders, eg employers, local commissions
- Council composition comes from a wide range of stakeholders (including Unions)
- Restricts or removes the right to teach by means of sanction or warning

It is not dissimilar to the Teaching Council model, of which the General Teaching Council for Scotland (GTCS) is an example. Historically this is a model, which has not been widely adopted in Europe and is more prevalent in countries such as the UK, Canada, Australia and New Zealand. Therefore Albania is taking an important positive step in establishing the TCC and in particular the in the way it has been structured.

The key feature of any regulatory framework for teachers is its purpose should be to **protect** the public (in particular children and young people in the widest sense) and **not to punish** the individual. This goes hand-in-hand with the need to maintain the good standing of the teaching profession and the trust and confidence that both the profession and the public have in the regulatory framework in place.

The safety and good educational welfare of children and young people is central to the fabric of society and shaping our future. Therefore the role of competent and professionally fit teachers is absolutely pivotal in that endeavour.

Regulatory partnership is also essential and in the case of teachers this should comprise the three key elements of Regulator (such as the TCC), employers and the individual teacher. The role of the Regulator is self-evident, however the employer has a key role in providing regulation in the workplace. This can be achieved by for example:

- giving advice and guidance in schools and informing the national educational debate;
- dealing with less serious conduct/competence transgressions and
- within the workplace, providing a professional and collegiate environment and encouraging professional dialogue and reflective practitioners

However the individual teacher has a pivotal role to play in this 'regulatory triangle' by way of **personal regulation**. The teacher, as a professional should be regulating himself or herself, with Code and Standards informing and underpinning the many professional judgments they have to make.

However in regulating any profession there must 'buy-in' from those who are being regulated and thus made subject to the Codes and regulations. Whilst accepting that there may of course be overlap between the two, any regulatory framework must strike a fair balance between a teacher's private and professional life. A framework should also empower and support the professional in making his or own professional judgments on a day-to-day basis; the old maxim of 'prevention rather than cure' comes therefore to the fore as does the importance of professional codes.

2 THE DRAFT CODE: SUMMARY OF CONTENT

2.1 Introduction

The introduction to the Code details the consultation process to date and that it is part of a wider framework of the "Promoting Transparency in Education" project. In particular the Code of Conduct is intended to address the issue of 'petty corruption' in public schools.

Sections I.1-I.2 outline to some extent which teachers will fall under the jurisdiction of the Code and also the aims of:

- Determining teachers' conduct rules in accordance with contemporary standards of professional conduct
- Helping teachers attain these standards
- Make the public aware of the type of conduct expected of teachers when they exercise their professional duties

Thereafter sections I.3 to I.9 lists, in some considerable detail, the prohibited behaviour within the following settings:

- Section (3) Teacher-pupil relationship
- Section (4) Teacher-manager relationship
- Section (5) Manager-teacher relationship
- Section (6) Teacher-parent relationship
- Section (7) Teacher-teacher relationship
- Section (8) Outside the premises of the education establishment
- Section (9) Dress Code for teachers

Part II of the Code details the Regulatory Mechanism and presumably the legislative authority for the Code and the Teachers' Conduct Council/Commissions (TCC). This includes the composition of the TCC associated competencies, functions and repertoire of Measures and Sanctions where a Code breach is substantiated.

2.2 Content

In general the Code includes the main elements required of a regulatory tool of this nature. Further additions and matters of structure, format and presentation are discussed in Section 4 below.

Section (3) Teacher-pupil relationship

The key issues in this section can be summarised as follows:

- I. Violence against pupils
- II. Discrimination against pupils
- III. Respect for and fair treatment of pupils
- IV. Bribery and blackmail
- V. Political and/or religious activity
- VI. Inappropriate relationships, misuse of internet and technology
- VII. Indecent images of pupils
- VIII. Health and safety
- IX. Confidentiality of pupil information
- X. Dishonesty in regard to examinations and assessment
- XI. Classroom mismanagement
- XII. Failure to follow the curriculum
- XIII. Teaching your own children

Section (4) Teacher-manager relationship

The key issues in this section can be summarised as follows:

- I. Insubordination
- II. Discrimination
- III. Respect
- IV. Make unfounded accusations
- V. Professional dishonesty
- VI. Intimate relationship with manager
- VII. Political and religious beliefs
- VIII. Threatening behaviour
- IX. Informing the manager of personal problems which may impact upon teaching duties
- X. Gaining favour with the manager using corrupt means
- XI. Unsatisfactory performance
- XII. Public display of unprofessional behaviour (Rule 8)

Section (5) Manager-teacher relationship

The key issues in this section can be summarised as follows:

- I. Good staff management skills
- II. Discrimination
- III. Respect
- IV. Confidentiality
- V. Bullying and harassment
- VI. Intimate relationship with teachers
- VII. Political and religious beliefs
- VIII. Abuse of position of manager
- IX. Bribery and corruption
- X. Threatening behaviour
- XI. Informing the manager of personal problems which may impact upon teaching duties
- XII. Unsatisfactory performance
- XIII. Public display of unprofessional behaviour (Rule 8)

Section (6) Teacher-parent relationship

The key issues in this section can be summarised as follows:

- I. Abuse of professional relationship for personal gain
- II. Abuse of professional relationship to advantage the school
- III. Have intimate relationships with pupil's parent on school premises
- IV. Confidentiality
- V. Require parents to act as unqualified teachers
- VI. Take into account the views and contributions of parents

- VII. Respect
- VIII. Address educational issues directly with parents
- IX. Use appropriate and professional behaviour
- X. Smoking and drinking issues

Section (7) Teacher-teacher relationship

The key issues in this section can be summarised as follows:

- I. Work in collegiate fashion
- II. Undermine colleagues
- III. Disregard inappropriate professional conduct of colleagues
- IV. Respect
- V. Intimate relationships with colleagues in the workplace
- VI. Bullying and harassment
- VII. Use school property for personal gain

Section (8) Rules of Conduct outside the premises of the education establishment

The key issues in this section can be summarised as follows:

- High standards of honesty and integrity
- Inappropriate behaviour
- Commission of criminal acts
- Prohibition of carrying firearms, knives etc

Section (9) Dress Code

The key issues in this section can be summarised as follows:

- Appropriate dress to be worn by teachers on school premises
- No provocative dress, jewelry and tattoos both on and outwith school premises
- Teachers should be examples of hygiene and cleanliness

3 STRUCTURE AND FORMAT

The current structure of the Code is somewhat overwhelming and lengthy resulting in a high level of duplication impacting upon the same 360-degree set of relationships in which a teacher operates. There needs to be a positive underpinning notion of “Fitness to teach” both throughout the Code and in the way it is enforced and cases/allegations are adjudicated. This aspect is discussed further in Part E below. In general, key recommendations/suggestions for the code are to:

- Frame a set of overarching, high-level principles for the Code

- Collapse/combine some of sections 3 to 9 and include managers more fully within the scope of the Code

3.1 Framing a set of overarching principles

Although this will be discussed in more detail in Section 5, in legal and policy terms there are risks and drawbacks associated with lists of rules which simply state what teachers and/or managers are **not** allowed to do. These shortcomings include:

- That the Code will not be ‘future proof’, i.e. it will be vulnerable to become easily outdated due to changes in circumstances (e.g. the development of communication technologies)
- Over prescription, which can make application of the Code and adjudication of any alleged breaches or breaches more difficult

Annex 1 (GTC Scotland’s Code of Professionalism and Conduct) is included as an example to illustrate this a model containing overarching principles, examples and commentary. Whilst the author is not advocating that the Scottish model is exactly the solution or the way forward, CoPAC may assist in further shaping the Albanian Code.

3.2 Combining sections and including managers more fully within the scope of the Code

It is suggested that some thought might be given to collapsing/combining some of sections 3 to 9. As any Code must be accessible to all (including parents and students), collapsing some of the sections would make it easier to follow and bring about a greater consistency of understanding and application to the whole.

This could be done either fully or partially, however the former would assume that both manager and teacher could be combined together into one class of individual. Section 5 is currently the only section, which applies to Managers, a fuller collapse of sections could also open the opportunity of applying standards to managers within the same set of overarching, high-level principles discussed immediately above.

3.3 Conduct Versus Competence

The Code as presented includes a number of issues, which might be considered to be more related to competence rather than conduct and therefore out of place within a **Conduct** Code. For example:

- Section (3) Rule 37 and 38
- Section (4) Rule 11
- Section (5) Rule 23
- Section (6) Rule 38

Conduct (or its antonym misconduct) tends to be related to behaviour as opposed to a person's ability to discharge certain tasks, for example, **ability** to manage classes or **ability** to assess students' progress etc. Competence is more closely linked therefore to professional qualities and capabilities that might best sit within a separate competence/Standards framework within which a teacher can be helped and supported. The same would apply to managers by way of a Standard for Leadership that would embrace many of the key management aspirations and competencies.

By way of example the GTC Scotland has such a framework and is governed by base-line competence standards - the "Standard for Full Registration" (SFR). This is included in Annex 2 of this report.

3.4 Application Of Code - Scope, Status And Purpose

Whilst recognising that the Aim and Scope of Action already goes some way in this regard, it is suggested that there is greater clarity. For example:

- Is it statutory?
- Is it advisory?
- Which (or do all) sections apply to managers?
- Which sections apply to support staff?
- How is it to be applied?
- Are all the existing rules of equal importance?
- Proportionality – is every breach always going to result in action or are individual circumstances of any importance?
- How is a series of very minor breaches looked upon within the Code?

3.5 Use Of language

A commentary may assist in this regard, however the use of language throughout the Code is worthy of consideration. As currently presented the language is quite negative and a more positive may be more constructive and helpful in ensuring that teachers embrace the Code. When it comes to applying any Code, the following list contains words which should be used with great care:

- Should, must, expected, will, may, would

3.6 Inclusion Of A Commentary Section

It is recommended to include a commentary to assist (in the words of the Code) to "help teachers attain these standards". A Web-based commentary can also be produced to give support to teachers. Annex 3 illustrates the way in which GTC Scotland has supplemented its Code; this example is in regard to the dangers of Social Networking.

4 CONTENT

Sections 3 to 9 contain lists of conduct which is prohibited with section (3) and (5) running to a list of 38 and 23 respectively. Therefore the Code is somewhat daunting for the following reasons:

- The number of Rules contained in each section;
- The complexity and level detail of some of the Rules themselves;
- The use of language that is generally negative in a Code that, is quite rightly intended to assist teachers attain and maintain standards of conduct

“Professional” or “Professionalism” in the title of the Code may also be an idea worth consideration.

4.1 “Fitness To Teach”

The consultant recommends/suggests that the Code includes a statement on ‘Fitness to Teach’ which would provide a high-level benchmark against which the fitness of a teacher can be judged in the broader sense, rather than judging conduct matters in purely and in isolation against a specific Rule or Rules in a Code. The notion of Fitness to Practice would serve to guide the focus of the TCC in considering the breach or breaches in question and the circumstances present, against that individual’s fitness to be a teacher in the following areas. It would also provide a high-level yardstick or principle very much in keeping with the aim of the Code “to help teachers attain these standards” and refer to tenets such as:

- Risk to children/pupils
- Expectations of the public
- Expectations of the professional peers
- Expectations of honesty and integrity

4.2 Other recommendations

4.2.1 Section (1): Aim

It is suggested that the second line should read: “ to help teachers attain *and maintain* these standards

4.2.2 Section (3): Teacher-pupil relationship

Notwithstanding the discussion and recommendations above regarding structure and format, the following factors might also be reflected in the final version of the Code:

- Rule 19 - this should be extended to include “children” and not just be confined to “pupils”. Indecent images of children may already be addressed

under the Albanian Penal Code, however that makes a strong Section (8) Rule 6 regarding criminal behaviour by teachers all the more important.

- Rule 22 - this Code is about the individual teacher/manager, therefore, should this fall within the responsibility of the manager or perhaps employer as opposed to the individual? Might this not be impossible to avoid in small rural schools?
- Rule 24 is unclear, perhaps it should read (teachers are not allowed to) "Take disciplinary measures *other than* in accordance with rules in force"
- Rules 37 and 38 are addressed above under Structure and Format

4.2.3 Section (4): Teacher-manager relationship

Notwithstanding the discussion and recommendations above regarding structure and format, the following factors might also be reflected in the final version of the Code:

- In certain circumstances might Rule 7 be a significant breach of the private life of the individual exacerbated by the measures and sanctions detailed in Part II (8) of the Code?
- Rule 11 is addressed above under Structure and Format

4.2.4 Section (5): Manager-teacher relationship

- Many of the Rules in the Code (eg, 19, 20, 21, 22 and 23) may fall within the scope of a standard for leadership as opposed to a Code of Conduct (see page 9), and therefore answerable as misconduct. This is addressed above under Structure and Format

4.2.5 Section (6): Teacher-parent relationship

Notwithstanding the discussion and recommendations above regarding structure and format, the following factors might also be reflected in the final version of the Code:

- The issue of discrimination, equality and diversity has been omitted from this section as has political or religious activity concerning parents (eg section 3, Rule 10)
- Promoting good relationships between home and school may be a useful addition.

4.2.6 Section (7): Teacher-teacher relationship

Notwithstanding the discussion and recommendations above regarding structure and format, the following factors might also be reflected in the final version of the Code:

- Much of this is duplicated elsewhere and could be quite effectively combined in the way suggested with Section (3)

4.2.7 Section (8): Rules of Conduct outside the premises of the education establishment

Notwithstanding the discussion and recommendations above regarding structure and format, the following factors might also be reflected in the final version of the Code:

- This section needs a careful approach in that the teacher’s right to a private life must be balanced with he/she being a role model to pupils and within the community;
- Rule 1 – the use of the word “exemplary” sets the bar very high at “perfect” and “excellent”;
- Rule 2 – the inclusion of friends and family life as opposed to just pupils and parents would seem to widen the scope of the Code significantly; Notwithstanding the fact the Albania is not subject to the European Convention on Human Rights (ECHR), Article 8 of the ECHR may serve as a useful reference point
- Again much of these rules might be combined into Section (3) there should be express mention about criminal behaviour, trends of criminal behaviour in general and in particular crimes involving or against children (including internet crime), crimes of dishonesty (other than just theft)
- Rule 4 is somewhat wide in scope and lacks specification and in fairness presupposes that a teacher will know this information simply and only as a matter of course

4.2.8 Section (9): Dress Code

Notwithstanding the discussion and recommendations above regarding structure and format, the following factors might also be reflected in the final version of the Code:

This is a little prescriptive and subjective and perhaps the same effect could be achieved by one statement for example:

“Whilst performing their professional duties, teachers should avoid extreme styles of dress and are expected to dress and present themselves in an appropriate and professional fashion, mindful that at all times they are role models for children and young people”

5 APPLICATION AND ENFORCEMENT

Writing a professional Code is a difficult and complex task, however in so doing, at every stage thought must be given to how individual parts of and the Code as a

whole can and are to be applied and enforced. In the UK, Human Rights legislation means that the right to teach is classified as a human right. Accordingly any enforcement, which restricts or removes the right to teach, must comply with ECHR. Notwithstanding the differences between Albania and the UK, the Code and how it was applied would doubtless feature in any challenge a teacher may have against a future ruling of the TCC.

In this light, lists of Rules as per the current draft of the Code present inherent risks and dangers such as:

- Future proofing (especially as the Internet and in particular Social Networking such as Facebook develop – reference Annex 3);
- In being too prescriptive resulting in something being omitted or forgotten;
- Listing, by being too prescriptive, can inadvertently rule other conduct out. For example, Section (3) Rule 19 only refers to “pupils”. That would therefore exclude the wider application of the Code to “children” and not just pupils.

The GTCS experience of CoPAC since August 2008 has demonstrated that the broader principles approach, (as opposed to the Listing approach) in fact widens the scope rather than restricts the scope of the Code. This is also complemented by the existence of the Fitness concept within the GTCS’s founding legislation.