

Ethics for the Prevention of Corruption in Turkey

ACADEMIC RESEARCH REPORT

CONFLICT OF INTEREST

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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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Conflict of Interest in Turkish Public Administration

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Introduction

Conflict of interest existed in public service is as old as public administration.

Whereas in many societies in the past it had been assumed that elected or non-elected public officials would take advantage of public office to promote their own personal interests in modern societies they should be expected to act exclusively in the interests of the state. As societies democratized and their governments became accountable to their publics citizens ask public officials to “discharge their duties in the public interest and with fairness and impartiality” (Seger, 2008, 40). Clean politics in democratic countries is subject to the effective and productive operation of democratic institutions as well as sustainable trust and guiding principles in government, namely openness, transparency and accountability (Shah, 2007; Przeworski et al., 1999, and Stapenhurst et al., 1999). Contrary to the countries where democratic control is high “transparency” in public service and clear separation between “public” and “private” objectives are major problems in several democratizing countries due to corruption and abuse of power in their past (Lankester, 2007).

The aim of this study is twofold: first, to describe the awareness of Turkish public officials about conflict of interest, and second, to underline the shortcomings of Turkish legislation with special reference to ethical infrastructure. In this context, the report is based on two major dimensions: first, a textual analysis of the legal framework of conflict of interest in Turkey, and second, an analysis of the findings of in-depth interviews with Turkish public officials conducted within the scope of this project. It is expected that the discussions of this report will also shed light on public service ethics in Turkey in general. In this context, the report can provide an overview of the expressed core values, infringements and expectations in relation to ethical standards. The report will begin with a conceptual framework and a brief comparative analysis of legislation and enforcement mechanisms for conflict of interest, followed by a thorough analysis of legal framework of conflict of interest related issues in Turkey. The final part of the report evaluates the findings of interviews and includes a brief conclusion on the recommendations.

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Conceptual Framework

Public interest, fair treatment and accountability are the major principles for the appointed and elected officials in office. Pursuing private interest in a public office such as self-dealing, outside employment, and bribe from friends or lobbying for private interest in the policy-making process or exercising influence on justice for private or political purposes undermine public interest. Finally, conflicts of interest undermine trust. They make the public lose faith in the integrity of governmental decision-making processes. These end up with corruption and erosion of democratic governance.

Corruption in terms of “bribery, extortion, clientelism, kleptocracy, nepotism and corruption networks” has been studied as a criminological problem with economic, legal, political and sociological consequences (Peele and Kaye, 2006, 3). Conflict of interest studies describes the phenomenon as a “public administration, political and legal problem.” Although there is no clear separation between conflict of interest and corruption conflict of interest and corruption are different things.

In reality, conflict of interest is properly understood as a situation, not an action, and it is clear that a public official may find him or herself in a conflict of interest situation without actually behaving corruptly (Reed, 2008, 8)

Conflicts of interest ... involve a conflict between public duty and private interests, whereby ...a private interest which could improperly influence the public interest, activities and decisions.

For example, a public official involved in making a decision in which he/she has a private-capacity interest may act fairly and according to the law, and consequently there is no corruption involved. Another public official could take a bribe (corruption) for making a decision he/she would have made anyway, without any conflict of interest being involved in his/her action (OECD-SIGMA, 2007b: 6).

In this context a conflict of interest is not necessarily corruption or fraud. However, it constitutes an “abuse of public office for private advantage” and may hold a potential for unfair behaviour.

A conflict of interest is generally described “as a situation in which someone in a position of trust, including politicians has competing professional or personal interests” (COE Parliamentary Assembly, 2007). According to Article 13 of Council of Europe’s Committee of Ministers Recommendation No. 2000 (10):

1. Conflict of interest arises from a situation in which the public official has a private interest which is such as to influence, or appear to influence, the impartial and objective performance of his or her official duties.
2. The public official's private interest includes any advantage to himself or herself, to his or her family, close relatives, friends and persons or organisations with whom he or she has or has had business or political relations. It includes also any liability, whether financial or civil, relating thereto.
3. Since the public official is usually the only person who knows whether he or she is in that situation, the public official has a personal responsibility to:
 - be alert to any actual or potential conflict of interest;
 - take steps to avoid such conflict;
 - disclose to his or her supervisor any such conflict as soon as he or she becomes aware of it;
 - comply with any final decision to withdraw from the situation or to divest himself or herself of the advantage causing the conflict.

More specifically, in the context of public service, a conflict of interest “involves a conflict between the public duty and the private interest of a public official, in which the public official’s private-capacity interest could improperly influence the performance of his/her duties and responsibilities” (OECD, 2003: 24). This common definition of conflict of interest has three dimensions. First, there is a private or personal interest (tangible or intangible). Second, the private interest of the public official comes into conflict with his/her official duty. Third, conflict of interest interferes with professional principles. Although there is a strong relationship between conflict of interest and corruption, the former is not the same as corruption. However, an improper influence of the public official due to his/her private interest may result in corruption anyway. Essentially, in a conflict of interest situation, the private interest of the public official can or could influence the objective and impartial performance of his/her official duties.

Types and Categories of Conflict of Interest

Conflicts of interest generally fall into two categories: *pecuniary* and *non-pecuniary* interests. (ICAC, 1996; see also OECD, 2003)

Pecuniary interests involve an actual or potential financial gain. They may result from a staff member, or a member of his or her family, owning property, holding shares or a position in a company bidding for government work, accepting gifts or hospitality, or receiving an income from a second job. Money does not have to change hands - the benefit could be an increase in the value of a property because of a favourable rezoning decision, or the selection of a particular tenderer for a contract.

For example, if a person with an application before council makes a donation to a company in which a councillor is a partner, there is a potential conflict of interest because the councillor might be influenced by the donation when considering the application. There is a risk that the councillor's personal interest in the company could conflict with his or her public duty to assess the application on its merits.

Non-pecuniary interests do not have a financial component. They may arise from personal or family relationships, or involvement in sporting, social or cultural activities. The most obvious example of this is family interest – for example, the recruitment officer may have an interest in influencing hiring procedures to secure a position for his brother or cousin, without ever benefiting financially.

For example, if a municipal city planner, with a child at the local preschool, draws plans on a voluntary basis for some extensions to the preschool, she has a personal interest in the plans being approved and this could influence the impartial assessment of the application by her.

Similarly, if a government organisation that gives grants to sporting organisations has a senior staff member whose daughter is a star player in a group, which is applying for funds, the staff member has, or could be perceived to have, a personal interest in the outcome of the grant application.

Moreover, there are also other interests which are not directly personal yet may be subject to conflict of interest. With the idea of reelection in mind, elected officials generally pursue the interests of their constituents and/ of their party, and attempt to influence the relevant administrative process which is usually against the public interest.

IDENTIFYING TYPES OF CONFLICTS OF INTEREST

| Actual conflict of interest | Perceived conflict of interest | Potential conflict of interest |
|-------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------|
| A public official <i>is in a position to be influenced</i> by their private interests when doing their job. | A public official <i>is in a position to appear to be influenced</i> by their private interests when doing their job. | A public official <i>is in a position where they may be influenced in the future</i> by their private interests when doing their job. |

Source: ICAC, Managing Conflict of Interest in the Public Sector, November 2004.

In general, a public official finds himself in such situations that may or may not allow the interest that conflicts with the public interest wrongly affect his actions. However, every public official may naturally have a personal interest or interest of his/her relatives/friends inevitably. Sometimes these interests may conflict with the decisions they make, or the actions they take in public service. Such conflicts are not the essence of the subject matter but how to act in such situation is essentially important.

Kernaghan and Langford (1990, see also OECD, 2003; Yüksel, 2005 and Ombudsman of Victoria, 2008) have identified eight categories of conflict of interest:

1. Self-dealing refers to a situation where one takes an action in an official capacity which involves dealing with oneself in a private capacity and which confers a benefit on oneself.
2. Accepting benefits describes that public employees should not solicit nor, unless duly authorized, accept transfers of economic value from persons with whom they have contact in their official capacity." Such benefits range from token gifts to significant "transfers" prohibited by the criminal code.
3. Influence peddling is "the practice of soliciting some form of benefit... in exchange for the exercise of one's official authority or influence on their behalf". According to Kernaghan and Langford, the key component is the "soliciting of benefit."
4. Using government property may involve using government telephones for personal use or the archetypal "taking pencils home" from the office. In more serious iterations, it might involve significant private use of government vehicles, aircraft, computers, etc. Kernaghan and Langford conclude that "the important point here is that government property not be used for private gain". They add that, as with benefits, the administratively convenient solution is to ban all such uses.
5. Using confidential information means that a public official disclose to others, or use to further their personal interest, confidential information acquired by them in the course of their official duties. A specific example of this is "insider information" which means the use of information that is gained in the execution of a public official's office and is not available to the general public to further or seek to further the member's private interest. As Kernaghan and Langford have argued, "the offence lies in using (insider) information... for private gain."
6. Outside employment may include a public official to engagement in, solicit, negotiate for, or promise to accept private employment, or render services for private interests or

conduct a private business when such employment, service or business creates a conflict with or impairs the proper discharge of their official duties.

7. Post-employment is one of the newest areas of conflict of interest. It implies that public officials can not act after they leave public office, in such a manner as to take improper advantage of their previous office. This is the problems of "capture" of government officials, particularly in areas of regulation. When "future employment" in such situations emerges, public interest in such examples rises, and public confidence in prior administrative decisions and fairness by such officials is potentially undermined. Kernaghan and Langford argue that "How can an appropriate balance be struck between the right of public servants to move between public and private sector employment and the need to prevent abuse of confidential information and preserve public trust in the integrity of public officials?"
8. Personal conduct is the question was whether "public servants (are) entitled to the same privacy as other citizens." According to Kernaghan and Langford there are two key circumstances where personal conduct may create a conflict situation:

(a) when a public servant's conduct makes him or her vulnerable to pressure to use his or her public office improperly" (as with drug addiction); and (b) "when a public servant's conduct brings significant discredit to the government or to a particular department and thereby undermines public trust in public officials." (Kernaghan and Langford, 1990: 152)They underlined that "each case of questionable or improper personal conduct involving public servants needs to be carefully considered on its merits.

Conflict of interest has three dimensions in curbing corruption: impartiality, equity, and openness in public policy making process (Doig, 2008, 119). A comprehensive anti-corruption strategy must include conflict of interest rules including a structural framework, prevention measures, detection and investigation bodies and procedures, and the penal system (Mendieta, 2008, 113). Therefore, regulating conflict of interest may help preventing and combating corruption. It may also help building public sector integrity and promotion of democracy.

Examples of Potential Conflicts Of Interest

1. Tendering and Purchasing

An organisation has advertised for a firm to supply and fit office equipment. A member of the panel assessing the tenders has shares in one of the firms which has submitted a bid.

This may affect, or it may reasonably be suspected that it could affect, his or her ability to make an unbiased decision.

2. Staff Recruitment

A member of a selection panel has a close relationship with one of the applicants for the job. This conflict of interest could bias, or could reasonably be expected to bias, the decision of the panel.

3. Secondary employment

Two police officers have second jobs as bouncers at a nightclub. Local residents have complained to the police several times about noise levels at the club and problems with drunks and underage drinking, but no action appears to have been taken.

The impartiality of the police officers has been compromised as it may be perceived that they are using their influence to make sure the club is not investigated.

4. Dealing with former public officials

A senior employee of a government department awarded a particular firm several valuable contracts. Shortly after awarding the contracts, he resigned from his job and went to work for the firm.

It could appear that the offer of employment was a personal benefit, in return for favours given. Other competitors might be disadvantaged if staff at the agency were influenced by their previous colleague and continued to award contracts to his firm. This situation must be carefully managed to ensure favouritism or the perception of favouritism does not occur.

5. Gifts, benefits and hospitality

A regular supplier offered the purchasing officer of a government department a free weekend for two at a beach resort. The officer's impartiality when dealing with the supplier could be compromised if she accepted the offer.

6. Local Government Planning Approvals

A senior council planner often had to advise applicants on how to make their development applications comply with council's codes. He suggested to some applicants that they should use the services of a local architectural firm where his brother worked. Although the necessary work was mainly done by staff at the firm, the planner was sometimes paid to prepare the drawings himself.

The planner's job was to act in the public interest and to provide impartial advice about council's policies. By recommending his brother's firm, he put the private interests of his brother and himself before his public duty.

A similar conflict can occur when councils have a dual role as developer and regulator. Councils that decide to develop a piece of land they own may make decisions in their own commercial interest and unfairly disadvantage other developers. It may be difficult for councils to be impartial when they are effectively having to assess their own applications.

7. Licensing

A health inspector is friendly with the owner of a local butcher's shop and often gets given extra meat with his family's order. As part of his job, the inspector has to inspect the butcher's shop to check it complies with health regulations.

The personal relationship between the butcher and the inspector, and his acceptance of free meat, could reasonably be expected to influence his assessment of the health standards in the shop.

8. Elected officials

Many councillors have business and professional interests in the local government area they represent. Conflicts can arise if their public positions allow them access to information and opportunities that could be used to advance their personal and business interests.

For example, a councillor may be tempted to influence an application to set up a new business in the town if his own business could lose custom as a result

Source: (ICAC Practical Guide, 1996. http://www.icac.nsw.gov.au/files/html/pub2_27cp.htm)

Types and Instruments of Regulating Conflict of Interest

More and more OECD countries enact conflict-of-interest laws or codes of conduct to set standards for identifying, preventing and managing potentially conflicting situations (OECD, 2003). There are basically three categories of conflict of interest regimes worldwide: *restrictive approach*, *moderate approach* and *soft approach* with special reference to extent of regulation, obligation and mechanisms (Demmke et al., 2007: 132). Although very few numbers of democratic countries have adopted general conflict of interest laws which apply to all institutions, there are some universal standards regulated within the scope of conflict of interests: (Demmke et al., 2007, 28)

- A body of rules, codes, standards and principles. Mostly these instruments enumerate a number of prohibitions and restrictions (e.g. not receiving gifts of over 250 euros).
- Disclosure policies and registers of interests that require the HPO to register potential conflicts of interests and other interests. Here, differences exist as to transparency requirements, the level of detail of reporting obligations and specific obligations (e.g. whether spouse's activities should be registered or not) etc.
- Monitoring and enforcement mechanisms. Here important differences exist regarding powers and resources of ethics committees and ethics commissions which have the task to advise on ethical questions and/or to monitor and control the development of conflicts of interests within their organisations. Also important differences exist as to (criminal and administrative) sanctions in cases of ethical misconduct.
- Training and education requirements

Due to the range and nature of potential conflict of interest situations in public service it is not possible to simply prevent or prohibit all conflicts of interest. Keeping the above mentioned types of conflict of interest (pecuniary/non-pecuniary and actual, perceived and potential) in mind a practical regulation of conflict of interest may have the following objectives (Reed, 2008, 10. See also OECD, 2003: 70):

1. To prevent conflict of interest situations arising, to the extent that this is possible and practical
2. To establish rules that address conflict of interest situations where they do arise.
3. To provide guidance to public officials and enable them to protect themselves more easily.

On the other hand, from the perspective of public it is argued that such regulations also (Demmke et al., 2007, 32):

1. Increase public confidence in the government.
2. Demonstrate the high level of integrity of the vast majority of Government Officials
3. Deter conflicts of interest from arising because official activities would be subject to public scrutiny
4. Deter persons whose personal finances would not bear up to public scrutiny from entering public service, and
5. Better enable the public to judge the performance of public officials in the light of their outside financial interests

Then, the first major questions arises: who will become the subject of these regulations? These rules should apply to all public officials, elected or appointed, in executive branch, including the members of the government. However, different types of public officials need to be regulated differently (Lankester, 2007 and Reed, 2008). An effective conflict of interest regulation should carefully tackle with two factors: “overlapping membership” and “improper use of confidential information by insiders” (Demmke et al. 2007, 29).

Some of the institutional mechanisms for preventing conflict of interest in the case of appointed public officials (public/civil servants)² may be applicable to elected officials but not all. There are several differences between appointed and elected public officials. Whereas civil servants are “permenant, professional and full-time” officials, the elected officials are “temporary, non-professional and part-time.” Whereas civil servants are “accountable only to the institution for which they work and its rules” the elected officials are directly accountable to the public through elections and other means and ways of legislative control. Whereas civil servants can only participate in specific discussion relevant to their office or duty the elected officials are, by definition, part of various public debates or decision-making process.

However, the effect of democratic accountability mechanisms may be less especially where voters have been bribed by politicians to keep them in power. “Adequate checks and balances to prevent corruption are needed in all democracies, but in resource-rich democracies..” where there is... “a strong temptation for politicians to embezzle public funds in order to indulge in political patronage” (Lankester, 2007, 4).

It is also argued that (Reed, 2008, 10-11):

“... the temporary and wide-ranging role of elected officials necessitates that they are regulated *less strictly* than professional civil servants, with primary emphasis on duties

² These concepts will be used interchangeably throughout this study.

to disclose interests, less emphasis on exclusion from decision-making and even less emphasis on prohibitions on external activities and interests.

Second methodological question is how to develop a regulation for conflict of interest? Among other reasons, especially for its effective implementation, codes of conduct and other ethical rules need to be owned and internalised by those who are subject to them. Considering some country experiences such as USA, it is recommended that instead of a “top-down” approach a viable legal document of conflict of interest should be adopted by consultation with the public officials (Reed, 2008, 11).

Finally, there are several institutional mechanisms to prevent pursuing self-interest in public service. The list of such mechanisms may include a merit system for appointment and promotion, adequate salary, leadership, effective legislative control, effective civil societal control, freedom of information act and an independent press (Lankester, 2007, 3). However, without “clear rules for handling specific conflicts of interest (for example, “declaring an interest” when dealing with issues in which the official has a personal interest) and to ensure ethical behaviour in general (for example, competitive tendering for contracts), it will not be easy to achieve the objective mentioned above.

These provisions can be regulated and implemented by general legislation for civil service or more specific legislation such as conflict of interest law. However, besides it is an obligation under Article 8.5 of the United Nations Convention Against Corruption a code of ethics or code of conduct is essential for several other reasons (Reed, 2008, 12). Code of Conduct as a part of an official’s “contractual obligation” first can be designed in accordance with individual needs of an institution. Second, a code may facilitate internalization of public service values. In addition,

“...modern conflicts of interest systems are no longer based purely on law, compliance and penalising wrongdoing. In fact, they are oriented towards preventing CoI from happening and encouraging proper behaviour through guidance and orientation measures, such as training and the introduction of codes of conduct” (Demmke et al, 2007, 43).

Generally, ethics rules prescribe four approaches to avoiding or mitigating ethical conflicts, whether actual or potential: (1) avoidance, (2) disclosure, (3) divestment or resignation, or (4) recusal. The main issues regulators encounter regarding ethics can be grouped into three broad categories: (1) acceptance of gifts; (2) personal and financial conflicts of interest; and (3) post-employment prospects.

These types of regulations first set “prohibitions on the performance of certain functions, and/or the holding of certain positions or certain interests by public officials.”

Secondly, they require “public officials to declare interests they have, either generally or in specific cases” and finally ask them to exclude themselves “from participation in decision-making processes or matters where they are subject to a conflict of interest” (Reed, 2008, 11-12).

Prohibitions and incompatible activities

In order to prevent possible conflict of interest situations, prohibitions on concurrent positions, duties and interest in addition to a public servant’s official duty are very essential. These may include a brief list of measures in summary form (Reed, 2008, 13): overlapping positions in different branches of government, employment or holding a position in or contractual relation (e.g. consulting) with private sector, having shares (absolute or over certain percentage) in private legal entities partially or fully owned by the state or do business with the state, signing a contract with the government or the government agency where the official work, temporary leave from public office to work in a private legal entity which the official’s government office does business with or exercises regulatory power over.

It should be taken into account that if salaries of public officials are not satisfactory for maintaining a standard of living outside income sources cannot be prohibited unless that interest may have a conflict with public official’s official duty (ibid.).

Due to the limited period of duty with no reelection guarantee, an elected official may continue to pursue interest outside the office. However, an elected official cannot have an overlapping membership in different branches of government, hold a position or have an interest in a private company which may have a contract with the government or hold a position or interest which prevent the elected official to fulfill the official’s duty (Reed, 2008, 14).

Declaration of Interests

There is a distinction between asset declaration and declaration of interest. Whereas interest does not provide any concrete benefit, asset refers to ownership or direct benefit. Although they do make general declaration of their assets and income regularly, declaration of interest can be made on *ad hoc* basis. As private interests could affect the impartiality of civil servants in their discharge of duties, declaration of private interests has been made a requirement for civil servants in several countries (Liu and Kwan, 200). Apart from declaring their own interests, civil servants may also be required to disclose those of their family members. This is a listing of public officials’ relevant personal interests and possibly those interests of individuals closely related to the employee where the interests may cause a

conflict of interest. These may be either “general declarations of personal interests, usually recorded in a register of interests” or “case-by-case declarations by members of any interest they may have in a matter that is before the legislature or one of its committees of which they are a member” (Reed, 2008, 14).

Declaration of interest provides transparency by means of which detection of conflict of interest situations and exclusion of public official from decision-making process can be possible. Declaring an actual or potential conflict of interest is essential to avoid any such perception that public official is acting in his self-interest “– e.g. making a declaration of personal assets on taking office, establishing “blind trusts” that are managed by an independent trustee, and “declaring an interest” and asking another minister or official to provide the advice or take the decision when there is a clear conflict of interest” (Lankaster, 2007, 5).

For practical reasons, the scope of declaration of interest should cover only those who have important decision-making powers, such as department heads. It is equally important to define the value or size of particular kinds of interest over which they must be declared (Reed, 2008, 15).

Declaration of interest is more important for elected officials simply because of the nature of their functions and must be regulated separately.

The major question here is the extent to which declarations of interests should be public. In other words, how to balance transparency and right to privacy is a delicate matter. In this respect, there are two important points to be formulated carefully (Reed, 2008, 17). First, “the higher the office held by the official and the greater are his/her decision-making authority, the stronger is the argument for public disclosure.” Second, the content of declaration can be divided into two as “public” and “non-public” parts

Exclusion from decision-making process (Recusal)

The main outcome of declaration of interest is the exclusion of a public official from decision-making process. However, this may happen in two ways. Following the declaration of interest either the superior disqualifies the public official from participation (exclusion) or public official himself resigns from participation (self-exclusion). The important point is that public official must make the declaration to the appropriate superior and the superior should take proper action.

In the case of an elected official self-exclusion from participation, debate or voting with or without declaration varies from country to country. Since an elected official is accountable to the voters it may be sufficient to make a declaration of interest. However, whether the voters are informed about the interest of public official in details is a major issue. It is also important that popular accountability of an elected official is simply determined by electoral system. These provisions should also apply to the members of the cabinet appropriately.

Enforcement Mechanism and Sanctions

Both codes and other types of regulations on ethical behavior including avoiding conflict of interest have at least an educational effect on the people as well as target groups. Although it is argued that ethics codes or codes of conduct ought to be self implementing such regulations without an effective institutional structure and support from the top leaders shall be futile. Similarly enforcement mechanisms and sanctions complement an effective ethical regime.

Institutional Structure

Implementation and supervision of ethical conduct in public offices can be carried out by superiors such as department/unit head or supervisors. However, it is more effective to assign a full-time ethics officer to implement the ethics framework properly with the following aims: (Reed, 2008, 21)

The US Office of Government Ethics (OGE), a small agency within the executive branch, was established by the Ethics in Government Act of 1978. Originally part of the Office of Personnel Management, OGE became a separate agency on October 1, 1989 as part of the Office of Government Ethics Reauthorization Act of 1988. The Office of Government Ethics exercises leadership in the executive branch to prevent conflicts of interest on the part of Government employees, and to resolve those conflicts of interest that do occur. In partnership with executive branch agencies and departments, OGE fosters high ethical standards for employees and strengthens the public's confidence that the Government's business is conducted with impartiality and integrity.

OGE is headed by a Director who is appointed to a five-year term by the President. In addition to the Office of the Director, OGE is divided into five Offices that work in concert to carry out OGE's mission. There are five offices in the OGE dealing with several other functions. For instance, The Office of General Counsel and Legal Policy (OGC & LP) is responsible for establishing and maintaining a uniform legal framework of Government ethics for executive branch employees. The Office of Agency Programs (OAP) is responsible for monitoring and providing services to Federal executive branch agency ethics programs.

Because the integrity of decisionmaking is fundamental to every Government program, the head of each agency has primary responsibility for the day-to-day administration of the "ethics in Government" program. Each agency head selects an individual employee of that agency to serve as the agency's Designated Agency Ethics Official (DAEO). It is these individuals and the additional staff of each agency tasked with supporting an agency's ethics program (collectively known as the executive branch "ethics community") with whom OGE primarily deals and to whom we communicate policy and regulatory changes.

Source: <http://www.usoge.gov/>

- Dealing with complaints about violations of ethical standards/code of conduct.
- Providing training to supervisors within the institution and to ordinary officials.
- Providing guidance on request and in response to questions about conflicts of interest or other ethical issues.
- Coordinating the other elements of an ethics framework, which go beyond only addressing conflict of interest

In this respect, a central organization with sufficient capacity such as a commission/ committee can be established to be responsible for tasks such as processing the general declarations of civil servants, dealing with appeals on decisions against civil servants and providing guidance to training to agency ethics officers.

Institutional instruments for conflicts of interest vary from country to country. In most of the countries detection and investigation are carried out through the internal hierarchy of public institutions. There are few independent bodies such as the Latvian Corruption Prevention and Combating Bureau, the Constitutional Court in Portugal and the Committee on Standards in Public Life in UK (OECD-SIGMA, 2007b:15-16).

There are several forms of enforcement agencies as follows (Gilman, 2005):

The Public Service Commissioner occupies an important central role within the Australian Public Service (APS) promoting the APS Values, evaluating performance and compliance, and helping to build the capability of the Service. The Public Service Commissioner has both statutory powers (under the Public Service Act 1999) and policy responsibilities... reports annually to Parliament on the state of the Service, including an evaluation of the extent to which agencies have incorporated the APS Values and the adequacy of their systems and procedures for ensuring compliance with the Code of Conduct. The Public Service Commissioner also:

- *endorses the process relating to the selection for employment of SES staff*
- *implements machinery of government changes*
- *conducts inquiries, evaluations and reviews of people*
- *investigates reported breaches of the Code of Conduct management practices (whistleblowing disclosures) by public servants*
- *reports to the Public Service Minister on any matter relating to the APS.*
- *promoting and upholding the merit principle*
- *developing people management policies and practices in recruitment, selection, mobility, conduct, performance, redeployment and retirement*
- *facilitating continuous improvement in people management throughout the APS*
- *fostering leadership in the APS*
- *coordinating and supporting APS-wide training and career development opportunities in the APS*
- *participating in APS agency head and statutory office holder selection processes*
- *promoting and reporting on workplace diversity in the APS, including Indigenous employment.*

APS employees are required, under the Code of Conduct, to behave at all times in a way which upholds the APS Values

Ethics Advisory Service
The Ethics Advisory Service is available to all APS employees who want advice on ethical issues in the workplace and on how to make sound decisions around these issues. We provide guidance on how to apply the APS Values and Code of Conduct and strategies and techniques for ethical decision-making in the APS.
Source: <http://www.apsc.gov.au/>

1. The Independent Commissions Against Corruption: : In Hong Kong, Korea, New South Wales of Australia, as the fourth branch of government these institutions are entitled to oversight the other branches of government namely the executive, legislative and judicial and require “especially companies that do business with the government, to have strong ethics codes.
2. Institutions in British Commonwealth Countries: These institutions prioritize the values rather than rules. Best examples are the Committee for Standards in Public Life (Great Britain), the Treasury Board and the Office of Ethics Commissioner (Canada) and the State Services Commission (New Zealand). In Canada there is also.
3. The U.S. Office of Government Ethics: Distinct separation from the enforcement function, this institution is basically responsible for establishing and maintaining a uniform legal framework of Government ethics for executive branch employees and responsible for monitoring and providing services to Federal executive branch agency ethics programs.
4. A slightly different design is the new French Service Central de Prevention de la Corruption. Its terms of reference are incredibly broad yet administratively it operates with only a very small number of administrators who are on detail from other agencies. Its mandate not only includes the public service, but trade activities from plumbing to electrical, sports and even pharmaceuticals.

In France, three Ethics Commissions (*Commissions de Déontologie*) were set up in 1995, one commission for each public service (central, territorial and public health). These three commissions have recently merged in one commission following the provisions of the 6 February 2007 Act on *Modernisation de la fonction publique*. The commission is chaired by a member of the Council of State (*Conseil d'Etat*), with a member from the Court of Audit, as well as three other qualified persons sitting on the board. Members are appointed by decree for a renewable period of three years. The administration is not obliged to follow the commission's opinion on the appointment of a former public official in a private company (Soccoja, 2007:4-5).

Public prosecutors carry out criminal investigation. All of the countries carry out administrative investigation, which is usually ensured by the body/authority in charge of detection.

The Committee on Standards in Public Life

On 25 October 1994, Prime Minister, the Rt Hon John Major MP, announced the setting up of the Committee on Standards in Public Life with the following terms of reference:

'To examine current concerns about standards of conduct of all holders of public office, including arrangements relating to financial and commercial activities, and make recommendations as to any changes in present arrangements which might be required to ensure the highest standards of propriety in public life.'

'For these purposes, public office should include: Ministers, civil servants and advisers; Members of Parliament and UK Members of the European Parliament; Members and senior officers of all non-departmental public bodies and of national health service bodies; non-ministerial office holders; members and other senior officers of other bodies discharging publicly-funded functions; and elected members and senior officers of local authorities'.

On 12 November 1997 the terms of reference were extended by the Prime Minister, the Rt Hon Tony Blair MP: 'To review issues in relation to the funding of political parties, and to make recommendations as to any changes in present arrangements'.

The Committee on Standards in Public Life has been constituted as a standing body with its members appointed for up to three years. Sir Alistair Graham succeeded Sir Nigel Wicks as Chair on 26 April 2004. Sir Nigel succeeded Lord Neill as Chairman on 1 March 2001 and Lord Neill succeeded Lord Nolan, the Committee's first Chairman, on 10 November 1997.

History of the Commissioner's Role
The role of the Commissioner for Public Appointments was created by the Public Appointments Order in Council 1995 on 23 November 1995. This followed the First Report of the Committee on Standards in Public Life ["Standards in Public Life" – CM 2850-1] under the chairmanship of Lord Nolan ("the Nolan Committee").

Source: <http://www.public-standards.gov.uk/index.html>

Civil Service Commissioners

The Nolan Committee was required to examine then current concerns about standards of conduct of all holders of public office, including arrangements relating to financial and commercial activities, and to make recommendations as to any changes in the then present arrangements which might be required to ensure the highest standards of propriety in public life. The Nolan Committee noted a number of concerns about so called "quangos" – quasi autonomous non governmental organisations. The Nolan Committee recommended (among other things) that there should be an independent Public Appointments Commissioner in order to monitor, regulate and approve departmental appointments procedures. The Commissioner was to publish an Annual Report on the operation of the public appointments system and draw up a Code of Practice for public appointments procedures.

...

What the Commissioner does

The Civil Service Code sets out the framework within which all civil servants work, and the core values and standards they are expected to uphold. It was first introduced in 1996, and forms part of the terms and conditions of employment of every civil servant. A new Civil Service Code was issued on 6 June 2006. Civil Service Commissioners (appointed by the Prime Minister) to audit recruitment by individual ministries to make sure they comply with the principle of selection and promotion on merit and fair and open competition;

The Commissioner for Public Appointments in England and Wales is:-

- *appointed by the Crown;*
- *independent of government; and*
- *is not a civil servant*

The Commissioner's main functions are set out in The Public Appointments Order in Council 2002, as amended.

They are:-

- *Regulating public appointments processes within her remit by:-
publishing a Code of Practice on the interpretation and application by those responsible for making such public appointments of the principle of selection on merit;
issuing such additional guidance in relation to appointments processes as she thinks fit; and
investigating complaints about appointment processes within her remit.*
- *Monitoring compliance with the Code of Practice by:
independent scrutiny during the appointment process by Independent Public Appointments Assessors;
by regular audit of appointments processes within her remit;
by issuing an Annual Report giving detailed information about appointments processes, summaries of the annual audit, complaints made and highlights of the main issues which have arisen during the previous 12 months; and by monitoring the political activity of appointees and reappointees to appointments within her remit. For this purpose "political activity" covers activity already in the public domain on behalf of a political party or candidate within the previous five years.*
- *Promoting economy, efficiency, effectiveness and equality of opportunity in the procedures for making such public appointments with the object of maintaining the principle of selection on merit in relation to public appointments within her remit.*

Source: <http://www.publicappointmentscommissioner.org/>

Sanctions

According to one study (OECD, 2003: 75), consequences of violating conflict of interest principles may vary: *personal* consequences, including disciplinary actions and criminal prosecution and administrative (*management*) consequences, the cancellation of tainted decisions and contracts. It is very important that sanctions must be commensurate with the scale of the violation (Reed, 2008: 22). Enforcement procedures and sanctions reflect the legal status of the conflict of interest provisions, whether they are legally binding or only contractually binding. In this respect,

public servants are also obliged to eliminate the cause of the conflict-of-interest situation, for example, by suspending those activities that were carried out without authorisation, or with authorisation but based on inappropriate disclosure. (OECD, 2003,77)

Depending on the seriousness of the violation, disciplinary procedures against public servants may range from warning and reprimand through fines and re-arrangements of duties, to suspension and removal from office: (Ibid.)

- Caution and warning.
- Fine or reprimand.
- Reduction in salary.
- Reassignment of duties.
- Delay in career, transfer of duties.
- Dismissal, termination of employment

Violation of declaration of conflict of interest is subject to disciplinary action or even criminal penalties in countries such as in Austria, France, Ireland, Italy, Korea and Slovakia. It may also result in cancellation of civil service status for any public officer (Hungary) or loss of office for senior officers (Portugal). In addition to the sanctions applicable during the term of office, some sanctions are used after the termination of office, such as the loss of retirement pension. For example, in Germany, a retired civil servant who violated the conflict of interest provisions has to return a maximum 30 percent of his pension (Ibid.).

In countries with a high level of trust in government, for example in Australia, Canada, New Zealand and Sweden, consultation and advice together with information-sharing and awareness-raising methods are applied as a practical prevention measure. Concerning violations in public procurement process, another preventive measure is to cancel the tainted decision and put the company's name in a "black-list" for a specified period (ibid.:78).

Managing Conflicts of Interest: A Comparative Overview of OECD Countries³

Increasing societal expectations, public demand for transparency in politics and closer public scrutiny by the media and opposition parties on the one hand, and, the close interaction between the public and private sectors (with more “grey areas” and business-like behaviour of public officials) on the other hand, required effective conflict of interest policies in OECD countries.

Although the majority of OECD countries enact conflict-of-interest policy in laws and regulations, only very few countries have developed a general definition in the law for the term of “*conflict of interest*”.

In European countries, conflict of interest is regulated through primary legislation such as laws on public or civil service and public administration. In a few countries, even the Constitution states some principles such as the obligation to serve the public interest. Recently, many OECD countries adopted conflict-of-interest laws or codes of conduct to set standards for identifying, preventing and managing potentially conflicting situations (ibid.: 45)

There is a shift in approaches and instruments for avoiding conflict of interest. While keeping their rule-based approach some countries like United States has moved from reactive criminal prosecution, to more proactive training, education and counselling programmes (ibid.: 51).

While the rule-based approach (*compliance-based ethics regime*) provides a clear frame of expected standards to which they can be held accountable the absence of general definition in countries with a principle-based approach (*integrity-based ethics regime*) or can be filled by raising the awareness of employees regarding identifying and disclosing conflicting private interests. For instance, in Australian Public Service, “codes and guidelines together with education programmes raise the awareness of public servants about possible forms of conflicting financial and other personal interests” (ibid.:55-56, see also Demmke et al., 2007: 129-131).

Incompatible financial or political activities and positions with public officials’ positions are regulated by countries in different respects. While the countries with strong administrative law traditions have a rigorous list of incompatible activities and situations for public officials most Scandinavian evaluate the cases on an individual basis and on their merits. *Pecuniary interests* such as secondary employment (membership of the management

³ This section is primarily summarized from OECD, 2003, Part II.

board, supervisory board or audit commission of a company under commercial law, etc.) constitute another major source for incompatibility.

In Japan, for example, these include the prohibition of political activities for public officials in general, and organising or joining employee organisations by police personnel and personnel working in the Maritime Safety Agency or in penal institutions. Solicitation of political contributions under certain circumstances is prohibited for executive branch officials in the United States... In contrast, Norway, for instance, has no formal restriction other than that derived from the separation of powers: the prohibition on a civil servant being elected as a member of the Parliament, for example. Instead, the incompatibility is to be determined in individual cases and on the basis of legal and ethical principles. (ibid.: 67)

In addition to the requirement of disclosing personal interests of public servant and interests of immediate family members is the major instrument some OECD countries request their public officials to provide information on their proposed post-public employment arrangements on leaving public office (ibid.: 70). In this respect, countries like Australia also require the public disclosure of pecuniary interests from elected public officials at sub-national level.

Moreover, considering the close relationship between the private and public sectors some mechanism such as “blind trust” assignments of pecuniary interests are introduced by several OECD countries.

Furthermore, in countries with a high level of trust in public institutions, for example in Australia, Canada, New Zealand and Sweden, consultation and advice are given to public servants (ibid.:78). In this respect, leadership of superiors is the major source of providing a personal example for their subordinates. They play very crucial role in guiding, training, consulting and monitoring in effectively preventing conflict of interest situations.

While training and distribution of policy documents are the principal measures for awareness raising, managers play a crucial role in creating a working environment with open communication between the employer and employees where the actual difficulties of implementing the conflict-of-interest policy can be openly raised and discussed. In order to develop such an open organisational culture, managers need help through central support mechanisms provided by governments.(ibid.: 80)

Several countries like Germany, Poland and the United States offer induction training for new employees. In service ethics training may focus on “applying the standards of ethical conduct, criminal conflict-of-interest statutes, and public and confidential financial disclosure requirements in day-to-day work.” In addition to a variety of training events, the relevant government agencies like the OGE provides several publications on standards of ethical

conduct for employees including booklets, pamphlets, audio-visual materials, and *informal advisory letters and memoranda*. In New Zealand, the State Services Commissioner (SSC) provides a resource kit including public service code of conduct, facilitation guide, and a CD-ROM. In Canada, a guide with general principles and standards as well as specific examples of complying and non-complying conduct was developed to serve as a reference tool for the application of the *Conflict of Interest and Post-Employment Code for the Public Service* (ibid.: 79-80).

In majority of OECD countries, managers and superiors are entitled to provide counselling to subordinates in resolving conflict-of-interest situations. In some other countries (Canada, Denmark, France, Japan, Poland, Switzerland and the United States), a dedicated persons within the organisation (for example, ethics officers, human resource management or legal staff) as well as external organisations (for example, independent commissions, ethics offices or the trade unions) can also provide advice (ibid.:81,83)

Similarly, monitoring compliance is mainly done by superiors, too. Moreover, central government organisations (for example, civil service departments) and external institutions (civil or public service commissions, auditor generals, inspector-generals, ombudsman and even constitutional courts) can also carry out monitoring the implementation of the conflict-of-interest policy in general. As explained earlier, in Canada, for instance, two different institutions are defined to examine compliance with the policy, namely, the Ethics Counsellor of the Government of Canada for ministers and other public office holders and the Treasury Board Secretariat along with head of departments for public servants (ibid.: 84). Only few countries (Germany, Hungary and the UK) have developed a system of detection by whistleblowers (people who report wrongdoing in the public sector). The other countries under review do not have such a system (OECD-SIGMA, 2007b).

Many countries attempted to inform senior officials in the public service, and the wider public regularly about conflict-of-interest policy in *ad hoc* ministerial statements – for example in Germany, the Netherlands and the United States – and in annual report -the annual report to the Parliament by the Public Service Commissioner in Australia- (Ibid.). For assessing conflict of interest policy, some countries like Canada, Germany, Poland, Spain and the USA, use special tools and employee feedback mechanism (ibid.: 89).

In many OECD countries a combination of mechanisms – especially those that raise awareness and ensure transparency – is implemented as the most effective in avoiding conflicts of interest.

| Summary of Conflicts of Interest Policies for Members of Government in EU Member Countries | | | | | | | | | | | | | | | |
|--------------------------------------------------------------------------------------------|-----------------|---------------|-----|------------|------------|------------|-----------------------|-------|----------|---------|-----------------|-----------------|----------------------|--------------|-----------|
| Countries | Code of Conduct | Relevant Laws | | | | Activities | Declaration of Income | Gifts | Missions | Travels | Post-Employment | Confidentiality | Professional loyalty | Impartiality | Mechanism |
| | | Constitution | Law | Regulation | Decree-Law | | | | | | | | | | |
| Austria | | | x | x | | x | x | x | x | x | x | x | x | x | x |
| Belgium | x | x | x | | | | x | | x | x | x | x | x | x | |
| Bulgaria | x | | x | | | x | x | x | x | x | x | x | x | x | |
| Cyprus (Greek) | | | x | | | | x | x | x | | x | | | | |
| Czech Republic | na | na | na | na | na | na | na | na | na | na | na | na | na | na | na |
| Denmark | x | x | x | | | x | | x | x | x | | | x | | |
| Estonia | x | x | x | | | | x | x | x | x | | x | x | x | x |
| Greece | na | na | na | na | na | na | na | na | na | na | na | na | na | na | na |
| Germany | x | x | x | | | x | | x | x | x | | x | x | | |
| Spain | x | x | | | | x | x | x | x | x | x | x | x | x | x |
| Finland | na | na | na | na | na | na | na | na | na | na | na | na | na | na | na |
| France | x | x | x | | | | x | | | | | x | x | x | |
| Hungary | | x | x | | | x | x | x | x | x | x | x | x | x | |
| Ireland | x | | x | | | | x | x | x | x | x | x | x | x | x |
| Italy | | | x | | | | x | | | | x | | | | |
| Latvia | | x | x | | | x | | x | x | x | x | x | x | x | |
| Lithuania | x | x | x | | | x | x | x | x | x | x | x | x | x | x |
| Luxembourg | na | na | na | na | na | na | na | na | na | na | na | na | na | na | na |
| Malta | na | na | na | na | na | na | na | na | na | na | na | na | na | na | na |
| Netherlands | x | | x | | | | x | x | x | x | | x | | x | |
| Poland | | x | x | x | | x | x | x | x | x | x | x | x | x | |
| Portugal | | x | x | | x | x | x | x | | | x | x | x | x | |
| Romania | x | x | x | | | x | x | x | x | x | | x | x | x | |
| Sweden | x | | x | | x | | x | x | x | x | | x | | x | |
| Slovenia | x | | x | x | | x | x | x | x | x | | x | x | x | |
| Slovakia | na | na | na | na | na | na | na | na | na | na | na | na | na | na | na |
| United Kingdom | x | | x | | | x | x | x | x | x | x | x | x | x | x |

Source: Compiled from Demmke et al., 2008, Annex 3.

| Summary of Conflicts of Interest Policies for Members of Parliament in EU Member Countries | | | | | | | | | | | | | | | | |
|--------------------------------------------------------------------------------------------|-----------------|---------------|-----|------------|-------------------|---------------------|-------------------------|-----------------------|-------|----------|---------|-----------------|------------------------------|----------------------|--------------|-----------------------|
| Countries | Code of Conduct | Relevant Laws | | | | | Incompatible Activities | Declaration of Income | Gifts | Missions | Travels | Post-Employment | Professional Confidentiality | Professional loyalty | Impartiality | Enforcement Mechanism |
| | | Constitution | Law | Regulation | Act Of Parliament | Rules of Procedures | | | | | | | | | | |
| Austria | | | x | | | x | x | x | x | | x | | x | x | x | x |
| Belgium | | x | | | x | x | | x | | x | x | x | x | x | | |
| Bulgaria | x | | x | | x | | | x | | | | x | x | | | |
| Cyprus (Greek) | | x | x | | | x | x | x | | | | x | x | x | x | |
| Czech Republic | na | na | na | na | na | na | na | na | na | na | na | na | na | na | na | na |
| Denmark | x | na | na | na | na | na | x | x | x | x | x | | | x | | |
| Estonia | | x | x | | | | | x | x | x | x | | x | x | x | |
| Greece | na | na | na | na | na | na | na | na | na | na | na | na | na | na | na | na |
| Germany | x | x | x | | | | x | x | x | x | x | | | | x | |
| Spain | | x | | | | | x | x | | | | | x | x | x | x |
| Finland | na | na | na | na | na | na | na | na | na | na | na | na | na | na | na | na |
| France | x | x | x | | | | x | x | x | x | x | | | | x | |
| Hungary | | x | x | | | | x | x | x | | | x | x | | | x |
| Ireland | x | | x | | | | x | x | x | x | x | x | x | x | x | x |
| Italy | | | x | | | | x | x | | | | x | | | x | |
| Latvia | x | x | x | | | x | x | | x | x | x | | x | x | x | x |
| Lithuania | x | x | x | | | x | x | x | x | x | x | | x | x | x | x |
| Luxembourg | na | na | na | na | na | na | na | na | na | na | na | na | na | na | na | na |
| Malta | na | na | na | na | na | na | na | na | na | na | na | na | na | na | na | na |
| Netherlands | x | | x | | | x | x | x | x | x | x | | x | | | |
| Poland | x | x | x | | | x | x | x | x | | | | | x | x | x |
| Portugal | | x | x | | | | x | x | x | x | x | | x | x | x | x |
| Romania | x | | x | | | | x | x | | | | | | x | x | x |
| Sweden | x | | x | | x | | | x | x | x | x | | x | | x | |
| Slovenia | | | x | x | | x | x | x | x | x | x | | x | x | x | |
| Slovakia | na | na | na | na | na | na | na | na | na | na | na | na | na | na | na | na |
| United Kingdom | x | | | | | x | x | x | x | x | x | | | x | x | x |

Source: Compiled from Demmke *et al.*, 2008, Annex 3.

The annual updating of formal statements on private interests together with training and consultation are key elements in a system which puts greater reliance on the individual public officials to self-disclose their private interests. On the other hand, in systems which place less reliance on individual integrity arrangements, the updating of legal regulations is the key measure to providing an effective basis for the system.(*ibid.*: 88-89)

Finally, in many countries, codes of conduct with a” concise focus, flexible nature and straightforward language can be used to both set standards for a whole public sector-wide conflict-of-interest policy and address specific relationships as well as emerging issues in areas such as the interface between the public and private sectors” such as lobbying.

Causes of Ethical Issues in Turkish Public Service

The Turkish-Ottoman state tradition has a long past. During the golden age of the Ottoman state, justice, merit system and prohibition of ill-gotten gains were the major elements of the administration. Having been inherited from the Islamic tradition, the phrase “justice is the basis of governance” is still used in modern Turkish state system. In addition to this, there were several sources referring to morality and good governance in the Ottoman state administration such as *Nasihatname*, *Futuwah*, and *Ahilik*.

However, as a response to erosion in the Ottoman state administration, patrimonial state tradition was transformed into a modern rational-legal bureaucracy during the Tanzimat Era (1839). The principle of rule of law and merit system in bureaucratic appointments were the essential aspects of these reforms in this period. Yet, the essence of the patrimonial state that people were subject to the state did not change. All social and moral codes were defined accordingly.

During the Republican period, a rational-legal bureaucracy was established in line with this heritage basically. Bureaucratic-elitist administrative culture combined with clientilistic and political patronage tendencies dominated in modern Turkish state for a long period. Institutional reform in Turkish public administration continued without any reference to cultural aspects. Therefore, especially after the second half of the 1970s Turkish public administration faced with an intensive and extensive ethical crisis. This was not only a result of global challenges such as the impact of post-industrial society, information society and globalisation but also of structural-functional erosion in the system (Emre, 2000). The post-1980 debureaucratization process further increased the erosion in public sector at large.

It is widely argued that corrupt relations in Turkish public service arise as an organizational issue (Özdemir, 2008). This can be defined as *doing what should not be done* or *not doing what ought to be done*. Therefore, cultural factors are as important as legal-administrative factors in understanding the causes of unethical issues in public service.

Although misconduct of ethical principles including avoiding conflict of interest and corruption are not the same things, there is a close relationship between ethics and corruption. According to a recent study, the major causes of corruption public service are as follows (Yüksel, 2005: 85-105):

1. Principle of the state governed by the rule of law is not established in public service;
2. Ethical culture is not established in public service;
3. Bureaucracy;
 - a. Centralization and status quo are dominant,

- b. Supervision of local administration is problematic,
 - c. Politicians exercise influence on the public administration,
 - d. Discretionary authority is exercised arbitrarily,
 - e. Quality of public service is under question,
 - f. Quality of bureaucratic services is under question,
 - g. Lack of commitment in public service is widespread,
 - h. Red tape.
4. Lack of administrative procedure;
 5. Employment issues;
 6. Lack of experience;
 7. Economic factors;
 8. Insufficient education;
 9. Ineffective media and civil society;
 10. Bureaucratic privileges;
 11. Societal structure.

The impact of the “strong state” tradition combined with the domination of central bureaucratic elites has been transformed into “party-centred” bureaucratic structure since 1950s. Political patronage especially led to the erosion of ethical values in bureaucracy. Additionally, political instability and socio-economic policies throughout the 1970s and 1980s eroded the value system in the public administration (Emre, Hazama and Mutlu, 2003; Ömurgönülşen, 2003 and Ömurgönülşen and Öktem, 2005).

Bureaucratic culture in Turkish public service was established on *comunitarianism*, solidarity and inter-group/community harmony. This fact that essentially originates from the lack of trust is a reflection of societal culture. Like an ordinary citizen a civil servant feels secure as a member of a community. Taking a negative attitude towards other groups, s/he avoids taking responsibility at work. Subjectivity, nepotism, and the place and importance of community leaders in the society also influence the general structure of the public service (Emre, Hazama and Mutlu, 2003).

On the one hand, the relationship between the state and the society has been essentially based on “fear” and “suspicion” in harmony with the “control” function of the central state administration since the Ottoman period. Having essentially been rooted from autocratic state structure, decline of trust in the society in general and high distrust in governmental institutions negatively affected by corrupt relations in public sector. It is obvious that there is a negative correlation between trust and corruption. In order to restate

trust in the society in general and trust in governmental institutions in special can be achieved by means of establishing an effective ethical system. On the other hand, the unquestionable quality of the state is considered to be the major obstacle for developing and establishing ethical behavior in the Turkish public service. Therefore, many criminal acts can be considered *proper* with the idea of protecting the interest of the state by means of legal rules (Ömürgönülşen and Öktem, 2005).

Trust in Institutions, Turkey (2002-2008, %)

| Institutions | 2002 | 2003 | 2004 | 2005 | 2006 | 2007 | 2008 |
|------------------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|
| Military | 81 | 82 | 89 | 88 | NA | 84 | 82 |
| Police | NA | 69 | 69 | 73 | NA | 69 | 64 |
| Religious Institutions | 68 | NA | 77 | 73 | NA | 64 | NA |
| Parliament | NA | 63 | 76 | 72 | 38 | 64 | 47 |
| Justice | 67 | 65 | 65 | 69 | 48 | 63 | 60 |
| Government | 47 | 66 | 80 | 72 | 35 | 63 | 47 |
| Television | 46 | NA | 47 | 50 | NA | 32 | 25 |
| Radio | NA | NA | 50 | 45 | NA | 31 | 28 |
| Trade Union | NA | NA | 38 | 38 | NA | 28 | NA |
| Press | 16 | 17 | 34 | 25 | 22 | 23 | 23 |
| Political Parties | NA | NA | 24 | 38 | NA | 23 | 18 |
| Civil Service | NA | 18 | NA | NA | NA | NA | NA |

Source: http://ec.europa.eu/public_opinion/index_en.htm

One of the basic factors leading to unethical behaviour is the inadequate ethical infrastructure, including insufficient ethical standards in public service, non-functional mechanisms of accountability, erosion of the principle of state governed by the rule of law, ineffective ethical culture in public service, centralized and status-quo oriented bureaucratic structure, arbitrary use of discretionary authority, lack of transparency, and lack of training on the subject matter (TÜSİAD, 2005).

Another factor leading to unethical/corrupt behaviour or relations in public service is to preserve one`s official position/duty at the expense of anything. This may encourage a public official to act unethically. Moreover, “goodwill” of public officials may also lead to the adoption of unethical attitudes.

Furthermore, a public official may be greedy and may be involved in unethical relations in return of gains. “Turning the corner in a short period of time” has been a motto in Turkish public service recently. Additionally, “friendship” or “helping a friend” (hospitality) at bureaucratic process may also end with using public vehicles, instruments, or resources for the benefit of relatives/friends illegally. Finally, some public officials may act unethically and

contrary to the legislation with the ideas of using their current position or duty for their post-retirement benefits (Özdemir, 2008).

Sometimes, public officials may implement the legislation flexibly with the idea of protecting public interest or the interest of the state. This jeopardizes the principle of state governed by the rule of law. The crystallisation of human relations and individualism further promote corrupt relations. As a consequence, people lose societal values, including universal, religious and humanistic values to give a meaning to their lives (Şarka and Bali, 2008). Therefore, the cultural aspect of unethical attitudes and behaviour is as important as the legal dimensions. According to TI Global Corruption Barometer 2003 survey 76,1 percent of respondents believed that corruption affects the culture and values of Turkish society significantly. “Here is Turkey anything may happen” has become a *motto* in daily life. Despite penal sanctions ignoring, bypassing or bending the rules has become widespread in bureaucracy. A supporting socio-cultural factor is that being a tattletale has a negative meaning in Turkish culture. Being a tattletale, or in the vernacular of the professional environment, a whistle-blower, often results in a negative response from coworkers and even neighbors.

From a societal perspective, a survey result has a striking finding: the significant majority of respondents expressed the view that many people in Turkey are ready to break the public interest for the sake of their personal interest (TESEV, 2001). Giving or receiving bribe is widely considered as a usual practice in public service for one reason or another (TÜSİAD, 2002). In fact, bribery is widespread in many public services such as the police, customs authorities, health services, and even in education. In another study, it is also stated that “rapid urbanization leads to corrosion in the settled social networks and moral and social control mechanisms” (Çelen, 2007). In this process, these networks are weakened and in turn, increase the level corruption and bribe.

Turkey Corruption Perceptions Index (CPI, 0-10)

| YEAR | RANK | CPI |
|------|------|-----|
| 2002 | 64 | 3.2 |
| 2003 | 77 | 3.1 |
| 2004 | 77 | 3.2 |
| 2005 | 65 | 3.5 |
| 2006 | 60 | 3.8 |
| 2007 | 64 | 4.1 |
| 2008 | 58 | 4.6 |

Source: http://www.transparency.org/policy_research/surveys_indices/cpi

The Corruption Perception Index (CPI) prepared by Transparency International (TI) is a standardized index covers regulations and practices including conflict of interest, too. Although Turkey's overall score has been improving recently it is still below average in terms of scoring and well behind of some countries which have less democratic experience in ranking.

It is more important that almost all public institutions and private sector in Turkey were perceived of being affected by corruption seriously and most of the scores did not change since 2004. This underlines a need for an effective ethical regime in Turkey. Therefore, initiating a feasible administrative reform and promoting ethical values as well as establishing effective enforcement mechanisms seem to be very vital to reverse such perceptions.

Corruption's impact on different sectors and institutions in Turkey, 2004, 2007

| | To what extent do you perceive the following sectors in this country to be affected by corruption? (1: not all corrupt ... 5: extremely corrupt) | | | | | | | | | | | | | | |
|------|--------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------|--------------------------|--------|---------------------------|-------------------------|---------|-------|------------------|------------------|------------------------------|-----------|----------|------|------------------|
| | Political parties | Parliament / legislature | Legal system / judiciary | Police | Business / private sector | Tax revenue authorities | Customs | Media | Medical services | Education system | Registry and permit services | Utilities | Military | NGOs | Religious bodies |
| 2004 | 4,0 | 3,8 | 3,9 | 4,0 | 4,1 | 4,2 | 4,1 | 3,8 | 4,1 | 3,9 | 3,8 | 4,1 | 3,1 | 3,5 | 3,3 |
| 2007 | 3,7 | 3,6 | 3,8 | 4,0 | 4,0 | 4,1 | - | 3,7 | 4,0 | 4,0 | 3,9 | 4,0 | 3,4 | 3,7 | 3,4 |

Source: http://www.transparency.org/policy_research/surveys_indices/gcb/2004__1 and http://www.transparency.org/policy_research/surveys_indices/gcb/2007

Naturally, how public personnel regime is conducted is very explanatory for respect for ethical standards in a given country. All governments always emphasized the need for reform of public personnel regime in Turkey however all governments have been accused of "excessive staffing" in the civil service based on patronage and cronyism. Due to political influence on public officials, a newly elected government party makes a massive change in bureaucratic cadres which hinders merit system in public service. Although it is understandable to make such changes in bureaucracy to a proper extent in order to work with senior civil servants in harmony, a government party(ies) exercises a booty system in distributing official positions based on loyalty. Thus, the state's resources are widely used for political ends, which, in turn, results in the perception of "political nepotism" in the process of public service (TBMM, 2003).

Practicing a “fair competition” among candidates in entering public service is the first and foremost didactic experience on how to comply with ethical norms and values at work. Recruitment of the civil servants in Turkey is carried out through a general aptitude examination (Public Personnel Selection Exam, KPSS) run by the Student Selection and Placement Center (ÖSYM) annually. Public institutions require a minimum score received from this examination in addition to general requirements for being a civil servant. They either organize both a written exam covering professional requirements and interview or only interview for final selection of the candidates. However, especially “the interview stage, do not guarantee objectivity and impartiality in the recruitment process (Acar and Emek, 2009 and OECD-SIGMA, 2006). Moreover, there are widespread complaints about the interviews that they reflect nepotism, cronyism, and patronage (Sigma, 2006a). Besides, discretionary (and discriminatory) decisions of the superiors and politicians override the rules on promotion, motivation, and accountability in public service (Özgür, 2004). There is no correlation between the performance of civil servants and their promotion and pay and “politicians tend to negatively influence decision-making mechanisms and manipulate bureaucratic decisions excessively for obtaining their own narrowly defined interests” (Acar and Emek, 2009).

On the other hand, cycle of money influencing politics is another factor explaining both conflict of interest and corrupt relations in which bureaucrats, politicians and business involve. A businessman (or an individual) who donates the campaign of an individual candidate or a party generally expects a “return” of expenses as a privilege, concession or public contract from the government (or municipal government at local level). This cycle is the most crucial process of emergence of conflict of interest in public service. In this respect, political finance in general and campaign finance of candidates need to be regulated urgently.

It is obvious that media played an important role in publicizing basically political scandals, corrupt and unethical behaviours of public officials in recent Turkish politics. An independent media as well as effective non-governmental organizations is vital in raising public awareness about ethical matters. Newspaper coverage of major dailies in Turkey on the ethical/corrupt cases during the last six years (2002-2008) was assessed by this study. The findings indicate that the number of relevant cases printed in the newspapers on procurement fraud by means of fraudulent, misconduct, conflict of interest and receiving a gift were distributed unevenly by years.

The highest number of newspaper coverage appeared to result from procurement fraud by means of fraudulent varying between 30-35 news annually. Annual sectoral distribution of

news is as follows: 12-13 news for energy sector, 7-8 news for public works and settlement, 5-6 news for health sector, 5-6 news for procurement in local administration and 2 news for education.

Misconduct received the second highest coverage in the newspapers. Annual average of this category of news was 15 and distributed by sector as 8-9 for energy sector, 2 for public works and settlement, 2 for education and health and other 2 for other sectors.

Conflict of interest cases found in the newspapers during this period reflects an average of only 4-5 news annually. Two of them are conceptual, other two are about legal and the final one is about a criminal investigation occurred in energy, public works and settlement sector.

Finally, cases on receiving a gift appeared in the newspapers for two different types. First, a politician receiving a gift that was counted only 3-4 times annually. Second, the regulations/circulars issued by the Council of Ethics for Public Servants rarely.

These media coverages reflect the socio-cultural background as well as legal framework and practices. Although the concept of “public interest” has been a conventional phrase, the term conflict of interest is a “novel” one in Turkish public service as well as in Turkish society. Because of the tradition of receiving and giving “gift” in Turkish society until recently “gift” offered to public officials was not a subject in media. However, “gift” that has a value above reasonable level given to the Turkish statemen by the foreign state elite created a negative public opinion by media exposure. Then both the Turkish statemen and the Council of Ethics for Public Employees initiated a “zero tolerance policy” for gift receiving in public sector. Due to their legal status as a criminal act, both “misconduct” and “fraud in procurement process” frequently occupy a greater space in media and public. In fact, the last three might be an outcome of potential or actual conflict of interest situations which was not disclosed.

In conclusion, a combination of multi-faceted factors - including patron-client relations, giving and receiving gifts, ineffective merit system in public administration, undefined concept of “confidentiality” in public administration, and unequal and unfair wages in public service - cause ethical misconduct as well as corruption, and obscure enforcement of existing legislation effectively. Eventually, this erodes the public trust in institutions, trust between the state and the citizens, between institutions and between citizens in general. High score of corruption perception and intense corruption in public sector can be considered as an important indication for the need of an effective ethics regime in Turkey.

Samples from Newspaper Coverags

Eski sekreteri Alpyürük, Erçel'in TL hesabını dövize çevirmesi için devalüasyondan bir hafta önce talimat verdiğini, 'Ben TL hesabımı ne yapayım' diye sorduğunda ise 'TL'de kal' yanıtını aldığını söyledi

ANKARA Milliyet

Devalüasyondan önce TL hesabını dövize çeviren Merkez Bankası eski Başkanı Gazi Erçel'in eski sekreteri Ayşenur Alpyürük, bu işlem için Erçel'den talimat aldığını söyledi.

Erçel, geçen hafta Yolsuzluk Komisyonu'na Türk parasını dövize çevirmesini "Tamamıyla tesadüf. 19 Şubat'ta paramın vadesi dolmuştu. Dövize çevirdik. Zaten ben ilgilenmedim, işlemleri yanımda çalışanlar yaptı" diye açıklamıştı.

Erçel'in görevini kötüye kullandığı iddiasıyla 4.5 yıla kadar hapis istemiyle yargılandığı Ankara 11. Asliye Ceza Mahkemesi'nde ifade veren eski sekreteri Alpyürük ise Erçel'in Halkbank'ta vadesi 19 Şubat 2001'de dolan TL hesabını dövize çevirmesi için devalüasyondan bir hafta önce talimat verdiğini kaydetti.

ÖZELLEŞTİRME DEĞİL SOYGUN : ÖZELLEŞTİRME SOYGUN GİBİ
30/12/2005 Birgün

Değer Tespit Komisyonu danışmanın raporundaki hataları yeterince incelememiştir. Tütün, Tütün Mamulleri, Tuz ve Alkol İşletmeleri (TEKEL) Özelleştirilen Alkollü İçkiler Sanayi ve Ticaret A.Ş ile TEKEL arasındaki cari hesap ilişkisinin 31.10.2003 tarihinde sonuçlanacağı kararlaştırılmasına rağmen, bu tarihten sonra da cari hesap ilişkisine devam edilmiş, devir tarihinde ise şirketin TEKEL ve bağlı ortaklıklarına olan tüm cari hesap borcu silinmiştir. Bu uygulama sonucunda devredilen şirkete kaynak aktarılmıştır. Petrol Ofisi A.Ş. (POAŞ) POAŞ'ın yüzde 42.3 oranındaki hissesinin satışı işlemi yurt içi baş global koordinatör olarak İş Yatırım Menkul Değerler'in görevlendirilmesi çıkar çatışması yaratmıştır. Ağustos 2002'de yüzde 25.8 oranındaki hissenin satışında aracı kuruma komisyon ödenmesi işlemi Özelleştirme İdaresi komisyon iadesi ödeme olanağını kullanmamış, oranları düşürmek için SPK'ya başvurmamış, bu nedenle 20 kat fazla komisyon ödemek zorunda kalmıştır.

DEMİRBAŞA İLK KAYIT 20/01/2005 *Vatan Haber*

Erdoğan'ın Başbakanlık envanterine kaydettirdiği halı bir ilk oldu. Şimdiye kadar hiçbir başbakanın aldıkları hediyeleri kaydettirmediği ortaya çıktı. Başbakan Erdoğan, eşi Emine Erdoğan'a hediye edilen gerdanlık ve broşu iade edip, ipek halıyı Başbakanlık demirbaşına kaydettirmesi, yeni bir tartışmayı başla

Turkish Legal Framework for Conflict of Interest

Although there is no specific legal regulation of “conflict of interest” in Turkey, there are direct or indirect references to this concept in Turkish legislation including the 1982 Constitution. Below, a general framework for the relevant legislation including the principles, prohibitions and sanctions is summarized

The 1982 Constitution (Article 5) assumes the state to

ensure the welfare, peace, and happiness of the individual and society; to strive for the removal of political, social and economic obstacles which restrict the fundamental rights and freedoms of the individual in a manner incompatible with the principles of justice and of the social state governed by the rule of law; and to provide the conditions required for the development of the individual’s material and spiritual existence.

Public services that have to be performed by state, state economic enterprises and other public corporate bodies are carried out by public servants and other public employees.⁴ Employment and other provisions of personnel regime including salaries and allowances are regulated by law (Article 128).

The current Constitution (Article 129) defines the basic principle for public service that “Public servants and other public employees are obliged to carry out their duties with loyalty to the Constitution and the laws.”

Similarly, according to Article 6 of the Law No. 657 on Civil Servants of July 14, 1965 public officials have to “remain loyal to the Constitution of the Republic and its laws, and implement in allegiance to the laws of the Republic of Turkey.”

In this respect, the Constitution (Article 137) prohibits the execution of an “unlawful order” by a superior in public service:

A person employed in public services, irrespective of his position or status, when he finds an order given by his superiors to be contrary to the provisions of by-laws, regulations, laws, or the Constitution shall not carry it out, and shall inform the person giving the order of this inconsistency. However, if his superior insists on the order and renews it in writing, his order shall be executed; in this case the person executing the order shall not be held responsible.

An order which in itself constitutes an offense shall under no circumstances be executed; the person who executes such an order shall not evade responsibility.

⁴ In Turkish legislation, the titles of functionary, public servant, civil servant, public or state employee, public agent and public official are indiscriminately used to refer to those persons subject to special constitutional obligations or rights in relation to the public functions they are called upon to perform (OECD-SIGMA, 2008). Civil servant or public servant refers to memur while public official or employee is exclusive one. For definition of public official, see also Article 6 and 252 of Penal Code.

A civil servant starts his/her duty by taking an oath to express his/her compliance to these principles in the presence of his/her competent superiors within one month following his/her appointment at the latest, and signs a “Document of Oath” to be kept in his/her employment file.

Similarly, Article 26 of Law No. 4054 on Protection of Competition also requires the members of the Board of Competition Authority to take an oath before the First Presidential Court of the Supreme Court of Appeal “that during their term of office, they shall carry out the tasks of the Board with full attention and honesty, and they shall not act or allow others to act contrary to the provisions of the Act.”

Definition of Conflict of Interest and General Principles

It was the first time the concept of conflict of interest has been incorporated into the Turkish legislation by the adoption of the Regulation on the Principles of Ethical Behavior of the Public Officials and Application Procedures and Essentials on April 15, 2005. This provides provisions for the implementation of ethical principles and also examination of violations of ethical principles in public service. Regulation refers conflict of interest specifically (Article 13):

Conflict of interest means all sorts of interests, financial or other liabilities and the situation of having such personal interests provided for the public officials, their relatives, friends or the person or organizations they deal with which affect or seem to affect their performance of the duty impartially and objectively.

Public officials have personal responsibility in the conflict of interest and as they are the ones to personally know the situation in which conflict of interest may rise. They should proceed cautiously in any potential or real conflict of interest, take necessary steps to avoid conflict of interest, notify the situation to their seniors as soon as they realize conflict of interest and keep themselves away from benefits that are in the scope of conflict of interest.

The United Nations Convention against Corruption which was ratified by the Grand National of Turkey on May 18, 2006 regulates that (paragraph five of Article 8 on “*Codes of conduct for public official*”)

Each State Party shall endeavor, where appropriate and in accordance with the fundamental principles of its domestic law, to establish measures and systems requiring public officials to make declarations to appropriate authorities regarding, *inter alia*, their outside activities, employment, investments, assets and substantial gifts or benefits from which a conflict of interest may result with respect to their functions as public officials.

The principle of “equality” in public service is emphasized by the Constitution (paragraph four of Article 10) that “state organs and administrative authorities shall act in compliance with the principle of equality before the law in all their proceedings and in utilization of all forms of public services.”

Cooperation, service orientation, and non-discrimination are important obligations of civil servants, and they can be sanctioned severely if they fail to fulfill them. Moreover civil servants have to express “integrity” in their acts at work and outside the work and their duty abroad (Law No. 657 Article 7 and 8).

In this respect, superiors have also some responsibilities in fulfilling a public duty (Law No. 657 Article 10).

A superior treats his/her subordinates with fairness and equality, and exercises his/her authority within the principles set by laws, statutes, and regulations.

In order to prevent patronage, a merit-based system is introduced by the Law No. 657 in the entrance to, promotion in and resignation from public service (Article 3).

Similarly, laws establishing various public institutions including independent administrative authorities describe professionalism and merit system as important principles in public service. For example, Article 92 of Law No. 2499 on Capital Market requires that (see also Article 87):

Professional staff shall be employed in the main service units of the Agency for tasks that require expertise. The qualifications of the personnel to be employed in the main service, advisory and support service units shall be set by the Board upon the proposal of the Chairman. The number of the Agency personnel that have no manager, advisor and professional staff titles shall not exceed thirty percent of the total number of personnel indicated in the tables annexed to the Law.

The Agency may employ adequate number of experts that have minimum ten years of experience in the sector and have a PhD degree in the relevant disciplines, under service or procurement contracts, provided that the number of such experts shall not exceed ten percent of the number of the Agency’s professional staff.

The Agency personnel may not be temporarily appointed to other public institutions and agencies.

Finally, Regulation on the Principles of Ethical Behavior of the Public Officials and Application Procedures and Essentials which entered into effect on April 13, 2005 provided a concise list of guiding principles of ethical behavior in public service. These principles were formulated in harmony with the new concept of public administration, governance and total quality management.

Regulation on the Principles of Ethical Behavior of the Public Officials and Application Procedures and Essentials, 13 April 2005

Consciousness of public service in performance of a duty

Article 5 – Constant development, participating, transparency, impartiality, honesty, protecting the public interest, accountability, predictability, fitness in service and confidence in statement should guide public officials in performance of the public services.

Consciousness of serving the community

Article 6 – In performance of the public services the public officials should aim at facilitating the daily life of the community, meeting public needs in the fastest and the most active and effective way, increasing the quality of the service, increasing the satisfaction of the community, focusing on the requirement of those benefiting from the service and on the results of services.

Compliance with the service standards

Article 7– The managers and other personnel of the public institutions and organizations should perform the public services in accordance with the determined standards and processes, inform those benefiting from the services by giving essential explanatory information about the work and transactions during the service processes.

Commitment to the Objective and Mission

Article 8 - Public officials should behave in accordance with the objectives and mission of the institutions and organizations that they work in. They should act in compliance with the interest of the country, the welfare of the society and the service ideals of their institutions.

Integrity and Impartiality

Article 9 – In all their actions and transactions public officials should act in accordance with the principles of lawfulness, justice, equity and integrity, they cannot discriminate with reasons such as language, religion, philosophical belief, political belief, race, sex etc. while performing their duty or providing services. They cannot act in a human rights violating or restricting way and cannot behave in a way obstructing the equal opportunity.

Public officials should use their discretionary authority in accordance with public interest and service requirements away from all sorts of arbitrariness and in compliance with principles of impartiality and equality.

Public officials should not treat the natural and legal persons in a prior or privileged and partial way breaching the principle of equality, should not act in a way aiming at the advantage or disadvantage of any political party, person or group, and should not hinder the policies, resolutions and actions of public authorities which are in compliance with the legislation.

Respectability and confidence

Article 10– Public officials should behave in a way that will establish confidence for the public administration and they should display with their behaviors that they deserve the confidence and reputation required by the duty. They should avoid behaviors that harm the sense of confidence of the community for the public service, raise doubts and impair the principle of justice.

Public officials should act in accordance with the requirements of the service having the consciousness that serving the community is above all sorts of personal and private interests, they cannot misbehave to those who benefit from the service, neglect their work, perform double standard and be partial.

Public officials who are in the position of director or auditor cannot behave arbitrarily, they cannot act in an oppressive, insulting and threatening manner, they cannot arrange reports which are not based on certain facts, they cannot demand service, opportunity or similar interests for themselves against legislation and cannot accept anything presented even there is no demand.

Decency and respect

Article 11 – Public officials should treat seniors, subordinates, colleagues, other personnel and those benefiting from the service decently and respectfully and give necessary attention. They should direct them to the relevant unit or authorized person if the subject is out of their authority.

Notification to the competent authorities

Article 12 – Public officials, in the case that their acting against the principles of ethical behavior which are determined in this Regulation or their carrying out illegal transactions or actions is demanded or when they learn or see such actions or transaction while performing their service, should notify the situation to the competent authorities.

Supervisors of institutions and organizations should keep the identity of the public officials who notifies and take necessary steps in order to avoid any harm.

Prohibitions and incompatibilities

Economic and financial activities

Law No. 657 forbids a public servant from performing an activity that, according to the Turkish Commercial Code, fall under the category of that of a merchant, tradesman, commercial agent, etc. Public servants whose spouses or children are engaged in activities that are forbidden to public servants must disclose this information, within 15 days, to the head of the administrative institution that employs them (Article 28).

Civil servants shall not be engaged in any economic activity or employment outside the administration, or be appointed as partners in companies, except in limited or joint stock corporations (Article 28); they can be members — and members of the managing boards — of construction or consumer cooperatives, however.

Moreover, Law No. 3984 on the Establishment of Radio and Television Enterprises and Their Broadcasts introduced some Prohibitions and Supervision on the members of the Supreme Council of Radio and Television (Article 9):

Members of the Supreme Council and their relatives by blood or by marriage up to and including to those third degree, provisions of Law No 5846 of Intellectual and Works of Art being reserved, shall not enter into any commitments pertaining to the function and powers of the Supreme Council within the field of radio and television services, shall not be partners or managers in private radio and television enterprises and in the enterprises that have direct or indirect partnership affiliation with these companies.

The members, who violate the above principles, shall be accepted as resigned. This issue shall be decided by the Supreme Council as a result of the evaluation either by its initiative or by the application.

There are similar prohibitions members of the Board of Capital Market (Law No. 2499 on Capital Market Article 20):

Unless permitted by a special law, neither may accept employment in another public or private entity, be involved in commercial business, perform his/her profession independently, give a lecture in consideration of a fee or assume a role in any examination or similar tasks or acquire an interest in any undertaking. The Board Chairman and the members shall transfer or sell any shares and participation certificates of mutual funds the portfolio of which contains shares that they own before assuming their duties, to non-related individuals or who are more distant than 3rd degree blood relatives or 2nd degree non-blood relatives according to the legal definition of such individuals. Members who do not abide by this rule within 30 days will be considered as having resigned from their positions in the Board.

Furthermore, Article 11 of Law No. 4734 prohibits the following persons to participate in any procurement:

- c) the contracting officers of the contracting entity carrying out the procurement proceedings, and the persons assigned in boards having the same authority,
- d) those who are assigned to prepare, execute, complete and approve all procurement proceedings relating to the subject matter of the procurement held by the contracting entity.
- e) The spouses, relatives up to third degree and marital relatives up to second degree, and foster children and adopters of those specified under paragraph (c) and (d).

Finally, Law No. 5393 on Municipalities (Article 28) puts some obligations for mayors and members of the municipal council:

Any mayor may not directly or indirectly, enter into contract with, or engage in brokerage or become a representative of the municipality or its subsidiaries during his term of office and two years after the termination of his office. These prohibitions are applied to the members of the council during their term in office and one year after the termination of their office.

Recusal or exclusion from decision-making

According to the Regulation on Discipline Committees and Discipline Chiefs of 1982 (Article 6) civil servants are obliged to suspend their participation in discipline committee that affects them or their relatives (*exclusion*). Otherwise, any decisions made during these processes can be annulled for formal reasons. The annulment is not automatic, but the decision can remain valid if it was against the interest of the civil servant or his/her relatives.

Exclusion of the Chairman or any Board member is required under certain circumstance (Law No. 2499 on Capital Market Board of Turkey Article 23):

The Chairman and the members of the Board may not participate in the discussions and in the voting concerning issues related to persons who are their relatives in the degrees indicated in paragraph 3 of Article Article 245 of the Law on Legal Procedures.

In order to avoid conflict of interest, Board chairman and members of Capital Market Board of Turkey can neither attend nor cast votes in the Board meetings regarding themselves, their spouses, their adopted children, blood relatives including the third degree and relatives in law through marriage up to second degree. This shall be indicated in the text of the decision, separately (Law No. 5411 Article 87).

Similarly, the members of the Savings Deposit Insurance Fund Board

can neither attend nor cast votes in the Board meetings regarding themselves, their spouses, their adopted children, blood relatives up to third degree and relatives by marriage up to second degree. This fact shall be noted down in the text of the decision (Law No. 5411 Article 116/last).

Furthermore, The members of the Board of Public Procurement Authority cannot participate in meetings and voting sessions related to decisions concerning their relatives by blood up to third degree or by marriage up to second degree and fosters (Article 53/g)

Law No. 3984 introduced some prohibitions and supervision on the members of the Supreme Council of Radio and Television (Article 9):

Supreme Council members shall not enter into negotiations or participate to voting in matters relating to themselves or their relatives by blood or by marriage up to and including to those third degrees.

The members, who violate the above principles, shall be accepted as resigned. This issue shall be decided by the Supreme Council as a result of the evaluation either by its initiative or by the application.

Finally, Law No. 5393 on Municipalities (Article 27) underlines that

The Mayor and the members of the Council shall not participate especially in the meetings during which the matters related to them, their second degree relatives by blood and relatives by law and their adopted children are debated.

Confidential information

Civil servants cannot make any confidential information public concerning public service without written permission of the minister concerned even after their resignation from their posts (Law No. 657 Article 31).

Confidentiality of information and offences against the abuse of all properties of the Board are regulated by a special provision (Law No. 2499 Article 25/a):

The Chairman, members and personnel of the Board, as well as auditing officials who have been appointed in accordance with this Law, may not disclose confidential information of the concerned parties or of third persons that they have learned during the performance of their duties and audit and they may not use such information for their own benefit. This obligation and responsibility shall also continue after the termination of their duties.

Last paragraph of Article 86 of Law No. 5411 underlines that “Board (Capital Market Board of Turkey) chairman and members and other personnel shall not disclose the confidential information and commercial secrets regarding the Agency to any person other

Binding explanations and factitious statement

Article 18 – *Public officials while performing their duty cannot exceed their authority and make explanation, engagement, promise or attempts binding the institutions they work for, they cannot make a misleading and factitious statement.*

than the legally authorized persons and shall not use such information for their or other persons' interests" during and after their employment

According to paragraph (e) of Article 53 of the Law No. 4734 on Public Procurement, the members of the Board of Public Procurement Authority and the staff of the Authority cannot disclose any confidential information or document concerning the related officials or third parties to any entity except for those authorized by law for such disclosures, and cannot use them for the benefit of their own or third parties. This liability of confidentiality shall also continue after they leave their offices.

Confidentiality of information and documents is also a part of this legislation (Law No. 4734 on Public Procurement Article 61):

Those who are assigned with the implementation of this Law and those who provide consultancy services cannot disclose or use for the benefit of their own or of third persons, any of the confidential information or documents relating to all proceedings about the tender process; works and proceedings about tenderers, technical and financial structures of the tenders, as well as the estimated costs of the procurements. Depending on their relevance, the sanctions stipulated under Article 58 and 60 shall apply in case of violation.

Similarly, the Savings Deposit Insurance Fund Board chairman and members and other personnel can not "disclose the confidential information and commercial secrets regarding the Fund to any person other than the legally authorized persons and shall not use such information for their or other persons' interests during and after their employment. Fund Board meetings are also kept confidential (Law No. 5411 Article 116/last).

According to Article 25/last of Law No. 4054 the members and staff of the Board of Competition Authority

may not disclose and use in their own or others' interests the confidential information as to the Authority, and trade secrets of undertakings and associations of undertakings that they learned during the implementation of this Act, even if they have left their office.

Finally, Article 7 of Law No. 4046 Concerning Arrangements for the Implementation of Privatization and Amending Certain Laws and Decrees with the Force of Law states that

As for organizations in the privatization program which are subject to the provisions of the Capital Market Law and whose stocks are traded on the stock exchange, the Chairman and members of the Board of Directors, the internal auditors and other personnel, the personnel of the Administration, the President and members of the Council may not disclose any non-public information or data they learn during their function on accounts, operations, and enterprises of their organizations.

Outside activities

Moreover, to provide *impartiality in public service*, the paragraph five of Article 68 of the Constitution states that “civil servants in public institutions and organizations, other public servants who are not considered to be laborers by virtue of the services they perform ... shall not become members of political parties.” Furthermore, last paragraph of Article 76 also requires that “employees of public institutions and agencies who have the status of civil servants, other public employees not regarded as laborers on account of the duties they perform, and members of the Armed Forces shall not stand for election or be eligible to be a deputy unless they resign from office. If the former civil servant is not elected, he has the right to be reinstated in his position. These legal limitations aim at preserving the objectivity and impartiality of the behavior and decisions of civil servants, which are considered to be compromised when a civil servant has already expressed his political preferences while running for election.

Impartiality or political neutrality is a major obligation of civil servants. In general, the obligations of public servants are set out in legislation to take account of and protect the

Regulation on the Principles of Ethical Behavior of the Public Officials

Not using the duty and authorities to derive benefits

Article 14 – *Public officials cannot derive benefit in favor of themselves, their relatives or of the third persons by using their duty, title and authority and cannot intercede, favor their relatives, friends and fellow townsman, perform political nepotism, discrimination or nepotism of any kind.*

Public officials cannot have their or others' book, periodical, cassette, compact disc and any other similar products sold or distributed; cannot derive benefits to any organization, foundation, association or sports club by donations, help or similar ways.

Public officials, when they are on duty or they leave the duty, cannot use the official or secret information they acquired during performance of their duty or as a result of these duties in order to derive economical, political or social benefits for themselves, for their relatives or for third persons directly or indirectly, cannot explain this information to any institution and organization except from the competent authorities.

Public officials cannot use the sources of the institution they work for in the election campaigns directly or indirectly or have those sources used.

constitutional role that the civil service has to accomplish. All kinds of discrimination are prohibited in public service in Turkey (Law No. 657 Article 7):

Civil servants cannot be members of political parties, cannot act in favor or to disadvantage of any political party, individual or group; cannot discriminate on the bases of language, race, gender, political thought, philosophical belief, religion and sect; cannot express view and act politically and ideologically in any form and cannot participate in such activities.

Civil servants have to protect the interest of the state in any circumstance. They cannot participate in any activity which is against the Constitution of the Republic of Turkey and its laws, violates the independence and integrity of the country, or endangers the security of the Republic of Turkey. They cannot join any groups, organizations, or associations which operate in the same manner, and cannot help them.

According to paragraph (e) of Article 53 of the Law No. 4734, the members of the Board of Public Procurement Authority

unless based on a specific Law, can not be involved in any official or private jobs, trade or freelance activities, can not participate in conferences or instruct courses in return of payment, and can not be a shareholder or manager in any kind of partnerships based on commercial purposes. .. The members who do not act in compliance with this provision shall be deemed resigned from their memberships.

Law No. 3984 on the Establishment of Radio and Television Enterprises and Their Broadcasts introduced some Prohibitions and Supervision on the members of the Supreme Council of Radio and Television (Article 9):

Supreme Council members shall not undertake any civil service or private post for the duration of their membership, they shall not be a party directly or indirectly in matters within the field of function and powers of private or public broadcasting enterprises or nor derive any benefit for such matters, shall not be a member to a political party. Functions in associations and foundations whose purpose is social aid and education and co-operative partnership are exceptions to this provision.

The members, who violate the above principles, shall be accepted as resigned. This issue shall be decided by the Supreme Council as a result of the evaluation either by its initiative or by the application.

Similarly, Law No. 2499 Article 20 states some restrictions for outside work:

Neither the Board Chairman nor members may work as managers of societies, foundations, cooperatives and similar entities.

The new Banking Law of 19 October 2005 (Law No. 5411) also regulates general principles of prohibitions (Article 86/1):

Excluding activities like scientific courses and conferences and the copyrights which do not constitute an obstacle for performing their primary duties, Board chairman or members of Capital Market Board of Turkey cannot accept employment in another public or private entity except for their official duties within the body of the Agency; involve in commercial business; work as managers of societies, foundations, cooperatives and similar entities; perform his/her profession independently; acquire shares in an undertaking operating in the sector or area which the Agency is authorized to regulate and supervise; or serve as a arbitrator or expert witness.

Savings Deposit Insurance Fund Board members and chairman have also prohibitions concerning outside work (Article 115):

Excluding activities like scientific publications, courses and conferences and the copyrights which do not constitute an obstacle for carrying out their primary duties, Fund Board chairman or members cannot accept employment in another public or private entity except for their official duties within the body of the Fund; involve in

commercial business; work as managers of societies, foundations, cooperatives and similar entities; perform his/her profession independently; acquire shares in the institutions covered by this Law or their direct or indirect partnerships; or serve as a referee or expert witness.

According to Article 25/3 of Law No. 4054 (for Board members of the Competition Authority) “positions in associations and foundations which aim at social assistance and education, and partnership in non-profit cooperatives fall outside this provision.”

Regulation on the Principles of Ethical Behavior of the Public Officials

Making use of public domain and sources

Article 16- *Public officials cannot use the public buildings, vehicles and other public domains and sources except for the public objectives and service requirements and can not have them used; they protect these and take necessary precautions to maintain them available for service at any moment.*

Avoiding extravagance

Article 17 – *Public officials should avoid wastefulness and extravagance in using the public buildings, vehicles and other public domains and sources, behave in an effective and economical manner while using the office hours, public domain, sources, labor force and opportunities.*

Use of Publics Sources and Vehicles

Civil servants shall not move any official document, vehicle and instruments outside the authorized site, or use them for their personal business. Moreover, civil servants shall return all official documents, vehicles and instruments which they receive during their official duties upon the completion of their duty (Law No. 657 Article 16).

Regulation on the Principles of Ethical Behavior of the Public Officials

Prohibition of receiving gifts and deriving benefits

Article 15 – All sorts of goods and benefits which are accepted directly or indirectly whether having economical value or not and which affect or have the possibility to affect the fulfillment of their duties, impartiality, performance and decisions are within the context of gift.

The basic principle for the public officials is not to receive or give gift and not to derive interest as a result of duty.

Public officials cannot receive any gift or derive benefit from natural or legal persons who have work, service or benefit relationships related to the duty they perform, for themselves, their relatives or third persons or organizations directly or through an interceder.

Public officials cannot give gifts by using the public sources, cannot send wreath or flowers to a natural or legal person except from official day, ceremony and festivals; they cannot give out a notice of commemoration, make an announcement or a celebration which are not related to the service.

Among the gifts given by the foreign persons and organizations according to the decency and protocol rules in the international affairs, saving for the provisions of article 3 of the Act numbered 3628, the ones that are below the limit of the said article are declared.

- Donations which mean contribution to the organization for which the public officials work, which will not affect the execution of the organization services in accordance with the law and which are received, provided that they are allocated for the public service, recorded in the fixed assets list of the organization and that they are declared to the public (except from the official car and other gifts received in order to allocate for the service of a specific public official) and the donations which are granted to the institution and organizations,

- Book, magazine, article, cassette, calendar, compact disc or such goods,

- Gifts or rewards acquired in publicly held competitions, campaigns and activities,

- Gifts having the value of souvenir which are given in publicly held conferences, symposium, forum, panel, meal, reception or similar activities,

- Advertisement and handicraft products which are distributed to everyone and which have symbolic value,

- Credits taken from financial organizations according to the market conditions, are outside the scope of the prohibition of receiving gifts.

a) Gifts of greeting, farewell and celebration, scholarship, travel, cost-free accommodation and gift vouchers received from the people who have service or interest relations with the institution they work for,

b) Transactions which are made from unreasonable prices according to the market price when buying, selling or hiring movable or immovable goods or service,

c) All sorts of gifts including jewelry, clothes, food or any other goods given by those benefiting from the service,

d) Loans and credits taken from the people, who have work or service relations with the institution,

are within the scope of the prohibition of receiving gifts.

The officials within the scope of this Regulation who are at least general director, equal to or above general manager notify the list of the gifts they received in the previous year and which are stated in the 5 th paragraph of this article and (a) clause of the 6 th paragraph to the Council until the end of January without waiting for any warning.

Gifts and Benefits

The Law No. 657 prohibits receiving gifts and obtaining a benefit (Article 29):

It is prohibited for civil servants to ask for a gift directly or in care of an agent, to accept any gift in return of providing an interest even though it would be accepted after official working hours.

Moreover, Article 10 of Law No. 657 emphasises that

A superior ..., cannot ask anything from his/her lowers in order to obtain a private gain, and cannot accept any gift or borrow money.

Furthermore,

It is prohibited for civil servants to obtain any benefit directly or through an intermediary from an agency under his supervision or which has a relation with his duty or with his institution (Law No. 657 Article 30). A similar prohibition was described by Article 31 of the Regulation on Supreme Board of Radio and Television.

Article 3 of the Law No. 3628 requires all civil servants return gifts or items which are above some economic value, to return them to their institutions.

Public officials listed in the article above must return gifts or items in nature of grants worth more than the total of ten months' minimum wage as at the date of receipt, received pursuant to international protocol, competition or courtesy rules or for any other reason whatsoever, from foreign countries, international organizations, other international legal entities, any private or legal person or organization which is not a national of Turkey, within one month as of the date of receipt, to their institutions. However, the frames of signed souvenir photos given by foreign statesmen and international organizations' representatives are not covered by the provisions of this article.

The values of gifts shall be determined by the Ministry of Finance pursuant to a regulation to be adopted.

The post-employment restrictions

These restrictions for civil servants (public employees) are regulated by Law No. 2531 of 6 October 1981 on Jobs Prohibited to those who have left a position in the Public Service. These activities are all connected with the civil servant's responsibilities while he/she was in office. This prohibition lasts for the first three years from the date of resignation or retirement (article 2):

Those who resigned from their posts specified in Article 2 (such as public institutions and agencies included in the general budget and municipalities) for any reason, for three years starting from the date of leaving the office, cannot directly or indirectly be assigned to a position or take in charge of any business, make any undertaking, brokerage or representation relating to his/her duties and activities held in their former office, opposing to the office, department, institution and agency where they worked during the last two years before they left the office.

Regulation on the Principles of Ethical Behavior of the Public Officials

Relations with the former public officials

Article 21 – *Public officials cannot make former public officials benefited from public services in a privileged way and cannot treat them in a privileged manner. The people who have left their public duties cannot be assigned directly or indirectly to a duty or work such as contractor, commissioner, representative, expert, interceder from the institution or organization they previously worked for - saving for the provisions and periods in the related Laws.*

Provisions of special laws are reserved.

Reserve officers and medical people including pharmacists are exempted. Those who violate these prohibitions shall be sentenced to a penalty of imprisonment for a term of six months to two years and a judicial fine of at least 10.000 liras (Article 4).

The new Banking Law of 19 October 2005 (Law No. 5411) also regulates general principles of prohibitions (Article 86/3):

Within two years after leaving office, Board chairman and members cannot take office in any private company that operates in the sector and area regulated and supervised by the Agency.

The Board members who violate the provisions of this paragraph shall be subjected to the penalties set out in Article 4 of the Law No. 2531 on the Jobs Prohibited to those who have Left a Position in the Public Sector.

Savings Deposit Insurance Fund Board members and chairman have also prohibitions concerning post-employment (Article 115):

Within two years after leaving office, Fund Board members cannot take office at the institutions whose management and control have been transferred to the Fund or at their direct or indirect partnerships. The Fund Board members who violate the provisions of this paragraph shall be subjected to the penalties set out in Article 4 of the Law No. 2531 on the Jobs Prohibited to those who have Left a Position in the Public Sector.

Restrictions applied to the mayors and the members of the municipal councils after leaving the office are described earlier in this study.

Asset and Interest Declaration

As mentioned earlier as a part of transparency and accountability, Article 71 of the Constitution imposes “Declaration of assets by persons entering public service and the frequency of such declaration shall be determined by law. Those serving in the legislative and executive organs shall not be exempted from this requirement.”

In accordance with the constitutional prescription (Article 71), the Law No. 657 (Article 14) requires that

in pursuant to the provisions of the special law, civil servants shall submit declaration of assets, including movable and immovable, credits and debits belong to themselves, their spouses and children.

The paragraph (d) of Article 2 of Law No. 3628 on Asset Declaration, Struggle against Bribery and Corruption (as amended by Law No. 5020 of 26 December 2003) requires all civil servants to declare their assets:

Civil servants in public service who are being paid salary, wage and allowance at general and added budgeted departments, provincial special administrations, municipalities and affiliated organizations and subsidiary organizations thereof, public economic enterprises (state economic agencies and public economic organizations) and affiliated establishments, subsidiaries and businesses, public service institutions and organizations established by special laws or power granted by special laws and subsidiary organizations or commissions thereof, other public officials which are not workers and members of boards of directors and auditors.

Assets whose acquisition cannot be proven in accordance with the Law or public moral values and the wealth increase which cannot be incompatible with the income of the person concerned with regard to his social life is accepted as unjust acquisition of wealth (Article 4).

Goods which cannot be proved to have been provided in accordance with law and public morale or increases revealed as expenses which cannot be considered commensurate with the income of the concerned in terms of the social life of the concerned are considered unjust acquisition of property within the context of the implementation of this Act.

Asset declaration is renewed regularly (Article 7):

Regulation on the Principles of Ethical Behavior of the Public Officials

Avoiding conflict of interest

Article 13 – Conflict of interest means all sorts of interests, financial or other liabilities and the situation of having such personal interests provided for the public officials, their relatives, friends or the person or organizations they deal with which affect or seem to affect their performance of the duty impartially and objectively. Public officials have personal responsibility in the conflict of interest and as they are the ones to personally know the situation in which conflict of interest may rise. They should proceed cautiously in any potential or real conflict of interest, take necessary steps to avoid conflict of interest, notify the situation to their seniors as soon as they realize conflict of interest and keep themselves away from benefits that are in the scope of conflict of interest.

Those continuing duties within the scope of this Act shall renew their declarations until the end of February of years ending with (0) and (5) at the latest. New declarations shall be collated by competent authorities with prior declarations.

The scope of declaration in terms of who shall declare and what is described by law (Article 5):

The subject matter of declaration of property is the immovable property of officials within the scope of this Act, their spouses and children under their guardianship, and separately for each of more than five times the amount of the monthly net payment made to the official, or in case of officials not paid, more than five times the amount of monthly net payment made to Public Servants of the 1st degree, money, shares ve debentures and gold, jewelry and other movable property, rights, receivables and incomes and resources, debts and reasons thereof.

Only the authorities empowered by other laws can have access to this information. The information is confidential and kept in the special file of the person submitted the declaration (Article 9):

Without prejudice to the provisions in the special acts, property declarations shall be kept in the declarant's private file. No statement can be made and no information can be given about the contents of declarations save for the provision of Article 20. Furthermore, no publication can be made about the contents of the property declaration based on the information and records in the property declaration.

Although it is stated by the law that the new and additional declarations shall be reviewed by the declaration processing authority in comparison with the previous ones, these regular financial declarations are not opened unless there is an administrative or criminal investigation.

The members of the Board of Public Procurement Authority have to submit a declaration of property, within one-month following the date of commencement and expiry of office, and every year during their office period (Law No. 4734 Article 53/f)

In compliance with Law No. 3628, members of the Supreme Council of Radio and Television submit annual declaration of property (Law No. 3984 Article 10).

According to paragraph (e) of Article 53 of the Law No. 4734, the members of the Board of Public Procurement Authority

... are obliged to dispose off any stocks or securities they have acquired prior to starting their offices, belonging to legal entities carrying out activities in the market or their subsidiaries, via transferring or selling off to persons other than their relatives by blood up to third degree or by marriage up to second degree, within thirty days following the start of their assignment periods, except for those securities issued by the Undersecretariat of Treasury for domestic borrowing purposes. The members who do

Regulation on the Principles of Ethical Behavior of the Public Officials

Declaring property

Article 22 – Public officials should declare of property of the movable and unmovable goods, loans and credits belonging to themselves, their spouses and children under their custody as per The Law on numbered 3628 Declaring Property and Anti-Bribery and Corruption.

The Council has the authority to investigate the declarations of property if it is necessary. The related persons and organizations (including banks and special finance houses) are responsible to give the requested information to the Council within 30 days at the latest with the aim of controlling the accuracy of the information in the declarations of property.

not act in compliance with this provision shall be deemed resigned from their memberships.

The Law No. 5411 requires Board chairman and members of Capital Market Board of Turkey, their spouses and their children under their custody (Article 86/2):

shall dispose off any security they own, within the framework of any capital market that falls under the Agency's competence of regulation and supervision, other than those issued by the Treasury for borrowing purposes, by selling them to persons other than their spouses, adopted children, blood relatives up to third degree and relatives in law through marriage up to second degree. The members, who do not act in line with the provisions of this paragraph within 30 days after their appointment, shall be considered as having resigned from their positions in the Board. Such cases shall be recorded by a Board decision and be notified to the relevant Minister.

In this respect, Board chairman and members of Capital Market Board of Turkey shall be subject to the provisions of the Law No. 3628.

According to Article 115/2 of Law No. 5411,

before taking office, Savings Deposit Insurance Fund Board chairman and members, their spouses and their children under their custody

shall dispose off any security they own in the credit institutions covered by this Law as well as their direct or indirect partnerships, within the framework of any capital market that falls under the Fund's competence of regulation and supervision, other than those issued by the Treasury for borrowing purposes, by selling them to persons other than their spouses, orphans, blood relatives up to third degree and relatives by marriage up to second degree. The Fund Board members, who do not act in line with the provisions of this paragraph within 30 days after their appointment, shall be considered as having resigned from their positions in the Fund Board. Such cases shall be recorded by a Fund Board decision and be notified to the relevant Minister.

Savings Deposit Insurance Fund Board chairman and members shall be subject to the provisions of the Law No. 3628 (Article 116/1).

According to Law No. 4054 (Article 25/2) the Chairman and members of the Board of Competition Authority

are, prior to assuming office, obliged to dispose of all kinds of securities in their possession within the meaning of the capital market legislation, apart from securities issued by the Treasury in connection with borrowing, by means of selling or

transferring them to persons other than their kin by blood up to the third degree and their kin by marriage up to the second degree. Those members who do not act in conformity with this provision within 30 days shall be deemed to have resigned from membership.

Briefly, the mechanisms of disclosing conflict of interest in public service compared to the requirement of regular asset declaration is limited to few institutions dealing with banking, capital market or procurement affairs.

Transparency and Accountability Regulations

Open and transparent governments increasingly recognize the importance of accountability. In this respect, public access to information, whistleblowing and financial accountability of public institutions are vital for enhancing democratic engagement, building confidence in government institutions and strengthening their credibility and effectiveness.

The Right to Information

The right to information is important for many reasons: creating a more open and democratic society, challenging corruption and enhancing transparency in government. Public access to government information, excluding certain fields, enables citizens to make the public administration accountable and prevent wrongdoings and corrupt activities of public officials.

Law No. 4982 on Right to Information was adopted in 2003, regulates the right of information in compliance with the principles of equality, impartiality and openness as required by democratic and transparent governance (Article 1).

This law is applicable to “the activities of public institutions and organizations, and professional organizations which have the capacity of a public institution” (Article 2). The provisions of the law on Exercising of the Right of Petition No 3071 of 1.11.1984 are reserved.

Regulation on the Principles of Ethical Behavior of the Public Officials

Notification, transparency and participation

Article 19 – Public officials should help the community to exercise their right to receive information. They should submit the information and documents upon the demand of natural and legal persons duly apart from the exceptions determined in The Law numbered 4982 on Right to Information.

Top executives should present their institutions' processes of tender, activity and audit report to the public opinion through acceptable means under the allowance of related laws. Public officials should pay attention to provide that those who will be directly or indirectly affected from the decision unless there is a contrary legal provision contribute to one or some of the stages of the preparation of fundamental decisions on public services, maturation, decision taking and application of these decisions.

However, the law also puts comprehensive limitations on the right of information acquirement (Articles 15-25). These limitations include, transactions which are not subject to jurisdictional audit, information or documents on secrets of state, information or documents on the economic interests of the country, information or documents on intelligence, information or documents on administrative investigation, information or documents on judicial inquiry and prosecution, privacy of private life, privacy of communication, trade secrets, intellectual and artistic works, intra-institutional arrangements.

There is a gradual increase in the use of this right in Turkey yet it is not sufficiently known by the citizens. With extensive use of this right, the standards of public services can be promoted and a trustworthy relation can be established between the public institutions and the citizens.

Whistleblowing

In the first instance, any public servant has a responsibility to report the matter to his/her immediate superior. If, however, that superior refuses to act, then the public servant must be able to alert the public to the problem, notwithstanding the provisions of his/her employment contract. This «*whistle blowing*» provision is a crucial safeguard of the public interest and an important element of an access to information law.

The status of whistle-blowing had been defined by several laws in Turkey, e.g. Law No. 1905 on Reporting Tax Evasion adopted in 1931. Earlier, Articles 5 and 7 of Law No. 4422 on Organized Crime regulated the protection of eye-witnesses and whistle-blowers; however, this law was repealed on March 31, 2005, by Law 5320 on Penal Trial.

According to Article 18 of Law No. 3628, the identities of the whistle-blowers cannot be made public without their consent. However, when the denunciation is valid, the identity of the whistle-blower shall be made public upon the request of the prosecuted person. Internal Circular No. 1990/1 also regulates “confidentiality of the identity” of whistle-blowers.

Recently Law No. 5726 on the Protection of Eye-Witnesses, which covers only those who shall testify at the Penal Court, was adopted. In other words, those who report any corruption-related cases do not have any legal protection against recrimination or other consequences. It should be bear in mind that whistle-blowing is not a looked on favorably in Turkish culture. The laws are general and apply to all citizens in the public and private sectors. (See also, Law No. 1905 on Reporting Tax Evasion adopted in 1931, Articles 5 and 7, of Law No. 4422, Law 5320, Article 24 (Protection of Eye Witness) and 25 (protection of

aggrieved persons) of Law No. 4800 on Transnational Organized Crime, Internal Circular No. 1990/1, Nov. 22, 1990 on Whistle-Blowing).

Public Financial Management and Control

The most significant development in terms of transparency and accountability in public administration was the enactment of Law No. 5018 on Public Financial Management and Control Law in 2003.

In order to ensure responsibilities of the public officials, transparency and accountability in public service, the law underlines fiscal transparency first (Article 7):

In order to ensure supervision in the acquisition and utilization of all types of public resources, the public shall be informed timely. Accordingly, the followings are compulsory:

- a) To clearly define the duties, authorities and responsibilities,
- b) To prepare government policies, development plans, annual programs, strategic plans and budgets; to negotiate them with the authorized bodies; to carry out their implementation and to make the implementation results and the relevant reports available and accessible to the public,
- c) To publicize the incentives and subsidies provided by the public administrations within the scope of general government, in periods not exceeding one year,
- d) To establish public accounts in line with a standard accounting system and an accounting order in accordance with generally accepted accounting principles.

Public administrations are responsible for making necessary arrangements and taking measures to ensure the fiscal transparency, which shall be monitored by the Ministry of Finance.

Then the law describes the scope of accountability (Article 8):

Those who are assigned duties and vested with authorities for the acquisition and utilization of public resources of all kind are accountable vis-à-vis the authorized bodies and responsible for the effective, economic and efficient acquisition,

Managers' liability to render account

Article 20 – *Public officials can render account about their responsibilities and liabilities while performing public services and they are always open and prepared for the public evaluation and audit. Executive public officials take the precautions required by their duty and authority in order to obstruct the transactions or actions that are inappropriate to the objectives and policies of the institutions on time.*

Executive public officials should take necessary steps in order to avoid the personnel under his/her authority from corruption. These steps should include practicing legal and administrative arrangements, making appropriate studies in training and notification; proceed cautiously about the financial and other difficulties which the personnel face with and being a model for the personnel with their personal behaviors.

Executive public officials are responsible to provide his/her personnel with the appropriate education about the principles of ethical behavior, to observe whether they abide by these principles, to view the life of the personnel incompatible with their income and to guide about the ethical behavior.

utilization, accounting and reporting of the resources on the basis of law, as well as for taking necessary measures to prevent the abuse of such resources.

The other relevant articles of the law also explain the responsibility, transparency and accountability in public service (Articles 11, 67, 70, 71 and 72). In this respect, undersecretaries, superior public officers in public institutions, governors and mayors are defined as responsible officers. By means of this law, all public financial transactions approved by these responsible officers shall be transparent and accountable. Thus, determining causes of conflict of interest situations in these processes may be easier. According to a recent assessment (OECD-SIGMA, 2008) change takes time, “a firm commitment from Turkish administration, clear and strong co-ordination, and a realistic timeframe” are required.

Public Controller (Ombudsman)

The Law No. 5548 entitles the Office of Public Controller to examine and investigate the complaints of natural and legal persons about the working of the administration within the scope of characteristics described by the Constitution of Republic of Turkey and its acts, actions, attitudes and behavior with the idea of justice and in relation to respect for human rights and conformity with fairness and to recommend accordingly to the administration. The law has been under constitutional review and this institution does not exist. The Constitutional Court ordered stay of execution of this law on Oct. 27, 2006.

Enforcement Mechanism and Sanctions

Institutional Structure

Discipline Committees and Discipline Chiefs

According to the Regulation on Discipline Committees and Discipline Chiefs dated 1982 discipline committees are set up in the central and provincial (or regional) organizations of public institutions, municipalities, unions and the Constitutional Court (Law No. 657 Article 134). Organization and functions of these committees are described by the Regulation (the Regulation Article 4-8).

Discipline chief for each department is determined by the special regulation. They are basically the superior officer for each institution hierarchically. At top Prime-Minister and ministers are discipline chief of all public servants. However, in practice, undersecretary, director general, department head, secretary general, and directors in the central administration and governor, regional director general, mayors in local/provincial

administration and foreign mission chief abroad are the discipline chiefs (Law No. 657 Article 126 and 134 and the Regulation Article 16).

Public servants have the right to recourse the disciplinary decision (excluding warning and reprimand) before administrative courts (Constitution Article 125 and Law No. 657 Article 21) in accordance with the internal administrative appeals procedure established by the regulation on Implementing Complaints and Applications of Civil Servants. There is no other internal dispute resolution or mediation mechanisms in the Turkish public administration.

As a part of wider internal control mechanisms in public administration, there is Prime Ministry Inspection Board and ministerial Inspection Boards which carry out supervision and reporting functions on several issues including corruption upon the request of the superiors (Prime-Minister or ministers)

Public servants and public employees have constitutional immunity from prosecution; they can only be criminally prosecuted or sued in civil court with the prior authorisation of their superiors, except in cases prescribed by law (article 129 of the Constitution). Exceptions to this immunity rule are basically corruption-related crimes or serious criminal offences.

Law no. 4483 on Trial of Public Servants and Other Public Employees of 2 December 1999 regulates the matter. Public servants and public employees have constitutional immunity from prosecution; they can only be criminally prosecuted or sued in civil court with the prior authorization of their superiors, except in cases prescribed by law (Article 129 of the Constitution). Provisions of the Law No. 5065 Concerning the Ratification of the COE Criminal Law Convention on Corruption contradict those in Law No. 657. (See also, Articles 10-13 of Law No. 657, Article 3 of Law No. 4483 on the Trial of Public Servants and Other Public Employees, various articles of Law No. 5237 on Penal Code).

There are special provisions regulating the prosecution of their officers in the laws establishing some independent administrative authorities. However, the provisions of the Law No. 657 on Civil Servants apply to all public officials unless there is a special provision (Article 127).

Council of Ethics for Public Employees

The most important development in establishing an ethical infrastructure in public service in Turkey is the enactment of Law No. 5176 on the Establishment of Council of Ethics for Public Service and Making Modifications on Some Laws. This law aims to

KAMU GÖREVLİLERİ ETİK SÖZLEŞMESİ

Kamu hizmetinin her türlü özel çıkarın üzerinde olduğu ve kamu görevlisinin halkın hizmetinde bulunduğu bilinç ve anlayışıyla;

** Halkın günlük yaşamını kolaylaştırmak, ihtiyaçlarını en etkin, hızlı ve verimli biçimde karşılamak, hizmet kalitesini yükseltmek ve toplumun memnuniyetini artırmak için çalışmayı,*

** Görevimi insan haklarına saygı, saydamlık, katılımcılık, dürüstlük, hesap verebilirlik, kamu yararını gözetme ve hukukun üstünlüğü ilkeleri doğrultusunda yerine getirmeyi,*

** Dil, din, felsefi inanç, siyasi düşünce, ırk, yaş, bedensel engelli ve cinsiyet ayrımı yapmadan, fırsat eşitliğini engelleyici davranış ve uygulamalara meydan vermeden tarafsızlık içerisinde hizmet gereklerine uygun davranmayı,*

** Görevimi, görevle ilişkisi bulunan hiçbir gerçek veya tüzel kişiden hediye almadan, maddi ve manevi fayda veya bu nitelikte herhangi bir çıkar sağlamadan, herhangi bir özel menfaat beklentisi içinde olmadan yerine getirmeyi,*

** Kamu malları ve kaynaklarını kamusal amaçlar ve hizmet gerekleri dışında kullanmamayı ve kullandırmamayı, bu mal ve kaynakları israf etmemeyi,*

** Kişilerin dilekçe, bilgi edinme, şikayet ve dava açma haklarına saygılı davranmayı, hizmetten yararlananlara, çalışma arkadaşlarıma ve diğer muhataplarıma karşı ilgili, nazik, ölçülü ve saygılı hareket etmeyi,*

** Kamu Görevlileri Etik Kurulunca hazırlanan yönetmeliklerle belirlenen etik davranış ilke ve değerlerine bağlı olarak görev yapmayı ve hizmet sunmayı taahhüt ederim.*

(Adı Soyadı)

(Tarih)

(İmza)

GÖREV YERİ VE UNVANI :.....

the establishment, duty and working procedures and fundamentals of the Council of Ethics for Public Service as to adopt and observe the implementation of ethical attitude principles such as transparency, impartiality, honesty, accountability, that should be abided by the public officials.

This Law covers all the personnel employed at departments included at the master budget, annexed budget administrations, public economical enterprises, floating capital establishments, local administrations and unions thereof; all the public establishments and institutions founded under the names of committee, upper committee, institution, institute, enterprise, organization, fund and similar possessing public judicial entity; chairmen and members of the management and auditory committee and council and supreme councils.

The provisions of this Law does not apply to the President of the Republic, members of the Grand National Assembly of Turkey, members of the Board of Ministers, Turkish Armed Forces, adjudication members and the universities (Article 1).

The Council is entitled to promote and ensure ethical standards in public service. Members of the Council are appointed by the Council of Ministers for a four-year term. Although the Council does not have any executive power, it receives and examines complaints about ethical misconduct of superior public officials.

regarding public officials that are at least general manager or at the similar level, with the claim that implementations are present at the public institutions and establishment in the scope of the Law that are violating the ethical attitude principles. The fact that which titles are to be deemed as equivalent of the general manager shall be determined by the Council by taking into account the organizational structure of the institutions and establishments and the character of the service they are executing (Article 4).

The Council prepared a regulation offering ethical guidelines which were adopted by the Prime Ministry on April 13, 2005. The board is empowered to determine the limitations of the prohibition concerning receiving gifts.

The aim of this Regulation

is to establish ethical culture in public, to determine the principles of ethical behavior of the public officials who have to abide while executing their duties, to assist them in order to display behaviors in accordance with these principles and to raise the confidence of community to the public administration by eliminating the situations which create distrust in the society and which impairs the principles of justice, integrity, transparency and impartiality in carrying out the duties, to inform the community about the behaviors they are entitled to expect from the public officials and to arrange the procedures and essentials of application to the Council (Article 1).

An Ethical Principles Contract was signed by all civil servants in accordance with the Regulation.

Konu: Hediye Alma Yasağı

İLKE KARARI

2007/1

Bilindiği üzere, mevzuatımızda kamu görevlilerinin doğrudan doğruya veya aracı eliyle hediye istemeleri veya almaları, görevleri sırasında olmasa dahi menfaat sağlama amacı ile hediye kabul etmeleri yasaklanmış bulunmaktadır.

25.5.2004 tarih ve 5176 sayılı Kanuna istinaden çıkarılan Kamu Görevlileri Etik Davranış İlkeleri ile Başvuru Usul ve Esasları Hakkında Yönetmelik'in 15. maddesinde "Kamu görevlisinin tarafsızlığını, performansını, kararını veya görevini yapmasını etkileyen veya etkileme ihtimali bulunan, ekonomik değeri olan ya da olmayan, doğrudan ya da dolaylı olarak kabul edilen her türlü eşya ve menfaat hediye olarak tanımlanarak, kamu görevlilerinin hediye almaması, kamu görevlisine hediye verilmemesi ve görev sebebiyle çıkar sağlanmaması temel ilke olarak kabul edilmiş ve kamu görevlilerinin yürüttükleri görevle ilgili bir iş, hizmet veya menfaat ilişkisi olan gerçek veya tüzel kişilerden kendileri, yakınları veya üçüncü kişi veya kuruluşlar için doğrudan doğruya veya aracı eliyle herhangi bir hediye alamayacakları ve menfaat sağlayamayacakları" belirtilmiştir.

Ancak, ilgili mevzuatındaki bu yasaklamalara rağmen kamu görevlilerine bazı özel kişi ve firmalar ile denetimi altında bulunan kuruluşlarca özellikle yılbaşı, bayram ve diğer özel günler bahane edilerek çeşitli hediyeler verildiği görülmektedir.

Kamu görevlilerine verilen veya kamu görevlilerince alınan bu tür hediyeler, kamuoyu nezdinde etik tartışmalara yol açmakta, kamuda yozlaşmaya, kamu görevlilerinin eleştirilmesine, yolsuzlukla ilgili algılamaların artmasına, kamu yönetimi ve yöneticilerine duyulan itibar ve güvenin sarsılmasına neden olmaktadır.

Bu çerçevede, kamu görevlilerinin hediye ile ilgili bu kurallara titizlikle uyması, özel şahıs veya şirketlerce çeşitli vesilelerle sunulan bu hediyeleri iade etmeleri ve bu hususta yöneticiler tarafından personele gereken uyarıların yapılması önem taşımaktadır. Ayrıca, hediye alınması halinde ilgililer hakkında, etik açıdan (genel müdür ve üstü düzeydeki kamu görevlileri için Kurulumuzca - diğer görevliler için yetkili disiplin kurullarınca) 5176 sayılı Kanun ve mezkur Yönetmelik gereğince gereken incelemenin yapılması öngörülmektedir.

Bu itibarla; konuyla ilgili olarak her unvandaki personele gerekli bilgilendirmenin yapılması hususunda bilgilerini ve gereğini arz/rica ederim.

Prof. Dr. Bilal ERYILMAZ

Başkan

All public institutions established Ethical Commissions and the Council organises training and awareness-raising activities.

Application Procedures and Essentials, provides provisions for the implementation of ethical principles and also examination of violations of ethical principles in public service. In

parallel to the Law No. 5176 (Article 4), the regulation describes the procedure of the application as follows (Article 33):

The applications that are related to the officials who at least have general manager rank or a rank equal to the level of a general manager that is accepted by The Council as in list on Appendix- 2 should be sent to the Presidency of Council. Other applications should be sent to the related institutional authority in order to direct them to the committees of institutional discipline authority. Applications by real persons via petitions should include their names, surnames, residences or business address' and signatures.

Detailed procedure about application process is explained by the regulation (Article 33, 34 and 35).

KURUL KARARI

Kamu Görevlileri Etik Kurulundan:

Dosya Numarası : 2008/ 97

Başvuru Tarihi : 02/10/2008

Karar Tarihi : 26/12/2008

Karar Numarası : 2008/206

A. BAŞVURANLAR

1 - M. Naim YALÇINEL

2 - Taner TALAŞ

B. HAKKINDA İNCELEME YAPILAN KAMU GÖREVLİSİ

Aytaç DURAK, Adana Büyükşehir Belediye Başkanı

KARAR

...

5393 Sayılı Belediye Kanunu'nun "Başkan ve Meclis üyelerinin görüşmelere katılmayacağı durumlar" başlıklı 27. maddesinde; "Belediye başkanı ve meclis üyeleri, münhasıran kendileri, ikinci derece dahil kan ve kayın hısımları ve evlatlıkları ile ilgili işlerin görüşüldüğü meclis toplantılarına katılamazlar" hükmü yer almıştır.

Benzer bir hüküm, 5216 sayılı Büyükşehir Belediyesi Kanunu'nda yok ise de, Kanun'un Büyükşehir Belediye Meclisi'ne ilişkin 12. maddesinin üçüncü fıkrası ile Büyükşehir Belediye Meclisi'nin çalışma usul ve esaslarına ilişkin diğer hususlarda Belediye Kanunu hükümlerinin uygulanacağına gönderme yapılmıştır.

Bu gönderme uyarınca Belediye Kanunu'nun 27. maddesindeki yasaklayıcı hüküm Büyükşehir Belediye Meclisi başkanı ve üyeleri için de geçerlidir. Kanun Koyucu bu hüküm ile belediye meclis kararlarının hiçbir etki altında kalınmaksızın, objektif ve tarafsız bir şekilde alınmasını sağlamayı amaçlamıştır.

Bu durumda Aytaç DURAK'ın, eşine ait taşınmazı da kapsayan imar planı değişikliğinin görüşüldüğü toplantıya katılmaması gerekirken, aksine davranışı Kanun'un yukarıda anılan hükmüne açık bir aykırılık teşkil etmektedir.

5176 sayılı Kanun'un 5. maddesinin verdiği açık yetkiye istinaden çıkarılan Kamu Görevlileri Etik Davranış İlkeleri ile Başvuru Usul ve Esasları Hakkında Yönetmelik'in ikinci bölümünde "Etik Davranış İlkeleri" belirlenmiş olup, "Dürüstlük ve tarafsızlık" ilkesini düzenleyen 9. maddesinin birinci fıkrasında, kamu görevlilerinin tüm eylem ve işlemlerinde yasallık, adalet, eşitlik ve dürüstlük ilkeleri doğrultusunda hareket edecekleri, ikinci fıkrasında da, "Kamu görevlilerinin, takdir yetkilerini, kamu yararı ve hizmet gerekleri doğrultusunda, her türlü keyfilikten uzak, tarafsızlık ve eşitlik ilkelerine uygun olarak kullanacakları" düzenlenmiştir.

Yönetmelik'in "Çıkar çatışmasından kaçınma" başlıklı 13. maddesinde ise; "Çıkar çatışması; kamu görevlilerinin görevlerini tarafsız ve objektif şekilde icra etmelerini etkileyen ya da etkileymiş gibi gözüken ve kendilerine, yakınlarına, arkadaşlarına ya da ilişkide bulunduğu kişi ya da kuruluşlara sağlanan her türlü menfaati ve onlarla ilgili mali ya da diğer yükümlülükleri ve benzeri şahsi çıkarlara sahip olmaları halini ifade eder. Kamu görevlileri çıkar çatışmasında şahsi sorumluluğa sahiptir, çıkar çatışmasının doğabileceği durumu genellikle şahsen bilen kişiler oldukları için, herhangi bir potansiyel ya da gerçek çıkar çatışması konusunda dikkatli davranır, çıkar çatışmasından kaçınmak için gerekli adımları atar, çıkar çatışmasının farkına varır varmaz durumu üstlerine bildirir ve çıkar çatışması kapsamına giren menfaatlerden kendilerini uzak tutarlar" hükmü yer almaktadır.

...

Yukarıda yapılan inceleme ve değerlendirmeler ışığında; Adana Büyükşehir Belediye Başkanı Aytaç DURAK'ın, eşine ait taşınmazı avantajlı bir duruma getiren imar planı değişikliğine ilişkin iş ve işlemlere katılmak suretiyle Yönetmelik'in 9. maddesinde düzenlenen "Dürüstlük ve tarafsızlık" ile 13. maddesinde düzenlenen "Çıkar çatışmasından kaçınma" ilkelerine aykırı davrandığına, kararın Resmî Gazete'de yayımlanmasına ve taraflara tebliğine, tebliğinden itibaren 60 gün içinde idari yargı yolu açık olmak üzere,

26/12/2008 tarihinde oybirliği ile karar verilmiştir.

Sanctions

Turkey's legislation on combat corruption has been harmonized with the international standards starting from the turn of this century especially. In this respect, Law No. 4518 on the Ratification of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions was first adopted by the parliament on February 1, 2000. Later, Turkish National Programme for the Adoption of the Acquis, including Priority Objectives Relating to Combat Corruption were issued by the Turkish government (24 March 2001).

As a part of efficiency and effectiveness program of the government in public administration, a working group to aid to the Committee on Effective Governance and Combat Corruption was formed on May 16, 2001. An Action Plan on "Increasing Transparency in Turkey and Enhancing Good Governance in Public Sector" was issued at the beginning of January 2002. Following the new early election, an Emergency Action Plan, including priorities for combat corruption, was issued by the 58th Turkish government, on November 16, 2002. A Commission on Increasing Transparency in Turkey and Enhancing Good Governance in Public Sector was established by the circulars of the Prime-Ministry (2003/17 and 2007/23).

Recently, Turkey ratified a series of the Council of Europe Conventions: Civil Law Convention on Corruption of 4 November 1999 on April 17, 2003; Criminal Law Convention on Corruption of 27 January 1999 on January 14, 2004 and Convention No.141 on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (Strasbourg Convention) on June 16, 2004, and adopted significant anti-corruption legislation such as Misdemeanor Law (No. 5326 dated 2005) and Law No. 5549 on Prevention of Laundering Proceeds of Crime (2006). In the meantime, Turkey has become a member of GRECO in 2004.

Disciplinary Penalties

The disciplinary provisions of the Law No. 657 shall not be applied to those who work at the public institutions and agencies which were established by special laws. The disciplinary provisions of the special laws are reserved (Article 125).

According to the Law No. 657, there are three rationale of imposing a disciplinary penalty:

- Do not fulfil the duties imposed by laws, statutes and regulations at home and abroad (Articles 6, 7, 8, and 11);
- Do not fulfil the things obliged by laws, statutes and regulations (Articles 26, 27, 28, 29, 30 and 31) and

- Carry out the things which were banned by the legislation

In accordance with the nature and seriousness of the disciplinary action (Article 125), Law No. 657 defines certain disciplinary penalties (“warning”, “reprimand”, “deduction from monthly salary”, “delay in the salary step increase”, and “discharge from the civil service”)

Nepotism, cronyism, and patronage within the civil service are indirectly subject to penal sanctions in Turkish law and are not defined as identical types of corruption. However, when any of these violations occur, it is considered to be either malpractice (neglect of duty) or abuse of office. (See Law No. 657 on Public Servants, Articles 7 and 29)

Law No. 3628 on Asset Declaration, Struggle Against Bribery and Corruption

Those who breach the provisions of asset declaration face with some penalties (Article 10):

Those who do not declare their properties within the time limits specified in Article 6 shall be warned by the authorities to whom the declarations are to be submitted. Those who do not declare their properties without good excuse within thirty days as of the notification of the warning shall be sentenced to a penalty of imprisonment for a term up to three months.

Those who do not declare their properties within the time limit given regarding the investigation shall be sentenced to a penalty of imprisonment for a term of three months to one year of imprisonment.

First of all, the relevant authority issues a warning to the person concerned. If unattended or validly unexcused within thirty days, the person concerned can be sentenced to a penalty of imprisonment for a term of up to three months. If the person under investigation fails to submit asset declaration within the assigned period, the term of imprisonment may be between three months to one year. Deceitful declarations are also subject to be sentenced for a term of six months to three years imprisonment unless it is subject to a heavier penalty (Article 12):

If a heavier penalty is not required by law, those who make false declarations shall be sentenced to a penalty of imprisonment for a term of six months to three years of imprisonment.

The penalties for unlawful acquisition of wealth, evading or hiding wealth are subject to a penalty of imprisonment for a term of three to five years (Article 13):

If a heavier penalty is not required by law, those who unjustly acquire property shall be sentenced to a penalty of imprisonment for a term of three years to five years of imprisonment and imposed a heavy fine from five million (read thousand) liras up to ten million liras.

Those who smuggle or conceal the unjustly acquired property shall also be sentenced to a penalty of imprisonment or fined in the same manner.

Secondly, a heavy fine and confiscation of the assets shall be decided (Article 14):

Properties unjustly acquired shall be confiscated. In cases where confiscation is not possible due to failure to get these properties or in the event that the entire property is not the subject of unjust acquisition of property, it shall be resolved to pay to the treasury a price equivalent to the asset unjustly acquired. This price shall be collected pursuant to the provisions of the Act on Collection Procedure of Public Receivables.

According to Article 15, those who were convicted by means of the above mentioned offenses are banned from public service for the period of conviction (if they breached the provisions on confidentiality and deceitful declarations) or for life time (if they breached the provisions of Article 13).

Finally,

Penalties set out in this Section cannot be deferred save for Subparagraph 1 Article 10, personal criminal penalties cannot be converted into money or injunction, the provisions of Article 119 of Turkish Penal Code shall not be applicable to perpetrators (Article 16).

Penal Code

The Penal Code of September 26, 2004 (Law No. 5237, Articles 235-236, 239, 247-266, 279 and 333) describes several offenses having to do with the corruption of public servants, such as bribery and embezzlement. These offences are basically related to “misconduct” or “unlawful benefit.” Major provisions of the Code are as follows:

Procurement fraud

Article 235. - (1) Any person who acts fraudulently in goods and service procurement on behalf of public institutions or agencies shall be sentenced to imprisonment for a term of between five to twelve years.

(2) Following situations shall be considered as fraudulent act:

..

1. To enable persons who do not meet the eligibility criteria or requirements for the bid;

2. To leave offered goods out of assessment regarding them not to meet the qualifications described by the terms of reference even though they have the specified qualifications.

3. To accept the offered goods for assessment regarding them to meet the qualifications described by the terms of reference even though they do not have the specified qualifications.

b) To enable others to access the information related to the offers that must be kept confidential according to the procurement legislation and the terms of reference.

...

(4) Public officials who obtained benefit by means of acting fraudulently shall be sentenced to a penalty in accordance with penal provision for this crime.

Fraud during the discharge of Contractual Obligations

Article 236:

(1) Any person who acts fraudulently during the discharge of contractual obligations with a public institution, public corporation, professional institution (presumed in law, to be public institution), a company (incorporated by the aforementioned professional institution, or a public institution or a public corporation or a foundation operating within the framework of such institutions or corporation), an association acting in the public interest; or a co-operative shall be sentenced to a penalty of imprisonment for a term of three to seven years.

(2) The following act are presumed to constitute fraud during the discharge of a contractual obligation;

a) Delivery, or accepting delivery, of goods other than those described within the contract;

b) Delivery, or accepting delivery, of fewer goods than described within the contract;

c) Accepting goods outside the limit specified in the contract, or the conclusion of the tender, for their delivery.

d) In construction tenders, accepting the completed construction, or material used in such, which does not comply with the conditions, quantity or quality as described within the contract or in the detailed specification of tender;

e) Accepting an obligation of service as having been completely discharged although the service rendered was deficient or contrary to the term described within the contract or in the detailed specification of tender.

(3) Any person who is under an official duty who gains a benefit through his involvement in fraud during the discharge of contractual obligations shall be additionally sentenced according to the relevant offences.

Disclosure of Confidential documents of Information Relating to Commerce, Banking or Private Customers

Article 239

(1) Any person who discloses confidential information, or documents, relating to commerce, banking or private customers, which he holds by virtue of his title, duty, profession or trade, to an unauthorized person shall be subject to a penalty of imprisonment for a term of one to three years and a judicial fine up to five thousand days, upon complaint. Where such information or documents are disclosed to an unauthorized individual by a person who unlawfully acquired such information or documents such person shall be subject to a penalty in accordance with this section.

(2) Section 1 shall apply to information relating to scientific invention and discovery, and the industrial implementation of such.

(3) Where such confidential information is disclosed to a non-citizen (who is not resident in Turkey) or his staff the penalty shall be increased by one third. In such case, no complaint is required.

(4) Any person who, by using force or threats, compels another to disclose the information or documents within the scope of this article shall be subject to a penalty of imprisonment for a term of three to seven years.

Within the scope of confidential information related offences; if any public officer “who publishes or discloses any confidential document, decision, order or other official notification under his control, or within his knowledge, by virtue of his office, or who facilitates, by any means, the access to such information by another shall be sentenced to a penalty of imprisonment for a term of one to four years” (Article 258). The same penalty shall be applicable where a public officer commits such an offense after the expiry of his status as a public officer.

Additionally, “exploitation of state secrets and disloyalty in government services” is also an offense regulated by the Code (Article 333):

Any person who uses any knowledge, which has been obtained by virtue of holding a public office, of scientific explorations, new discoveries or industrial innovations, either for his or another's benefit, and such information is to be kept confidential for State security, shall be sentenced to a penalty of imprisonment from five years to ten years and judicial fine up to three thousand days.

Embezzlement

Article 247

Any public officer who embezzles property, for the benefit of himself or another, which is under his custody or control or which is held by him as a consequence of his duty shall be subject to a penalty of imprisonment for a term of between five years to twelve years.

Where this offense is committed by deception for the purpose of concealing the embezzlement, the penalty shall be increased by one half.

Where the offense is committed with the aim of returning the property after temporary usage, the penalty may be reduced by up to one half.

However, “Mitigating Factors|” can be taken into account by judge: “Where the value of the subject of the offense (embezzlement) is minimal then the penalty to be imposed shall be reduced by one third to one half” (Article 249).

Extortion

Article 250

Any public officer who compels another to make a promise or provide a benefit for himself or another by misusing the influence derived from his office shall be subject to a penalty of a term of imprisonment from five to ten years.

Any public officer who convinces another, by deception, to make a promise or provide a benefit for himself or another by misusing the influence derived from his office shall be subject to a penalty of a term of imprisonment from three to five.

Where the offense defined in section two is committed by taking advantage of a person's mistake the sentence to be imposed shall be a penalty of imprisonment for a term of one to three years.

According to Article 251 of the Penal Code, those who fail to supervise as a superior shall be legally responsible, too:

Where a public officer, in a supervisory role, intentionally ignores the commission of an offense involving embezzlement and extortion, he shall be culpable as a joint offender.

Any public officer who provides the opportunity for the commission of the offenses of embezzlement or exploitation by failing to fulfill his supervisory duty shall be sentenced to a penalty of imprisonment for a term of three months to three years.

Bribery Article 252

Any public officer who receives a bribe shall be sentenced to a penalty of imprisonment for a term of four to twelve years. The person furnishing the bribe shall be sentenced as if he were a public officer.

Where the parties agree upon a bribe, they shall be sentenced as if the offense were completed.

Where a person who receives a bribe, or agrees to such, is a person in a judicial capacity, an arbitrator, an expert witness, a public notary or a professional financial auditor, the penalty to be imposed according to section one shall be increased by between one third and one half.

A bribe is defined as the securing of a benefit by a public officer by his agreeing with another to perform, or not to perform, a task in breach of the requirements of his duty.

Section one shall also apply where, through a breach of duty, a benefit has been conferred upon a person acting on behalf of a professional institution (presumed in law, to be public institution), a company (incorporated by the aforementioned professional institution, or a public institution or a public corporations or a foundation operating within the framework of such institutions or corporation), an association acting in the public interest, a co-operative, or a public joint stock corporation, in order to establish a legal relationship with such entities or in order to continue an existing legal relationship with such.

The following actions shall be presumed to be bribery: offering, promising or giving a direct, or indirect, benefit, for the purpose of ensuring the performance or non-performance of a task, or obtaining or protecting an unjust benefit concerning international commercial activities, to an elected or appointed person in a foreign country who is a parliamentary officer, a member of a public institution charged with judicial or administrative duties; a person working in an international organization that has been established by another international public institution, state or government (regardless of its structure or function), or any other person performing a duty having an international character in a foreign country.

Other legislations on bribery include; Article 128, 135, 140, and 248 of Law No. 5271 on Penal Trial, Law No. 3628 on Property Declaration, Struggle against Bribery and Corruption, Article 17 of Law No. 4734 on Public Procurement, Article 25 of Law No. 4735 on Public Procurement Contracts, Article 23 and 27 of Law No. 5506 Concerning ratification of UN Convention Against Corruption, Law No. 4518 on Combating of Bribe of Foreign Public Officials in International Business Transactions -OECD Convention.

Unlawful benefit

At institutional level, the Code underlines that “where a legal entity secures an unjust benefit through the offense of bribery security measures specific to legal entities shall apply” (Article 253). In this respect, an “effective remorse” can be taken into the account in the following situations (Article 254):

Where, prior to the commencement of an investigation, the person in receipt of the bribe presents the consideration of such, in its original state, to the authorities, no penalty shall be imposed for the offense of bribery. Where, prior to the commencement of an investigation, a public officer who, after having agreed to receive a bribe, informs the authorities of such, no penalty shall be imposed.

Where, prior to the commencement of an investigation, a person who offered and gave a bribe to a public officer informs the authorities responsible for investigation of such, no penalty shall be imposed and the bribe he gave to the public officer shall taken from the public officer and handed back to him.

Where, prior to any investigation, any other person who participates in the offense of bribery demonstrates remorse by informing the authorities responsible for investigation of such, no penalty shall be imposed upon such person.

The Code describes “Securing a Benefit for a Task outside the Scope of Activity” as an offense against trust of public administration trust and practice (Article 255):

Any public officer who secures a benefit by giving the impression that he is able to perform a task, either by himself or through another which is outside the scope of his duty and is unauthorized shall be sentenced to a penalty of imprisonment for a term of one year to five years and a judicial fine.

Misconduct

One of the major and widely observed offenses related to public servants is “Misuse of Public Duty” regulated separately by the Code as follows (Article 257):

Excluding any situation defined elsewhere as a separate offense in law, any public officer who secures an unjust financial gain for another or causes any loss to the public or an individual by acting contrary to his duty shall be sentenced to a penalty of imprisonment for a term of one to three years,

Excluding any situation defined elsewhere as a separate offense in law, any public officer who secures unjust financial gain for another or causes any loss to the

public or an individual by failing to discharge his duty, by omission or delay, shall be sentenced to a penalty of imprisonment for a term of six months to two years.

Any public officer who secures financial benefit for himself, or another, in return for fulfilling the requirements of his duty shall be sentenced according to section one, provided such act does not constitute the offense of extortion.

In parallel to the provision of Law No. 657 “Trading by a Public Officer” is prohibited by Article 259 of the Code:

Any public officer who attempts to sell goods or services to another by using the influence derived from his duty shall be sentenced to a penalty of imprisonment for a term of up to six months or a judicial fine.

Use of Public Sources

Use of public vehicles or materials in public service during the commission of an offense also constitutes an offense (Article 266):

Provided that a constituent element of an offense does not include a reference to a public officer, then where a public officer uses a vehicle, or material, which he holds as a result of his duty, during the commission of an offense, the penalty to be imposed shall be increased by one third.

Any public officer, who fails to report an offense or delays in reporting such offense to the relevant authority after becoming aware of such offense in the course of his duty, shall be sentenced to a penalty of imprisonment for a term of six months to two years. A judicial law enforcement officer`s penalty shall be increased by one half (Article 279). If this offense was committed by a member of the medical profession who provides health services to report an offense penalty of imprisonment is up to one year (Article 280).

Law No. 2499 on Capital Markets

Offences against the abuse of all properties of the Capital Market Board of Turkey are regulated by a special provision (Law No. 2499 Article 25):

b) The money, documents and all kinds of properties of the Board are considered State Property. The Chairman, members, and personnel of the Board who commit offenses against these who abuse or neglect their functions and duties shall be subject to the same penalties as civil servants. Prosecutions on these subjects shall be implemented in accordance with the general provisions.

An Assessment of Managing Conflict of Interest in Turkey

The concept of conflict of interest is not regulated by primary legislation for all public officials in Turkey. Although the Constitution and some laws (Law No. 657 and Law No. 5237) state some principles such as “public interest” and “impartiality”, it was the first time the Regulation on the Principles of Ethical Behavior of the Public Officials and Application Procedures and Essentials of 2005 (Article 13) referred to the principle of “avoiding conflict of interest.” However, under what conditions a conflict of interest may occur is not specified by the Regulation.

Turkish ethical infrastructure is essentially based on the rule-based approach (*compliance-based ethics regime*). Considering the legal provisions prescribed by the legislation it can be said that the ethical system in public administration which is in transition attempts to prevent unethical behavior/attitude by adopting general prohibitions by law. In fact, the Regulation seems to be an indication of transition to a principle-based approach (*integrity-based ethics regime*) in Turkey.

Naturally, in the process of free market economy of 1980s and 1990s the establishment of the so-called “independent administrative authorities” such as Capital Market Board and Public Procurement Authority needed some special provisions concerning ethical behavior of their officers including “avoiding conflict of interest.” However, even these provisions are limited and do not cover all aspects of the phenomenon. Procurement process in local administration is open to potential and actual conflict of interest. In this respect, it can be said that there are lots of prohibitions but no integrated legislation for all which can make the system effectively work.

Similar to the countries with strong administrative law traditions Turkey has also a long list of incompatible activities and situations for public officials. However, the related provisions are too general and do not specify conditions. Although civil servants cannot be members of political parties “what will happen if a civil servant campaign for a political party voluntarily?” More importantly, Law No. 2531 on post-employment restrictions for public officials is not effectively implemented. Considering the fact that lobbying is not regulated by law in Turkey and bypassing the provisions of this law may cause more problematic situations. Heads and the members of the Boards have strict limitations on outside employment for two years after leaving the office as well as post-employment restrictions. Confidentiality of official information during and the post-employment period is also effective in these institutions.

Considering avoidance, disclosure, divestment or resignation, or recusal dimensions of the issue, the Turkish legislation do not have general and firm provisions. It can be said that there are sufficient statements to encourage avoidance yet how effective is this provision in practice doubtful. Although asset declaration including family members is a regular practice for all public officials imposed by the Constitution and the Law. No. 3628, there is no general requirement of disclosing conflict of interest. In fact, the effectiveness of the former is also questionable due to the fact that files of declaration of assets are not inspected by the relevant authority which is a legal requirement unless there is a discipline or criminal investigation. The last three dimensions are not regulated by law exclusively. Only the members of the boards of independent administrative authorities such as Capital Market Boards, Supreme Council of Radio and Television are subject to these provisions extensively.

Despite the fact that civil servants cannot engage in economic activities and such activities of their immediate family members must be declared in definite period the effectiveness of these provisions is doubtful. There is no mechanism such as “blind trust” assignments of pecuniary interests for appointed public officials in Turkey.

Similar to many OECD countries monitoring compliance is mainly accomplished by superiors in Turkey, too. Moreover, there are inspectorates in the Prime-Ministry and the ministries. Furthermore, internal auditing system for financial management created another mechanism. Although all of these mechanisms are directed to eliminate corruption in public service, a harmonious reorganization of all these institutions is a subject of a public administration reform. There is no external mechanism to examine the conflict of interest situations effectively. Public Controller (Ombudsman) law which was adopted by the parliament has been under constitutional review since 2006. Similar to many OECD countries Turkey does not have a system of detection by whistleblowers regulated by law.

The organizational affiliation of the Council of Ethics, which is the sole institution directly related to ethical dilemmas in Turkey causes a significant legitimacy problem. Despite the qualifications of the members of the Council the political and administrative tutelage of the Prime-Ministry is perceived that it is a part of the government. Secondly, organizational capacity of the Council is not sufficient to fulfil all functions prescribed by the law and the regulation. The activities of the Council in order to create an ethical culture in general and to avoid conflict of interest in special gradually increasing. Although six years passed since the establishment of the Council, it is not widely known by public officials too.

Despite few striking examples, the ethics commissions in central and local administrations are not effective bodies. They were officially formed by the relevant authorities yet many of them did not make any ethics related activity. It is up to the initiative and personal efforts of the relevant public officials.

Alongside ethics training, the urgent need for consultation in resolving conflict of interest related issues needs to be organized effectively. Public officials do not have any clear idea about “Why they signed the ethics contract?” “What does conflict of interest really mean?” “How to act in special circumstances?” In other words, it seems that public officials act and behave according to their own norms and values developed throughout socialization period or according to the values of the superior.

It should be noted that the principles of ethical behavior such as “impartiality,” “honesty,” “prevention of unjust interest” are explicitly defined in the Turkish legislation yet the principle of “accountability” is referred implicitly or little.

Both disciplinary and criminal sanctions are regulated in such a way that public officials can refrain from violating the provisions. However, immunity of a public official from prosecution constitutes the major obstacle. Similarly, holding a disciplinary action is of the discretionary authority of the superior. Therefore, effectiveness of the discouraging disciplinary provisions is under question. The law enforcement mechanisms are not covered by this study, however, it can be said that alongside with the international cooperation and the capacity building measures prosecution of the corruption related offences has been improved in Turkey.

As complementary of legal framework, political campaign finance and lobbying is not regulated in Turkey. Despite the constitutional requirement (Article 69/last) the parliament failed to adopt a framework for campaign finances of candidates and political parties. This constitutes a big loophole for potential and actual conflict of interest relations. Registration of all campaign spending sources may have a preventive effect.

Survey on the Perception of Senior Civil Servants on Conflict of Interest

The scope of this study is basically limited to conflict of interest; however, it covers a diverse range of issues extending from public service values to available infrastructure for establishing an effective ethical regime in Turkish public service. Keeping in mind that Turkish public administration has been passing through a transformation for decades and the reform in public service has been a continuous but failed objective, this research is more concerned with picturing a general perspective of the situation in Turkey.

Following the establishment of the Council of Ethics for Public Officials in 2004, the Regulation which was adopted in 2005 set the Principles of Ethical Behavior in Turkish public service, including avoiding conflict of interest and required the public institutions, central and local branches, to form an ethics commission consisting of at least three people from the institution in three months in order to establish and develop ethical culture, to advise and direct about the problems the personnel face with about the principles of ethical behavior and to evaluate ethical practices. After four years, a survey with special focus on ethical standards assessed by the first hand knowledge of higher public officials might provide an overview on the legal and institutional developments in ethics.

Research Methodology

The research methodology to explore the perception of ethical standards in general and of conflict of interest in public service specifically is based on a qualitative analysis of in-depth interviews with the selected public officials from the selected cities: three metropolitan cities –Ankara, İstanbul and İzmir- and three medium size cities –Mardin, Trabzon and Uşak. The last three cities were selected according to the State Planning Organization’s Socio-Economic Development Index of 2005. It is considered that by means of this sampling, the project may describe the variations on ethics culture between different localities (small vs. big cities) and different socio-economic development levels, if any.

A Convenience sampling method was used in this survey. The members of the provincial ethics commissions constituted the first group of interviewees. The second groups consisted of the representatives of the departments of each municipal government –basically senior officials, head of departments or equivalent-. This second group is consisted of those who have civil servant (*memur*) status, too. Interviewing with the senior/junior officials from the relevant departments of the municipalities would provide both their views on ethical standards in their units and their interaction with the citizens on ethical manners at work. Since the research design did not include a citizen dimension, this would help to explain the major problems occurring between the public officials and the citizens at the time when

public service is provided from the perspectives of the former. Similar interviews with seven senior public servants at the selected ministries (Finance, Education, Energy, Public Works and Settlement, and Health) and the deputy-head of Capital Market Board (the oldest independent administrative authority) in Ankara. Most of them were the members of ethics commission of their institutios.

Before holding interviews, we visited the superior public officials, namely the minister, the governor, or the secretary general of the institution to explain the scope and purpose of the project. Due to time limitation, the interviews were held by a panel of all interviewees basically. However, we had also chance to talk with some of them after panel interview. The interviews with governors, mayors and public officials in Ankara were held individually.

During the interviews, at least one case study (See Appendix A) was introduced to the interviewees and after they read the text carefully they were asked the following questions: “Do you observe any unethical/unruly behaviour/attitude in the case study you read?” “If any, what are these unethical/unruly behaviours/attitudes?” “Are you familiar with such cases in your current work environment or were they common in your previous post?” “How would you act if you were in the place of actors involved in the case study?” In the second part of the interview, two more questions were asked to the interviewees. First, “What are the most important factors to lead unethical/corrupt activities in public service?” Second, “What is/are the most important institutional value(s)/norm(s) in your institution and how do you teach this/these to the new generation civil servants?”

These open ended questions followed by an open discussion originating the cases with special reference to ethical infrastructure, violations of legislation, and the expectations of civil service in general.

Interviews were set through the instrument of governorship in the selected cities An official letter from the Council of Ethics for Public Employees indicating the scope and objective of the project and the name of the project coordinator was also sent to each governor’s office earlier. Interviews were conducted in the period of 15 December-15 January, 2008. Except for Ankara, the governors were visited and informed about the project personally and then a deputy-governor helped the organization of the interviews with the members of the provincial ethics commission and the municipal government.

Except for few cases; interviews were digitally-recorded and deciphered separately. The interview texts were analysed qualitatively and presented anonymously.

General Observations

It should be underlined that both the governorships and the municipal governments expressed a great interest and attention to this survey by providing time and arranging personnel in a short period of time. Panel interviews took four hours on average. Individual ones varied between one to three hours according to the time reserved by the interviewee.

Panel interviews, as opposed to the expectations, provided a more open discussion environment on the subject matter. With the presence of other colleagues, the interviewees felt secure in expressing their “true” thoughts. However, while some of them expressed themselves extremely few talked about the facts common to everybody. Due to their position in the rank and file and the status of the project owner, the Council of Ethics for Public Employees, many of the interviewees started talking reserved. Especially in municipalities, they considered this study as a survey directly initiated by the Prime Ministry. During the interviews these obstacles were generally minimized and an open and free conversation environment was created.

First of all, all interviewees expressed how they are careful in complying with the rules governing public service, including the Constitution, and shared good examples from their experiences with a good faith (*bona fides*). On the other hand, they agreed that there are evidences of “corruption” and “graft” in public service but this is a matter of scale. There are big ones and small ones. There are several factors affecting a civil servant’s behavior in such cases. Sometimes, without considering the legal/social consequences of a small favor for a relative/friend, a civil servant implements the procedure flexibly at the expense of public interest. However, it is understood once more that such small “favors” e.g. speeding up a bureaucratic process, became a part of organizational culture and is widespread in practice.

Secondly, it was not clear in the minds of many civil servants “what is moral and what ethics is?” Some interviewees expressed lengthy ideas on moral and religious values. However, the term ethics is basically perceived as a new, alien and technical concept. Many have a general notion about ethics yet they do not have a detailed understanding of the major aspects of the subject matter. Although what is moral has an overall consensus among the participants but ethics is considered to be something imposed or imported. In any case, ethics is also taken as something necessary and “required by this century.”

Thirdly, although the civil servants were aware of the concept of “interest” but no idea about whose interest creates a conflict. They are well aware of the concept of “public interest” in public service, they do not know or neglect to know the fact that conflict arises between the

An interviewee's assessment:

Honest persons must be braver than dishonest ones. On the one hand, a security chief who was banished from Ankara to Edirne does not act impassivity and clamp down on corruption in custom, health service and municipality. On the other hand, a chief physician at a public hospital accepts the membership of audit board of a private hospital and earns a high salary from this position. Another example, a ministerial inspector accepts the position of membership in the executive or audit board of joint ventures of the ministry He does not go to auditing of this company but his colleague does. A bank examiner resigns from his position due to his failure in auditing bank Y. After a while, he starts working at bank Y as a high-pay director. This is a reward of his failure. A tax inspector also starts working at companies he audits after he learns the professional tricks. These are widespread. A judge at the age of 23 starts his career with a corrupt relation. He searches references for being a judge. Then, one can observe the residues of this corrupt relation in his career or in his subconscious at least.

public and personal interests. Alternatively, some of them called the situation as “convergence of interest.” They comply with the principle of public interest basically but when their interests appear they fail to care it.

Fourthly, only one of them remembered the oath that he took an oath when he entered the public service. Such ceremonies have been a part of privileged status of being a civil servant. In fact, this oath refers to the guiding principles to be followed by a civil servant (memur). This may be an indication that oath-taking has no practical value at all.

Fifthly, many of them expressed that recently they have signed the ethics contract but they do not know the purpose of this contract! They were not asked “Did you fully read the Regulation and remember the basic guiding principles” but it could easily be said that none or few of them –only those who work at the ministries- read it due to their duty, position and responsibilities. Especially the superior officials brought a copy of the Regulation along to the interview.

Most interviewees were not aware of what the Council is and does basically. Many argued that it may be difficult to apply such a set of values and ethics (the Regulation) to daily routine of bureaucracy. It was also emphasized that senior officials/politicians need to demonstrate their commitment to values and ethics in

their decision making and their interactions with civil servants and citizens. The lack of commitment is reflected in conflicting values and messages in many areas, e.g., hire the right person but respond to employment equity; take risks and improve, but don't make mistakes.

Moreover, hiring an unqualified person to certain positions creates fidelity and then s/he pays back. A person, who was promoted to a position without merit, follows his benefit or the benefit of the person who appointed him to that position. Most interviewees underlined that public service is not based on merit system which is the major cause of “graft” and

corruption. Appointments made by unmerited ways and a high turnover at the level of senior officials undermine the importance of role model in public service. Public service is not based on an effective merit system. Although the centralized entrance exam (KPSS) eliminated favouritism in written exams, oral exams are open to any influence. Interviewees were unanimous that the key to public sector integrity is leadership: the tone at the top. Political influence in the promotions above the level of section chief is widespread. Such kinds of employees do not take risk and initiative because they do not know their job description.

An interviewee's assessment:

Ministry of Finance is crucial for all public institutions, therefore, a spoiled relation may break out. In order to maintain good relations with this ministry any mediation demand is quickly accepted. I do not attend the hiring commission or I do not give reference about someone in another institution. My colleague asks mediation from me for hiring someone in my institution.

It is expected that lawmakers –politicians- must comply with the rules, first. As opposed to this, it cannot be expected the practitioners –public officials- to be loyal to these rules. In other words, unless politicians become ethical it should not be expected that public officials ought to be ethical. It is unanimously supported that “political influence” is widespread especially in municipalities. Civil servants always refuse illegal demands of the citizens; however, citizens eventually find a political connection and solve their issue. Some expressed the fact when they opposed the illegal demands of the citizens they faced with a death threat.

Similarly and more importantly some of the interviewees argued that it is a fact that there is a cycle of money through political campaign finance. Procurement process is one source of political rent-seeking. Although all participants from municipalities expressed that their institutions implement the rules carefully they underlined the fact that there are legal loopholes and discretionary authority offers bid to any client firm. If there is a price of citizen's vote citizens cannot make the corrupt people accountable. Therefore, the biggest conflict of interest is the fact that there is a price of each vote. There is no public accountability in public service, citizens do not complain, or complain about the cases adverse to them.

Furthermore, it is underlined that socio-economic conditions of public officials are not compatible with the duty they perform. Personal rights and psychological situation of employees are insufficiently regulated by the personnel regime in Turkey. Unfair salary system is another important factor for negligence of ethical principles. This is especially true

A real story:

During the Democrat Party period in Turkey (in 1950s), a private company offers a partnership to the son of the former Prime Minister Adnan Menderes. The son tells this offer to his father.

Adnan Menderes: Do you have sufficient money to be a partner in this business?

The son: No, I don't, but they did not ask money but want me to become a partner because of my knowledge.

Adnan Menderes: They want to set a partnership not with you but with me as Prime-Minister. And then they will get a payoff in return of your partnership without capital. Therefore, you would rather continue using your knowledge to become an officer at the Ministry of Foreign Affairs.

for those who audit a company of trillions of liras. Wage inequality in public service and economic pressures lead civil servant to act improperly. There is no clear-cut job description for any public official except for payroll. In some units, the excess volume of workload also causes unethical behaviour.

As a result of booty culture spoiling public resources is considered usual in this country. It is observed that the superiors permit the lowers to use public vehicles for private purposed when and if the official duty is not jeopardized. For example, a driver may stop on the way to an official duty and may pay his utility bill or shop at the grocery store.

All participants shared that distrust is a major issue in the society. Participants agreed trust is easier to destroy than to create, whatever the causes. A single incident can demolish what may have taken decades to build, whether in the public or private sectors. Fortunately, history shows recovery of trust is possible; periods of low confidence in the past have been

followed by periods of rising confidence.

There was a strong consideration among the interviewees that the “things” shall be conducted unjust. This constitutes the basis of unethical behavior in public service. On the other, the bureaucracy does not sufficiently inform the public or the procedures change quickly. Consistency in public service should be essential. Double standards may lead to unethical behaviour. In other words, loopholes of the legislation also cause unethical behavior.

Many of the participants expressed that average moral values is below the ethical values. Everybody attempts to find a way to do his affair at bureaucracy unfairly but expects others to comply with the rules and regulations. Ethical values exist in our culture; however, we have forgotten them. The current societal values do not reject the unruly behavior. Therefore, public employees prefer to conform to the dominant order.

An Interviewee's assessment:

Public procurement constitutes the most important area where conflict of interest arises. Pre-procurement period should be kept confidential until the procurement day. In collaboration with security and intelligent units, cost of procurement should be determined carefully. Transparency needed on the procurement day and after but not during the pre-procurement period. Otherwise some people stir up interest in procurement process.

An interviewee's story:

I was a member of the hiring committee. I turned off all my phones; however, many people reached me to get help before the interviews took place. In another case, before I was informed about the fact that I would be a member of a hiring committee, a friend of mine called me and asked me to help one of his relatives in the interview.

Interviewees argued that sometimes individual characteristics take precedence in this process. In some occasions, “gaining a benefit” is subject to personal decisions. A person who can afford being excluded from the institution and criminal sanctions may attempt to do unruly behavior. When and if superiors are tolerant to such employees for one or another reason and his behavior infects organizational integrity or creates divisions.

Confidentiality was described as an ethical issue by most interviewees. They were aware of the importance of maintaining confidentiality and felt comfortable with the procedures in place to do this. In fact, it was argued that especially in small localities many of the confidential information are available due to clientilistic relations and insider information. In this context, what is “state secret” becomes a usual news until it arrives at their office!

On top of all, the interviewees pointed out that there is no organizational culture, therefore, public servants do not have a value but nepotism and

clientilism are widespread. Principles guiding the behaviors and attitudes of public officials are regulated by law. However, corruption in public sector during the post-1980 period caused erosion of ethical/moral values in public administration. Ethical values and principles are not considered as important as technical qualification of an employee such as computer knowledge and good command of speaking. On the other hand, there is no official mechanism of teaching the existing organizational culture in many institutions. In service training has become a kind of leisure activity together with family members. Therefore, values, norms and principles guiding public officials are learnt by means of “mastery” relations. This leads to different perceptions of guiding principles in public service in accordance with the “priorities” of the sector, the agents and the circumstances.

Civil servants are reluctant to come forward and report suspected wrongdoing. Civil servants who have career and personal relationship in the workplaces are afraid of taking risk.

Lengthy investigative processes and public inquiries may be abrasive. Whistle blowing, which is not regulated by law in Turkey, on suspected wrongdoing is the 'right' thing to do, however, it means disloyalty to the employer and colleagues. Organizational culture in many public institutions is closed, secretive and risk-averse. Bad news is hidden as long as possible for fear of public scandal and punitive political reaction.

It is widely argued that discretionary authority of some superiors causes several ethical issues including conflict of interest. For example, planners should interact with investors to facilitate development. In this process, planners either compromise or use their discretionary power. Instead of following the rules they may negotiate something "behind the scene." How can we trust ethics of planners (hidden interest) in this negotiation? It is clear they protect public interest or not? Additionally, some superiors intentionally protect some employees due to relative/friendship/political relations even though these employees violate some simple principles guiding public service. In these circumstances, an ordinary civil servant faces an ethical dilemma between different attitudinal preferences.

Finally, almost all interviewees criticized why the Regulation isn't applicable to politicians and academic personnel and some others. According to their view, this creates discrimination without any rationale.

Within the scope of this study it was observed that there is an implicit consensus on the need for an effective system of guiding principles in Turkish public service. While some public officials emphasize on moral (religious/societal or combination of both) dimension of the issue others prioritize an effective ethics regime regulated by law or code with sanctions. Although it is not discussed few of them mentioned that if the case does not fall into the scope of criminal investigation all wrongdoings are subject to paper over the cracks. Therefore, there is a need for organizational effort too. In order to accomplish this objective, it was always repeated that a committed leadership together with the sincere participation of all stakeholders, including the greater public, media and non-governmental organizations is necessary. Otherwise, they are the cogs in the machine. It is equally shared that these efforts must be combined with the efforts of the formal education from seven to seventyseven.

Dominant (Core) Values in Public Administration

During the interviews, we asked the interviewees "what are the most guiding (core) public service values according to their personal experience?" They listed lawfulness (rule of law), impartiality/honesty and public interest as the most recognized values. Service principle and duty of care stated moderately and followed by equality, and transparency/openness. And accountability was the last recognized value.

Although the interviewees complained about unfair practices the principle of rule of law has a strong emphasis in Turkish public service. The phrase “according to black book” is still dominant principle for civil servants. This was especially true for members of civil administration (mülki idare). On the other hand, service principle and fairness were estimated the most core values in municipalities.

Public servants have a general understanding of these concepts basically developed through their personal experiences yet lack of current challenges significantly. For instance, the term public interest is considered to be an abstract concept above all everything. However, how do they apply these concepts in practice requires another survey.

It is striking that “avoiding conflict of interest,” “accountability” and “unlawful benefit/gift receiving” which are the most important principles of the Regulation and the Ethics Contract, none referred to them in priority. The first two concepts are new to Turkish administrative culture as well as to the society and they are in the process of taking their forms. Gift receiving/giving (“lavishing”), on the other hand, is very wide spread in Turkish culture. It is argued that receiving a gift as a bribe is not acceptable or a gift beyond acceptable value is not correct. However, gift giving and gift receiving at the times of celebrating a completed job etc. should not be considered as a bribe. Refusing a gift is not approved in Turkish culture. While it is widely argued that there is no small or big gift Some of the interviewees stated that “an ordinary gift” is nothing we have to focus on “big corruptions.”

The ethical values specified in the Regulation were not incorporated by the public officials very well. However, the representatives from the municipalities expressed the challenging concepts such as transparency, openness and accountability more than the representatives from the provincial ethics commissions. It is obvious that municipalities are more prone to changes than civil administration. It was obvious that most public officials do not have time to think about these values under the limitation of daily routine. Although the relevant departments of some ministries organize regular in-service training on these matters there is a clear need for ethics training in provincial organizations.

According to the available data through web pages of the ministries and other public institutions one can generalize that ethics commissions and ethics training have not been given priority consideration. In provincial organizations, it was observed that the ethics commissions were formed on paper but did not convene until recently. Therefore, there is an urgent need to regenerate the ethics.

The interviewees also mentioned some other values which are not present in the Regulation such as loyalty to public, empathy, a consistent relation between the superior and the lower, effectiveness and responsibility. Loyalty to public as a value comes close to service principle. Empathy can be linked to respectability and confidence. Consistent relation between the superior and the lower can be understood as courtesy and respect. Effectiveness is a part of avoiding extravagance. And finally, responsibility is implicitly linked to accountability.

Finally, it was observed that in civil administration (mülki idare) and financial institutions (maliye) civil servants have established professional principles and values institutionally. However, in other institutions values are not established institutionally. Civil servants follow the values they learned in the family, in their peer groups or by an influential superior. Therefore, institutionalizing values is the major phenomenon in Turkish public service.

Common Comments of the Interviewees on the Case Studies

Interviewees overwhelmingly agreed that case studies that they read were very expressive of the “degeneration” and “erosion” in public service and reflected the reality. However, most of them stated that “they hear such rumors or read from newspapers” but these are not “usual” in their current institution.” Few of them argued that these behaviors/attitudes might be legitimate if the relevant actors did not intend to obtain an unfair benefit. They also underlined that individuals may violate the rules unintentionally under the influence of an external factor, economic, political or so on. Therefore, it is equally important to question the constraint factor(s) leading to an unethical behavior.

Case 1:

His behaviour is unethical but very much humanly. Any parent who faces a similar situation can act similarly. A father has to save his kids especially when a daughter is concerned. Unemployment and economic crisis might have made him hopeless. The director also acted whatever a usual friend does. This is a very widespread situation around us. We would also act similarly in this case.

DECISION: NO CONFLICT OF INTEREST AT ALL

Case 2:

Public vehicles are used by civil servants frequently. There are loopholes in the legislation and sometimes superiors act tolerantly. We also permit a driver to stop and pay his electricity bill etc. on the way to his official duty. He can do both public duty and his personal business

simultaneously if this does not obscure the public duty. Public do not express a negative attitude towards such things and never complain about it. However, unless a senior official permits a lower civil servant he cannot attempt to do such things. The phrase “my civil servant knows how to survive well!” creates a mental pollution; first we should correct this! When a boss –senior civil servant- drives to his summer house by his official car and a civil servant does not use the car available to him he is called “silly!” When your superior acts honestly and transparently you have to comply with the official rules. The system is wrong; the housing facility was built in a distant place first. You should not leave a space for loopholes and tolerance. Such issues must be solved by means of legal provisions. However, compared to money laundering using an official car for personal business is nothing! At least he pays gasoline price.

When an inspector or senior public official visits our department we organize sightseeing for him/her at the weekend and use public vehicles for transportation. This is a routine honouring that we offer. Sometimes we offer my official car for their family, too. IT IS A USUAL DECISION: SITUATION BUT SHOULDN'T BE DONE BUT NO PROBLEM UNLESS A PUBLIC DUTY DELAYED/INTERFERED

Case 3:

This is also widespread but not applicable for all civil servants. Sometimes our department does not offer advance payment for our official trips. In this case we have to use our credit card to book a ticket. We do not have that much cash money available. Sometimes we book an international flight ticket for an official visit by lending money from someone else. In this case, it is not important to win a TV or a free ticket. Tickets must be booked by the institution, and mileage can be collected in a pool system. Mileage is a small thing; there are bigger problems to be solved in priority.

DECISION: NOT APPLICABLE TO ALL. IT SHOULDN'T BE DONE IN PRINCIPLE. FRINGE BENEFITS (DO NOT) CAUSE AN ETHICAL PROBLEM (INTERVIEWEES ARE DIVIDED)

Case 4:

Mayors should not seek self-interest. Both political party(ies) and citizens exercise influence on the municipalities. Small gifts may influence individuals. However, big gifts may cause fidelity and the things get done accordingly. It is natural for anybody to start working at another job after retirement; however, it is unethical to set an interest relation with another private company while s/he is working in public service. Public officials basically comply with the principle of public interest; however, when their individual interests appear in front

of them they do not take painstaking. In the case of yacht club, one might think for a second time and find it as an investment in the city.

DECISION: A GOOD SENARIO EXPRESSING “ACTUAL” CONFLICT OF INTEREST

To conclude, the interviewees first make a distinction between small and big benefit. Second, they have a tolerant attitude towards the cases considering the fact that same thing may happen to me in near future. Third, they do not differentiate what is public source and what is private source properly. Finally, sometimes they act under the influence of external factor –family, financial, political and social- when and if the rules are not specified properly.

Conclusion and Recommendations

Within the limited scope of this study, both the existing literature and the survey results commonly underline an urgent need for an effective ethics regime in Turkish public service. Although there is a gradual improvement in ethics related issues it is timely to further institutionalize ethical environment in Turkey.

Issues:

- Organizational culture deteriorated
- Personnel regime including merit system and pays is unfair and ineffective
- New public management reforms including public procurement system cause ethical dilemmas in transparency and accountability
- Confidence in public service is low due to lack of sufficient transparency and accountability
- Relevant legislation is too dispersed
- Preventive measures are insufficient
- Public awareness and control limited
- Need for an autonomous body to monitor, investigate and report to public

Positive developments:

- Harmonizing the legislation with the relevant international regulation
- Encouraging operations of law enforcement agencies
- Cooperation with the international institutions
- Public demand

- Continuous strong will of the government

What should be done?

Recommendations for short term:

- This study first recommends an ethics training program linked to revised Chapters 2 and 3 of the Regulation. This training should include the aspirational elements of the key principles and stress the following objectives:
 - Public Servants are required to abide by all legislation, including the Constitution
 - Serve the public and to put the public interest first;
 - Execute the policies of the government of the day, regardless of individual political affiliations; and
 - Promote sound, efficient, effective, transparent and accountable administration.
- In order to enlighten civil servants an addendum based on actual case studies to assist interpretation of the principles of ethical behavior should be regularly published and distributed.
- While the Council is responsible for promoting ethics in public service an ethics champion for each ministry or province should be appointed. A contact person in every provincial ethics commissions should be determined to answer the questions of civil servants and a toll free hotline should be set up.
- Law No. 5176 on the Establishment of Council of Ethics for Public Service and Making Modifications on Some Laws and the Regulation should be revised and updated. Other relevant laws and regulations should be harmonized.
- A general conflict of interest regulation should be enacted. Other sectors should be encouraged to develop their own conflict of interest mechanisms.
- Political/campaign finance law should be enacted.
- Parliamentary Ethics and Judicial Ethics should be regulated either as a code or law.
- Public procurement process should be more competitive and transparent
- Finally no ethics regime will succeed unless there is a clear message from the top that the executive supports ethical behaviour.

Medium-term:

- A whistle blowing mechanism should be enacted by the parliament in order a civil servant to inform unethical behaviors as well as illegal activities in conflict with public interest to the appropriate authorities.
- Discretionary authority of public officials which may cause conflict of interest must be narrowed down.
- Council of Ethics for Public Employees should be reorganized.
- Ombudsman law must be readopted

Long-term: A strategic plan should be developed by the participation of all relevant stakeholders including public, business, non-governmental organizations and the media.

KEY RECOMMENDATIONS FOR MANAGING CONFLICT OF INTEREST

- 1. Identify relevant conflict-of-interest situations. Provide a clear and realistic description of what circumstances and relationships can lead to a conflict-of-interest situation. Ensure that the conflict-of-interest policy is supported by organisational strategies and practices to help identify concrete conflict-of-interest situations at the workplace.*
- 2. Establish procedures to identify, manage and resolve conflict-of-interest situations. Ensure that public officials know what is required of them in identifying and declaring conflict-of-interest situations. Set clear rules on what is expected of public officials in dealing with conflict-of-interest situations, so that both managers and employees can achieve appropriate resolution and management.*
- 3. Demonstrate leadership commitment. Managers and leaders in the public service should take responsibility for the effective application of conflict-of-interest policy, by establishing a consistent decision-making process, taking decisions based on this model in individual cases, monitoring and evaluating the effectiveness of the policy and, where necessary, enhancing or modifying the policy to make it more effective.*
- 4. Create a partnership with employees. Ensure wide publication, awareness and understanding of the conflict-of-interest policy through training and counselling. Review “at-risk” areas for potential conflict-of-interest situations. Identify preventive measures that deal with emergent conflict-of-interest situations. Develop and sustain an open organisational culture where measures dealing with conflict-of-interest matters can be freely raised and discussed.*
- 5. Enforce the conflict-of-interest policy. Provide procedures for establishing a conflict-of-interest offence, and consequences for non-compliance, including disciplinary sanctions. Develop monitoring mechanisms to detect breaches of policy and take into account any gain or benefit that resulted. Co-ordinate prevention and enforcement measures and integrate them into a coherent institutional framework. Provide a mechanism for recognising and rewarding exemplary behaviour related to consistent demonstrated compliance with the conflict-of-interest policy.*
- 6. Initiate a new partnership with the business and non-profit sectors. Involve the business and non-profit sectors in elaborating and implementing the conflict-of-interest policy for public officials. Anticipate potential conflict-of-interest situations when public organisations involve persons representing businesses and the non-profit sector through boards or advisory bodies. Include safeguards against potential conflict-of-interest situations by making other organisations aware of the potential consequences of non-compliance and reviewing together high-risk areas.*

Source: (OECD, 2003)

Appendix A. Case Studies Used During the Interviews

Case 1

Şakir Dürüst who works as a unit chief at the revenue office and is a member of hiring committee. Jale Dürüst, daughter of Mr. Dürüst, received a higher score from the Aptitude Examination for Public Employees, and applied for a vacant position at the revenue office and met the requirements for an interview. Due to his long career at public service, Şakir Dürüst, committed to impartiality and merit system in the service. He thinks that he should resign from the membership of the hiring committee and tells this to Mr. Cahit Dostel, who is the deputy-director of the revenue office and the head of the committee. However, before leaving Mr. Dostel's room, he adds that she is unemployed for a long period and fell into a psychological depression, therefore he requests Mr. Dostel to help them. Despite there were more qualified and experienced candidates among interviewees, Jale Dürüst is employed.

Case 2

Zeki İşbilir who has a family with five children works as a driver at a power station company. Housing facility is 30 minutes away from the closest shopping centre and the only transportation facility, the municipality's shuttle bus operates at every two hours. It takes 10 minutes by walk from the bus station to the housing facility. Both shopping and the children's attendance to weekend courses at the downtown create big trouble for İşbilir family which does not have a private car. After a while, Zeki İşbilir solved the problem by using the official car under his responsibility for both shopping and driving the children to the course at the weekend. He paid the gasoline by his pocket. Sometimes he serves the colleagues at his apartment.

Case 3

Zeynep Çokuçar, who attends the training programs for the harmonization with the EU acquis, frequently flies to Brussels. Her travel expenses are paid by her institution. However, the institution does not offer advance payment and pays her expenses in return of bills afterwards. Therefore, Ms. Çokuçar pays her expenses by using her credit card. After a while, when her mileage reaches at a certain score she gets a free ticket from the airline company. Then she wins a 32 inch LCD tv from the Karopuan drawing of the bank. She is quite happy.

Case 4

İhsan Yanbakan wins the recent local elections. The former municipal council decided to construct garbage and recycling project nearby his elder brother İrfan Yanbakan's inarable land. Mr. İhsan convened the relevant public officials and asked them to review this decision as the first business. He wants to develop the region where his elder brother's land located as

a collective housing area. He also plans to move the recycling Project closer to farmyards. He thinks that farming is unproductive, increases hidden unemployment and leads to migration. He argues that building small enterprises on agricultural lands will decrease unemployment. He also thinks that they can get vegetables and fruits for urban consumption cheaper from Yantalya, a close city.

Case 5

Cafer İşbilir, mayor of Atılımkent, plans to build a five star international hotel and shopping center on a land determined as a green zone, closer to the city centre. Besides negative propaganda of the local media and environmentalist, some members of the municipal council and the governorship approach the issue with reservation. Later, with the support of Ketko Company, an internationally known company, mayor, deputy-governor and some members of the council with their wives attended a local government conference organized in Canary Islands. They paid their wives expenses by themselves. Mr. Cihan Saygıdeğer, a civil engineer and the elder brother of Vecdi Saygıdeğer, the deputy governor, worked at a company which was busy with construction of shopping centres in big cities.

After the conference, the elder brother of the deputy-governor Mr. Cihan, under the influence of the telling of his brother, applies for a job at Ketko Company. After a while, he started to work at the company's Turkey headquarter and assigned to an important position.

After six months, a new ÇED report is prepared and with the consent of the opposing members, construction of the yacht club and shopping centre is opened for bid. Ketko Company also applied for the bid. Mr. Vecdi, the deputy-governor, is a member of the competition committee but resigns from membership due to his elder brother's position at Ketko Company. At the end Ketko Company gets the bid.

Before the start of the construction, Ketko Company establishes a centre at the city. Akın İşbilir, the son of the mayor and graduate of management starts working at Ketko as deputy expert responsible for operations. Sadık Değişken, who prepared the new ÇED report, starts working at Ketko's environment unit after he gets retired.

Appendix B:

Guidelines For Managing Conflicts Of Interest

Organisations can use a number of strategies to prevent conflicts of interest arising and help resolve any conflicts that do occur.

The first step is to recognise what situations could give rise to potential conflicts of interest. The second step is to make sure that staff discloses these conflicts. The third step is to decide how to resolve the conflicts or minimise their potential impact.

1. Organisations should identify areas of potential conflict of interest as part of their corruption risk assessment.

Before you can put procedures in place to manage conflicts of interest, you need to know where they are likely to arise and the effects on the organisation if they do.

There are some examples of potential risk areas on pages 2-5 of this module, but the level and type of risks will vary from one organisation to another depending on its structure and functions.

2. Organisations must develop a clear code of conduct and promote it to all staff.

The code should help staff to act ethically and with integrity in their day-to-day work. It should include topics such as personal and professional behaviour, the acceptance of gifts or benefits, other employment or businesses and how to deal with conflicts of interest.

The code needs to stress that it is the responsibility of individual members of staff to be aware of possible conflicts, to think about how others might view the situation and to notify senior staff if they think a conflict may exist. You might like to include some examples of where personal interests might conflict with public duties in your organisation.

The code should also explain what to do if a situation arises where there might be a conflict of interest. For example, a local government code of conduct might give the following guidance to staff and councillors:

If staff believe that there could be a situation involving a conflict of interest, they must advise their supervisor or the General Manager in writing, stating the full facts, in order to protect both themselves and council.

Councillors must disclose any interest in matters being considered by council. This disclosure must be made at the start of the council meeting. The onus is on the individual councillor to declare his or her interest.

You also need to make it clear that, as far as staffs is concerned; a breach of the code may constitute grounds for disciplinary action and possible dismissal. Councillors may also be liable to disciplinary action.

Having staff and elected officials formally disclose their personal interests is an important corruption prevention strategy. Elected officials in local government are in fact required to comply with pecuniary interest provisions in the Local Government Act 1993. A public record of a person's interests is a significant disincentive to his or her acting corruptly, in their own self interest.

3. Organisations should develop policies and procedures for identifying and dealing with conflicts of interest.

The policy should explain what a conflict of interest is, who should be notified and what records should be kept and give some examples of how conflicts may be managed.

The purpose of the policy is to identify potential conflicts at the outset of a project, such as a purchasing contract, and then deal with them appropriately.

Meeting procedures and guidelines for selection panels should specify when staff and other public officials should declare a conflict and what action should be taken.

All policies and procedures should be periodically reviewed and updated to make sure that they remain relevant to the organisation's current situation.

4. Organisations must make sure that all staff and elected officials are aware of conflict of interest issues and know what their responsibilities are.

Your organisation may need to have an ongoing awareness program to remind everyone connected with the organisation of their obligations regarding conflicts of interest.

To do this you could:

provide all new staff with a copy of the code of conduct and ask them to certify that they have read and understood it

raise awareness of conflict of interest issues through articles in staff newsletters, posters and bulletins

include information and discussions on conflicts of interest in induction and management training programs

Staff attitudes and behaviour are often influenced by the examples set by senior management. Staff look to managers for guidance and support. It is important that all senior staff are good models of ethical behaviour, are able to identify potential conflicts of interest and know the appropriate action to take.

inform current and potential suppliers and contractors of the need to disclose any conflicts of interest at the time they offer to provide goods or services

Many public sector organisations now include a requirement that if conflicts of interest are not disclosed the contract can be terminated as part of the terms of contract.

explain to all customers and outside organisations the importance of integrity in the public sector. Explain that it is unacceptable to try to influence public officials through the offer of gifts and benefits.

Some public sector organisations have a 'Statement of Business Ethics' which outlines the ethical responsibilities of public and private sector staff in their business dealings with each other.

No-one working for or connected with, the organisation should be able to claim that they didn't know what a conflict of interest was, didn't realise they had one, or didn't know they had to disclose it.

5. Organisations must clearly state who is responsible for receiving conflict of interest disclosures and fully documenting any disclosures made.

Clear, open and accountable procedures help to prevent confusion and uncertainty and encourage staff and other public officials to discuss and report possible conflicts. The message should be: if you are in doubt, talk to a senior member of staff.

Staff responsible for accepting disclosures must make sure that the details of the disclosure are recorded. A record must be kept of any action taken to resolve the conflict.

If a conflict of interest is disclosed at a meeting, the minutes of the meeting should record the disclosure and any action taken. It should also give details of who was entitled to vote and make decisions or recommendations on which issues.

6. Organisations should consider a range of options to resolve actual or potential conflicts of interest.

Often the immediate reaction when a conflict of interest is disclosed is to remove the person with the conflict from the situation altogether. However, there are other options available. The option you choose could depend on:

the nature and extent of the conflict

whether the interest is of a controversial nature

the cost of the contract or action

the damage the conflict might cause to the process

public perceptions of the situation.

Some possible ways of managing conflicts of interest are:

Take no action

If the conflict of interest is minor or the person concerned is not in a position to influence decisions, you may decide that no action is necessary apart from documenting that the conflict has been disclosed.

Allow a limited involvement

Depending on the nature of the conflict, the person may still be able to be involved in the process, for example, by providing technical advice on a tender, but not be part of any decisions made. It must be remembered however, that the provision of technical advice could heavily influence the decision and should be avoided or corroborated where possible.

In a meeting, the person might be able to participate in the debate but not be allowed to vote or influence the decision.

Remove the source of the conflict

The staff member or elected official may be prepared to dispose of the interest that has caused the conflict. This could involve, for example, selling their shares in, or resigning from a position with the company involved in a tender.

Include an independent

You may decide to ensure impartiality by having an independent person on, for example, a selection panel. For complex or controversial projects, it is a good idea to have a probity auditor who can review the process and provide advice about how to resolve issues which arise.

Establish an ethics committee

Some organisations have set up an internal ethics committee which adjudicates on conflicts of interest and helps to decide what action should be taken. The committee should include a cross-section of staff from different areas and no one person should be allowed to dominate the process.

Checklist

- _ Has your organisation identified areas of possible conflicts of interest within the organisation as part of its corruption risk assessment?

- _ Does your organisation's code of conduct include clear information on conflicts of interest? Do all staff have a copy of the code?

- _ Has your organisation developed policies and procedures for managing conflicts of interest?

- _ Do these policies and procedures explain how to recognise and disclose a conflict of interest? Have they been clearly explained and promoted to all staff and elected officials?

- _ Have all staff, elected officials, suppliers and contractors been told of their obligation to disclose any actual or potential conflicts of interest?

- _ Is information on conflicts of interest regularly included in staff newsletters and training sessions to raise awareness of the issues involved?

- _ Are there open and accountable procedures in place to resolve conflicts of interest?

- _ Do your meeting procedures include details of how to deal with conflicts of interest that arise during a meeting?

- _ Are all conflicts of interest that are disclosed fully documented and records kept of any action taken?

- _ Do you consider a range of options for resolving conflicts of interest?

- _ Have you considered setting up an internal ethics committee, having a probity auditor for major or controversial projects, or preparing a statement of business ethics?

- _ Does your organisation periodically review and update its conflict of interest policies and procedures and make sure that they are relevant to the organisation's current needs?

Source: ICAC, 1996, Practical Guide To Corruption Prevention,
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