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TECHNICAL PAPER: CURRENT PROCEDURES AND POSSIBLE FUTURE WORK OF THE COUNCIL OF ETHICS

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The views expressed in this document are author's own and do not necessarily reflect official positions of the Council of Europe

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1. INTRODUCTION

This working paper discusses the legal and institutional context of the work of the Council of Ethics for the Public Service before focussing on the Council's procedures and working practices and the implications for future work outlined in the project (Council of Europe Project No. EC/1062).

2. WORK UNDERTAKEN

The Council held a workshop on its roles and responsibilities. Individual members of the Council completed a questionnaire. The same questionnaire was also completed by members of the Secretariat who were also interviewed by the LTA (some twice). Reference was also made to the Council's annual report, to the law and to the Code.

3. ETHICS: THE BACKGROUND

Formal rules for officials of the public administration of Turkey have been in force since the mid-1960s. However, the establishment of the Council of Ethics for the Public Service¹ and its development of a code of ethics² provides a focus for the institutional and procedural framework to deliver an ethical environment, in addition to the work of audit units and inspection boards as well as the introduction of Ethics Commissions in public sector institutions.

4. THE COUNCIL OF ETHICS: LAW AND CODE

The law and Code give the Council a number of responsibilities, including investigations of complaints, working with Ethics Commissions, promoting ethical understanding (including through training), and reviewing ethical environments and issues. Essentially these provide three roles: investigation, awareness/education and prevention. In relation to investigations, the law gives the Council the right to call for witnesses, documents and information; the only sanction is publication of an offender – who has the right of appeal – in the Official Gazette.

The law gave the Council the right to draft a Code of Ethics, which was undertaken in its first year. The current Code is a mix of: ethical requirements, reviews of ethical cultures, calls for training programmes, cooperation with other agencies, Council Standing Orders, investigation procedures and other administrative matters. In relation to ethical standards, the Code is very broad, ranging from performance standards and personal behaviour to whistleblowing, misuse and misappropriation of resources, and post-employment restrictions. The Code applies to designated senior public officials – approximately 10,000 – but not government ministers, members of the Legislature, universities, the judiciary and the armed forces.

5. THE WORK OF THE COUNCIL

The Council of Ethics consists of eleven members elected by the Council of Ministers for a period of four years and a similar number of staff in the Secretariat. The tasks of the Council are:

to determine whether public officials adhere to the Code of Ethics while performing their duties;

to investigate claims that the principles of the Code have been violated by a senior

¹ Law no. 5176, published in the Official Journal on 8 June 2004.

² Regulation on the Principles of Ethical Behaviour of Public Officials, published in the Official Journal on 13 April 2005, no. 25785.

public official with a minimum rank of general manager or equivalent³;
to inform the relevant authorities on the results of such investigations;
to carry out or to commission studies and research which help establish a culture of ethics throughout the public administration.

At present, the capacity of the Council is limited by the resources made available to it. In terms of wider ethical work and reviews, the Council has worked with universities, the private sector and NGOs on the discussion of ethics, initiated reviews of areas of concern (such as the relations between the pharmaceutical industry and the healthcare sector) and established an Ethics Day (25th May).

In relation to the implementation of the Code, the Council currently is able to handle the small number of allegations that fall within the scope of the Code (from about 150 received); approximately 60 a year covering: personnel issues; breaches of official duty; misuse of public resources; plagiarism; nepotism; fairness; access to information; corruption and denial of equity.

Allegations are reviewed as to the rank of the public official involved and the nature of the possible offence. Allegations which may involve a criminal element must be redirected to the Prosecutors Office while those relating to lower-level public officials are sent to the institution concerned (and a report later received). Allegations which fall within the remit of the Code are agreed by the Council for investigation which, at present, involves a request for information from the institution concerned and a decision by the Council on whether or not a breach of the Code and whether or not the sole sanction should be imposed. To date, no sanction has been imposed.

As to the other areas of responsibility, the Council undertakes seminars, work with agencies, and conducts reviews, but there has been no systematic review of ministries' approach to the ethical environment.

6. MAIN AREAS OF CONCERN INVOLVING THE CURRENT WORK OF THE COUNCIL

These come under three categories:

6.1 Law and Code

The law is relatively broad, giving the Council two main roles – determination of a Code and investigation of any breaches (for which it has powers to access witnesses, documents and other information), and wider reviews of ethical environments. The law provides for only one sanction for proven breaches although it does provide the right of appeal.

Issues:

- the law does not give the Council authority to provide training, or monitor the provision of training, in the Code and the ethical environment it is intended to promote;
- the law does not define the authority of the Council in relation to wider reviews, such as the right to call for annual reports or for proactive inquiries;
- the law does not allow for an appropriate range of sanctions.

³ See the list in Appendix 2 of the Code of Ethics. Complaints on other categories of officials received by the Ethic Council are forwarded to the disciplinary authority of the respective institution without further investigation by the Council.

The Code, drawn up by the Council under the law, are very broad, ranging from conflict of interest to procedures for dealing with allegations and administrative matters relating to the work of the Council.

Issues:

- the Code is too broad, containing material relevant to a code of ethics, material more suited to a service delivery standards charter, material better dealt with by other legislation, material more properly the responsibility of an Ombudsman, material more suited to Standing Orders or administrative procedures, and material more appropriate to be addressed by other institutions (especially those relating to personnel issues);
- the Code lacks a structure that lends itself to training;
- the Code lacks clarity in terms of responsibility and is too broad for the Council to have sole responsibility to enforce or implement;
- the Code is negative in that it focuses on required conduct and the consequences of failing to adhere to that conduct, while not addressing why and how ethical conduct is to be supported and rewarded.

6.2 Institutional and Resources

The Council of Ethics is located within the Prime Ministry. Its budget and staffing are within the gift of the Prime Ministry; most of the Secretariat are career public officials seconded without selection. While the Council has independence in receiving and conducting inquiries into breaches and in conducting relations with other agencies within and outside the public sector and, as such, may determine its own strategy, there are a number of issues that restrict its effectiveness:

Issues:

- It lacks budgetary independence that would allow it to delivery its intended roles and responsibilities, and resource it accordingly;
- It is not able to determine either its staffing levels or the types of expertise it requires;
- The staff currently working for the Council are temporary secondees from the Prime Ministry – the staff base in terms of acquiring and retaining expertise, as well as developing institutional memory, is not stable;
- Its relations with other public inquiry agencies, such as inspectorates, and with ethics commissions is not yet determined;
- Its investigative role is limited and its power of sanctions even more limited;
- Its wider review work is conducted on an *ad hoc* basis and the formal authority of its findings unclear.

6.3 The Potential Work of the Council

The Council has acknowledged the need to review its roles and responsibilities. Its perceptions range widely. Externally these include: the possibility of a new Prevention of Corruption Agency, the range of institutions that should be covered by the Code, the role of Ethics Commissions, the need for the Legislature and the judiciary to set up equivalent Codes and ethics bodies, and the completion of annual reports on ethics work by ministries. Internally there are proposals for a full-time Chair, for individual members of the Council to take lead responsibility for specific areas of Council work, and for more staff (such as lawyers or investigators depending on what the members see as the Council's main work).

Members recognise the current restrictions, whether resources or the single sanction. Many recognise the need for extensive education and training on ethics, as well as more cooperation and coordination with other agencies. Many also propose an extensive awareness campaigns. While several members see the Council undertaking all 3 main roles – investigation, awareness and prevention – there is some divergence over which of those should be the primary role or roles of the Council (and thus where any new resources would be allocated).

In summary the main areas to expand and develop the work of the Council, as perceived by Council members, include:

- to develop an effective investigative capability, including addressing the issue of parallel investigations;
- to extend the range of sanctions;
- to develop training and awareness roles, particularly through media campaigns;
- to expand the remit of the Code to universities;
- to work with the Legislature, Judiciary and armed forces to develop their own Codes of Ethics;
- to encourage ministries to report on their work on developing an ethical environment;
- to develop a research capability and an approach to prevention.

7. HOW OTHER COUNTRIES ADDRESS ETHICS

There is no one answer or approach to what could be the main roles and responsibilities of the Council, what could be the organisational shape to deliver them, or what resources would be needed. Such decisions on the strategic direction, roles and resourced have been faced by a number of countries – and the responses are varied.

In relation, for example, to what roles and responsibilities should be undertaken by Anti-Corruption Commissions (ACC) a 2006 OSCE review noted variations in focus – see Table 1.

AGENCY	POLICE DEPT	PROSECUTOR DEPT	INVESTIGATION	PREVENTION	EDUCATION	LOBBYING/PARTY ELINDING	CONFLICT OF INTEREST	SURVEILLANCE	NATIONAL PLAN	PUBLIC REFORM	FINANCE
LITHUANIA STT	-	-	✓	✓	✓	✓	Part	✓	✓	part✓	-
LATVIA CPCB	-	-	✓	✓	✓	✓	✓	✓	✓	-	-
SPAIN	-	✓	-	-	-	-	-	-	-	-	-
ROMANIA NAD	✓	-	-	-	-	-	-	-	-	-	-
CROATIA	-	✓	-	-	-	-	-	-	-	-	-
BELGIUM	✓	-	-	-	-	-	-	-	-	-	-
NORWAY	✓	-	-	-	-	-	-	-	-	-	-
FRANCE SCPC	-	-	-	✓		✓	-	-	-	✓	✓
SLOVENIA CPC	-	-	-	✓	✓	-	✓	-	✓	✓	-
MACEDONIA NC	-	-	-	✓	✓	-	✓	-	✓	✓	-

ALBANIA ACMG	-	-	-	✓	✓	-	-	-	✓	✓	-
UK SFO	-	✓	-	-	-	-	-	-	-	-	-

Source: drawn from a report on anti-corruption agencies for the Organisation for Economic Co-operation and Development Anti-Corruption Network for Eastern Europe and Central Asia (2006).

In 1997 the OECD/SIGMA survey noted variations in new areas being addressed in relation to the promotion of ethical environments (Table 2).

New actions being considered	C o u n t r i e s
Enhancing or establishing penalties	Belgium, Czech Republic, Germany, Hungary, Japan, Korea, Poland, Switzerland
Increased transparency and public exposure	Hungary, Italy, Korea, Mexico, Poland, Spain, Switzerland
Introduction, or enhancement of powers, of specialist bodies	Belgium, Germany, Ireland, Italy, Switzerland
Increased guidance or training for officials	Germany, Ireland, Mexico, Spain, Switzerland
Review of domestic law for local and international corruption implications	Czech Republic, France, Italy, Sweden, Switzerland
Review of regulatory effectiveness	Italy, Korea, Mexico, Switzerland
Improved organisational effectiveness	Germany, Hungary, Italy, Mexico
Review of high-risk areas	Germany, Switzerland

Source: Mills, A. Strengthening Domestic Institutions against Corruption: a Public Ethics Checklist. OECD (1997).

When, however, there is broad agreement on implementing Codes and ethical environments, there is not necessarily a common institutional approach, as the UK example shows (Table 3).

Last Full Year Number of Allegations and Inquiries	NORTHERN IRELAND	ENGLAND	WALES	SCOTLAND
Body to deal with Legislature		Y	Y	Y
Body to deal with local government	N	Y	N	N
Body to deal with local government and public bodies	N	N	Y	Y
Body to deal with Legislature and local government	Y	N	N	N
Body to review ethical environments	N	Y	N	N
Are any of the bodies also combining role as Ombudsman	Y	N	Y	N
Code (C) or Law (L)	L	C	L	L

Sanctions (L) = Legislature only	Disqualify Suspend Reprimand	Disqualify Suspend Reprimand Fine (L)	Disqualify Suspend Reprimand	Double Disqualify Suspend Reprimand Fine (L) Prison (L)
Parliament/Assembly allegations	(1 - 2002)	93	46	29
Parliament/Assembly Inquiries – % for investigation	(100%)	25%	20%	20%
Number of MPs subject to Code	108	645	60	129
Staff in Body	-	1	1	1
Annual Cost	-	£302,000	n/a	£88000
Local Government Code allegations (for Scotland, also includes public bodies)	-	3861	183	139 (over 90% relating to councils)
Local Government Code Inquiries – % for investigation	-	24%	46%	95%
Number of persons subject to agency		100,000	16000 (est)	3500 (est)
Staff	-	61 inc. support	14 plus support	3.5
Local Government Code: agency annual costs	-	£8 million	£226,000	£400,000

Sources: Annual Reports and 10th Report, Committee on Standards in Public Life, 1995-2005

8. IMPLICATIONS FOR THE COUNCIL

Within this context, the current and future organisational shape of the Council and its main roles and responsibilities will be determined by the Council. Reflecting the points raised above, however, the Council may wish to consider a number of issues.

8.1 Workload and Reputation

The proposals for extensive awareness campaigns and for the extension of the Code to other institutions, such as universities, may have significant impact on the Council. Currently it is not resourced to manage any increase in complaints, nor to manage complex and lengthy inquiries that, given the only available sanction open to the Council, are likely to be challenged. In such a worst case scenario the reputation of the Council will be adversely affected unless appropriate resources are available in advance. The rationale for any additional resource, whether for an increased investigative function or any other function, will, however, require consideration of the strategic direction of the Council.

8.2 Strategic Direction

The Council currently has three potential roles: investigation, awareness, prevention (including training and reviews of ministries). The Council has to address three issues: priority – which of the 3 roles should be the focus of the work of the Council or should all 3 be undertaken and in what order of priority; sequence – where should the Council put the emphasis in terms of which role should be developed first; timing – how long

would it take the Council to be fully operational to deliver the role or roles and how should they be measured? Such strategy will provide the context for the resource requests that will be necessary to deliver it.

8.3 Independence

To achieve its strategic direction, the first issue that needs to be addressed is the constitutional status of the Council. While Article 3 of the law gives the Council its operational authority, Article 2 does not ensure that it has the resources and budget to deliver them. The revision to the law is necessary to allow the Council to deliver its strategy, with appropriate appointment, reporting and audit arrangements to ensure accountability.

8.4 Revisions to law and Code

In achieving 8.3, and depending on the focus on the roles the Council, the future work of the Council will be further facilitated by revisions to the law and the Code. Specifically the Council could:

- provide itself with stronger investigative powers or delegate the responsibility to other bodies;
- ensure a wider range of sanctions (most similar bodies will include: mediation or further ethics training, transfers, verbal or written warnings, suspensions, fines, dismissal);
- have the power to undertake reviews of prevention work or the development of ethical frameworks in ministries;

and

- review the code to tighten the ethical framework the Council would require the public service to implement;
- have the authority to transfer responsibility for parts of the code to other bodies;
- have the power to require uniformity of codes across the public service;
- once the code is revised and appropriate responsibility for aspects of the code and its enforcement are addressed, have the authority – if the Council wishes to have an investigative capability - to carry out its own inquiries, irrespective of any other inquiry into the same person or activity by another institution.

8.5 Relations with Other Institutions

It is clear that, whatever focus it chooses, the Council will need to develop relations with other bodies, and in particular with ministry Ethics Commissions and Inspectorates. These may work with the Council, take on some of the responsibilities of the Council to allow it to pursue a more strategic role, and develop partnership arrangements to develop effective ethical environments.

9. POSSIBLE OPTIONS

A number of options are available, including:

9.1 Focus on an investigative role

The Council could concentrate on major breaches of the Code, using experienced investigators with appropriate case management and evidential requirements and operational databases. Minor breaches could become the responsibility of Ethics Commissions and Disciplinary Boards with the Council retaining a supervisory role to ensure consistency and uniformity of inquiries and sanctions. The Council could retain

lesser roles in awareness campaigns, the monitoring of training programmes and ministry preventative strategies.

9.2 Focus on an awareness role

Responsibility for investigations would go to Inspectorates, Ethics Commissions and Disciplinary Boards. The Council would focus on media campaigns to promote the Code across the public services and among the public. Complaints would come to the Council who would delegate their investigation but receive reports on the outcome. The Council would pursue a significant role in overseeing and monitoring training programmes for the Code across ministries. It would retain a minor role in monitoring ministry preventative strategies.

9.3 Focus on a preventative role

The role of the Council could focus on ministries and other public bodies over their work in developing an ethical framework. This would include receiving annual self-assessments and risk assessments from ministries, monitoring training programmes, liaising with Inspectorates, undertaking research, carrying out proactive reviews, and supervising the roles and responsibilities of Ethics Commissions. It would retain a monitoring role over the investigative work within ministries and publicise its and the ministries' work to the public but not mount any extensive awareness campaigns. Complaints would still come to the Council who would delegate their investigation but receive reports on the outcome.

10. SUMMARY

The Council could choose any or all of the 3 main roles or any permutation. There may be, at present, uncertainty over revising the Code and the law and ensuring an adequate budget. The Council may therefore wish to take the opportunity to develop and present the case for reform and resources by considering:

What could be its strategy – its main role or roles?

What will be its priorities to deliver the strategy?

What will be the sequence of activities and work plans to deliver the priorities?

What changes to the law and the Code will be necessary to do this?

What level and what type of resources will it need to do this?

What level and what type of resources will the government agree to provide over what timeframe?

The Council should mix pragmatism with aspiration to devise a realistic and realisable strategy that will build on the existing resources and which will attract additional government resources to deliver its intended roles and responsibilities for the future.
