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THE FOUR SYSTEM STUDIES: LEGAL AND INSTITUTIONAL INFRASTRUCTURE OF ETHICAL ADMINISTRATION IN TURKEY

REPORT

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TABLE OF CONTENT

INTRODUCTION: THE AIM, SCOPE AND METHODOLOGY OF STE REPORT

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

However, a new wave of ethics has emerged in Turkey for the last decade. Both recent struggles for accession to the European Union (EU) and serious economic crisis of 2001 are real turning points in Turkey's combating corruption. On the one hand, Turkish governments are required to adjust Turkish national anti-corruption legislation to that of the EU in the process of accession to the EU. Developing ethical legal-institutional infrastructure is seen one of the significant criteria for enhancing the administrative capacity of Turkish public administration. On the other hand, Turkish governments are strongly asked to take some institutional and legal-administrative measures for anti-corruption in order to get financial aid from international financial institutions such as the IMF and the World Bank in the process of economic recovering. In addition, widespread political and bureaucratic corruption is regarded by the Turkish public opinion as the main cause of economic and financial crisis of 2001 (see Ömürgönülşen and Öktem, 2005 and 2007: 112-113). However, the lack of a special institution particularly in charge of combating corruption and a general code of conduct for all public servants seems serious defects of the system. Inadequacies in the integration and harmoniously working of various rules and institutions in the ethical landscape of Turkey are other serious problems. Therefore, the legal measures, institutional structure and their daily operation in the Turkish public administration in struggling with bureaucratic corruption and unethical conducts should be examined seriously.

In relation to the need to develop systems of monitoring the effectiveness of prevention and other anti-corruption measures, the TYEC Project supports "system analyses" of the effectiveness of key measures implemented in recent years, such as the reforms of the Code of Ethics (issued by the Council of Ethics for the Public Service), the Public Information Act (i.e. the Law about the Right to Access to Information) and Criminal Legislation (i.e. the new Penal Code). Drawing on the results of these analyses, the Project will support the development of new proposals for further anti-corruption measures and strategies and the coordination of measures to promote ethics with other anti-corruption measures (i.e. Outputs 8 and 9 in the Workplan of Activities of Project). So, at the first stage of this Report (i.e. Section 1), existing literature on corruption&ethics in Turkey from academic and practitioners perspectives has been reviewed to identify main themes, developments, issues and Turkish governments' responses in this field. At the second stage (i.e. Section 2 and 3), the landscape of current legislation (rules and procedures) and institutions with a direct and indirect involvement in corruption&unethical conducts and the prevention of corruption has been mapped. The purpose of these two stages is to assess the integration or divergence of legislation (rules and procedures) and institutions-mechanisms in terms of an anti-corruption framework. The result of this assessment has enabled us to do more detailed reviews (i.e. Section 4) about the effectiveness of anti-corruption measures implemented in recent years under the headings of four System Studies.

The following methodology has been used by the STE for each System Study. First, previous and existing international, national and institutional anti-corruption initiatives and activities have been reviewed; second, the legal and institutional landscape or infrastructure of ethical administration (e.g. existing laws, by-laws, regulations, codes, institutions, strategies, procedures and mechanisms concerning with corruption and public service ethics) has been mapped; third, interviews have been done with related parties in terms of contribution to or participation in anti-corruption strategies, procedures and operational activities; and finally, the effectiveness of the various means to address or prevent corruption and unethical conducts have been evaluated.

In short, in this Report (particularly in Section 4), the Short Term Expert (the STE) has presented the results of four System Studies on the effectiveness of AC measures through 1) Code of Ethics; 2) the Public Information Act; 3) Criminal Law; and 4) Disciplinary Provisions

in the Legislation and Existing Structures. Within this framework, in this Report, the ethical (legal and instutional) infrastructure of Turkey has been reviewed through related legal documents (laws, by-laws, regulations and codes) and institutions-mechanisms in order to provide a necessary base (i.e. the gap analysis) for four system studies. Some clues for the (in)adequacies and (in)effectiveness of legal measures and institutional mechanisms related to anti-corruption strategy have been figured out and then some recommendations aimed at improving the management, coordination and monitoring of anti-corruption strategies have been made.

1. RECENT DEVELOPMENTS IN THE ETHICAL INFRASTRUCTURE OF TURKEY

The 1980s and 1990s were the decades in which the Turkish political-bureaucratic and economic-financial systems were heavily infected with corruption. The early 2000s seem to be the period in which some serious steps taken to combat corruption and establish an ethical administration in Turkey.

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

common discontent of public from serious economic crisis and widespread corruption in all areas of society.

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

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

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

Meanwhile, the "Parliamentary Inquiry Commission on Corruption" (*TBMM Yolsuzlukları Araştırma Komisyonu*) set up in early 2003 by the JDP Government completed its inquiry on political and bureaucratic corruption allegations through summoning former prominent politicians, senior bureaucrats and famous businessmen. This Commission submitted a Report containing number of reform proposals in detail to the Presidency of the Grand National Assembly in mid-2003 in order to eradicate corruption in the public sector including some significant amendments in various laws. The Commission also requested parliamentary investigations for two former prime ministers and a number of former ministers and criminal proceedings for a number of present and former senior bureaucrats who were mainly in charge of the management of economy during the 2001-2002 economic crisis (see *Hürriyet*, a Turkish daily, 17, 24, 27 July 2003). In 2004, the Grand National Assembly voted to authorise the High Tribunal (*Yüce Divan*) to try four former ministers (see European Commission, 2004).

In recent years, Turkey has also adopted several international anti-corruption conventions. Turkey approved "OECD Convention of 1997 on Combating the Bribery of Foreign Public Officials in International Business Transactions" in 2000 and made all necessary modification in the national laws in accordance with the Convention in 2003. Turkey also ratified the "1997 Council of Europe Civil Law Convention on Corruption" in 2003 and the "1998 Council of Europe Criminal Law Convention on Corruption" in 2004. Thus, she has become a member of GRECO in 2004. Turkey also ratified the "United Nations Convention against Corruption" in 2006. Turkey has tried to modify her own legislation in order to implement these conventions.

Turkey approved the recommendations made by "OECD Financial Action Task Force on Money Laundering" (FATF) in 2003. She also participates in monitoring the application of anti-corruption measures taken by the "OECD Working Group on Bribery in International Business Transactions" (see European Commission, 2002, 2003, 2004 and 2005; and Başbakanlık, 2004).

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

Whether or not the attempts of the JDP Government produce intended results in practice in near future, without any doubts, depends on the strength of political will of the JDP Government in this issue (Ömürgönülşen, 2003: 40). In spite of progress in recovering the loss occurred for government because of some bankrupt banks and firms, some irregularities are still seen in some national and local privatisation and public contract bids. Various corruption allegations about national and local politicians of the govening party have increased recently. Particularly in the eve of March 2009 local elections, allegations about various illegal or at least unethical and

partisan behaviours of some higher level bureaucrats and governors have been the hot issue on the agenda of opponent parties and the media. There is no progress can be reported either concerning the issue of changes to the extent of parliamentary immunity. This is, of course, not a good record for the Government. Furthermore, the control function of public administration has been reorganised on the basis of performance auditing rather than traditional legal expediency through new arrangements in the "Public Financial Management and Control Law" (*Kamu Mali Yönetimi ve Kontrol Kanunu*) dated 2003 and numbered 5018 and the "Law concerning the Fundamental Principles and the Restructuring of Public Administration" (*Kamu Yönetiminin Temel İlkeleri ve Yeniden Yapılandırılması Hakkında Kanun*) dated 2005 and numbered 5227. This can cause serious legal-administrative obstacles in fighting against corruption in the short term.

2. THE LEGAL INFRASTRUCTURE OF ETHICAL ADMINISTRATION IN TURKEY

There is not any "general code of conduct for all public officials", but several laws and by-laws in the Turkish national legislation, particularly for civil servants, comprise a number of important rules of conduct for civil servants and other public servants (see Yüksel, 2005; and Ömürgönülşen, 2008c).

2.1. The Turkish National Legislation

The most important items of the Turkish national legislation for securing ethical conducts and combating corruption are as follows:

- The 1982 Constitution,
- The Civil Servants' Law (the CSL) (*Devlet Memurları Kanunu*) dated 1965 and numbered 657,
- The Turkish Penal Code (*Türk Ceza Kanunu*) dated 2004 and numbered 5237,
- The Law for Financial Disclosure and Combating Bribery and Corruption (*Mal Bildiriminde Bulunulması, Rüşvet ve Yolsuzluklarla Mücadele Kanunu*) dated 1990 and numbered 3628,

- The Law concerning Prohibited Activities of Former Public Servants (*Kamu Görevlerinden Ayrılanların Yapamayacakları İşler Hakkında Kanun*) dated 1981 and numbered 2531,
- The Law concerning the Trials of Civil Servants and Other Public Servants (*Memurlar ve Diğer Kamu Görevlilerinin Yargılanması Hakkında Kanun*) dated 1999 and numbered 4483,
- The Law concerning the Use of Right to Petition (*Dilekçe Hakkının Kullanılmasına Dair Kanun*) dated 1984 and numbered 3071,
- The Law about the Right of Access to Information (*Bilgi Edinme Hakkı Kanunu*) dated 2003 and numbered 4982,
- The Law concerning the Foundation of the Council of Ethics for the Public Service (*Kamu Görevlileri Etik Kurulu Kurulması Hakkında Kanun*) dated 2004 and numbered 5176,
- By-Law concerning the Principles of Ethical Behaviour of the Public Servants (*Kamu Görevlileri Etik Davranış İlkeleri Yönetmeliği*) dated 2005,
- The Law about the Prevention of Money Laundering (*Karaparanın Önlenmesine Dair Kanun*) dated 1996 and numbered 4208 and the Law about the Prevention of Laundering Income comes from Crime (*Suç Gelirlerinin Aklanmasının Önlenmesi Hakkında Kanun*) dated 2006 and numbered 5549,
- The Public Procurement Law (*Kamu İhale Kanunu*) dated 2002 and numbered 4734 and the Public Procurement Contracts Law (*Kamu İhale Sözleşmeleri Kanunu*) dated 2002 and numbered 4735,
- The Law about Public Financial Management and Control (*Kamu Mali Yönetimi ve Kontrol Kanunu*) dated 2003 and numbered 5018.

The major pieces of Turkish national legislation comprise various necessary legal instruments for preventing many kinds of corruption. Various instruments took place in different codes of conducts for public servants developed by the regional or international organisations are also prescribed in this legislation. In addition to these major legal regulations, various ethical principles and rules of conduct can also be detected in the organisational laws of many public bodies and the laws and by-laws of many professions (e.g. the Banking Regulatory and

Supervision Agency, the Public Procurement Agency, customs officers, police officers, internal auditors). However, they are scattered around the national legislation and need to be recodified in accordance with the guideline of a general code for all public servants.

2.2. International Conventions ratified by Turkey

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

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

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

3. INSTITUTIONAL INFRASTRUCTURE OF ETHICAL ADMINISTRATION IN TURKEY

As a consequence of increased international concern for corruption and other kinds of unethical conducts, new institutions have been established in particularly developed countries in order to determine ethical codes of conduct for public servants and monitor their applications in practice.

"The Public Service and Merit Protection Commission" (Australia), "the Office of the Ethics Counsellor" (Canada), "the Public Offices Commission" (Ireland), "National Public Service Ethics Board" (Japan), "the Committee on Standards in Public Life" (the UK), and "the Office of Government Ethics" (the US) are well-known examples of such institutions. A special institution for such a kind (i.e. the Council of Ethics for the Public Service-CEPS/*Kamu Görevlileri Etik Kurulu*) was newly established in Turkey. The legislative, executive and judicial organs of the Turkish polity are, however, directly or indirectly authorised for combating corruption in the way of establishing an ethical administration in Turkey (see Yüksel, 2005; and Ömürgönülşen, 2008c).

The ways of control of corruption can be usually categorised into three: "legislative control"; "judicial control" and "administrative control". In addition to these conventional ways of control, the "control of public opinion" (mass media and the institutions of civil society) over corruption can be counted as a new and developing way of control (see Gözübüyük and Tan, 2001, Vol.1: Chp. 8/1 and 3) in the face of increased public reaction against widespread corruption in Turkey as well as many other countries. "International control" through "the European Court of Human Rights" is another new control mechanism for Turkey. "Ombudsman" is not existent in Turkey in spite of recent legislative efforts to establish such an institution at both national and local levels. The execution of "the Law about Omdusman" (*Kamu Denetçiliği Kurumu Kanunu*) dated 2006 and numbered 5548 was halted and then totally annuled by the Constitutional Court (*Anayasa Mahkemesi*).

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

When it comes to judicial control, there is not any specialist court for the judicial supervision of corruption in Turkey. The legal proceedings about corruption cases are, however, carried out by

both the constitutional higher courts and judicial, administrative and military courts. Corruption cases within the framework of the Penal Code are in the jurisdiction of the courts of justice. “The High Court of Appeal” (*Yargıtay*) is the last instance for reviewing decisions and adjustments given by courts of justice and which are not referred by law to the other judicial authority (the Constitution, art. 154).

Administrative control contains the ways of “internal control” and “external control”. Internal control means that the activities of a public organisation are controlled by itself (i.e. auto-control). The “hierarchical control” of superiors over subordinates is a conventional but important way of internal control. “Inspection boards” in the Office of the Prime Ministry and in every ministry and autonomous public bodies play a significant role in terms of internal control in Turkey. In particular, the “Inspection Board of the Office of the Prime Ministry” (*Başbakanlık Teftiş Kurulu*) has recently been assigned to a new role: so-called “central co-ordination unit for implementing ant-corruption policies”. All these inspection boards execute their inspection functions mainy in the light of the Penal Code, the Laws numbered 3628 and 4483 and the CSL (disciplinary provisions). External control means that the activities of a public organisation are controlled by the authorities outside the public organisation concerned. The “administrative tutelage” of the central government over local governments in Turkey is a good example for external control. “Control by special public bodies” are carried out by certain expert public bodies authorised in specific areas or issues such as the “Audit Court” (*Sayıştay*), “the State Supervisory Council” (*Devlet Denetleme Kurulu*), “the Higher Supervisory Board of the Prime Ministry” (*Başbakanlık Yüksek Denetleme Kurulu*), “the Banking Regulation and Supervision Agency” (*Bankacılık Düzenleme ve Denetleme Kurumu-BDDK*), “the Public Procurement Agency” (*Kamu İhale Kurumu*), “the Examination Board for Financial Crimes” (*Mali Suçlar Araştırma Kurulu-MASAK*) and the CEPS in Turkey.

“The Audit Court” (the Court of Accounts/*Sayıştay*) is one of the higher courts in Turkey. This constitutional institution is charged with auditing, on behalf of the Turkish Parliament, all the accounts relating to the revenue, expenditure and property of government departments financed by the general and subsidiary budgets, with taking final decisions on the acts and accounts of the responsible officials, and with exercising the functions required of it by law in matters of inquiry,

auditing and judgement (see the Constitution, art. 160; and the Law about the Audit Court dated 1967 and numbered 832).

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

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

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

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

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

It should be, however, pointed out that institutions mentioned above, except CEPS, are not deliberately established for preventing and combating all kinds of corruption and unethical conducts and monitoring the issues of public service ethics. Although many of them do their supervisory functions indirectly, they are not always effective enough to achieve this aim (see Başbakanlık Yüksek Denetleme Kurulu, 1989). The daily workload of the Audit Court and the Higher Supervisory Board of the Prime Ministry prevents these bodies to examine corruption cases properly. The Audit Court does not have any co-operation with departmental inspection boards. It does not have investigative powers and whenever it suspects a criminal offence, it either reports to public agency concerned or to the public prosecutor. Some of these institutions (e.g. BRSA, PPA and EBFC) are authorised in highly limited fields and jurisdictions which do

not cover different aspects of unethical conducts. BRSA could not handle properly the Imarbank Scandal in the early 2000s (see Ömürgönülşen and Ömürgönülşen, 2009). Although PPA's role in combating corruption is highly crucial, it has preferred to play a low-profile role in practice since 2002. Furthermore, the supervisory report of the State Supervisory Council is not mandatory for public organisations. If the public organisation concerned considers the information in this report as denunciation, it may start investigation about the civil servant(s) concerned (Gözler, 2002: 123). One of the most serious deficiencies in the supervisory activities of these institutions is that the results of supervision are not publicly known enough (Aktan, 1992: 110-111).

With "the Law concerning the Foundation of the Council of Ethics for the Public Service" dated 2004 and numbered 5176, a specialised council (the Council of Ethics for the Public Service-CEPS/*Kamu Görevlileri Etik Kurulu*) for supervising the ethical conducts of public servants was establihed for the first time in Turkey. The recommendations of regional and international organisations such as the EU, the Council of Europe and the OECD was influential in the establishment of CEPS as an important part of the ethical infrastructure of Turkey. CEPS is commissioned and authorised to "determine the principles of ethical behaviour" to be abided by public servants while performing their duties, "perform the necessary investigation and research" with the personal claim that the ethical principles are violated or the same based on the complaints to be received, to inform the relevant authorities regarding the result of such investigation and researches, "perform or make performed studies to establish the ethical culture" within the public and to support the studies to be performed in this regard (art. 3). CEPS is also authorised to examine, when necessary, the declarations of assets of public servants (art. 8).

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

2005; Demirci and Genç, 2007; and Ömürgönülşen, 2008a, 2008b, 2008c). The narrow span of authority of CEPS (politicians, military-judical-academic personnel and cases already transferred to courts are not covered by the Law) are the most significant criticisms. Furthermore, its relations with disciplinary boards and institutional ethics commissions are really weak. Since the functions of CEPS are actually restricted by the Turkish penal law and disciplinary law, the role of CEPS in combating corruption and unethical conducts can be questioned. It is, however, early to evaluate the effects of the works of CEPS since it was put into force in late 2004. Nowadays, CEPS is heavily occupied with conducting a project called "Ethics for the Prevention of Corruption in Turkey" (*Türkiye'de Yolsuzluğun Önlenmesi İçin Etik Projesi*), in co-operation with the Council of Europe (see http://www.coe.int/tyec). Recently few cases about mayors and bureaucrats violating ethical principles have been announced by the Prime Ministry to the public as a Council Decision via the Official Gazette (*Resmi Gazete*).

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

Another new institution, “the Board of Review of Access to Information” (*Bilgi Edinme Değerlendirme Kurulu*) was established with the Law on the Right to Information dated 2003 and numbered 4982. Although this Board is not a special institution for combating corruption or monitoring unethical conducts, it should be mentioned among institutions which has contributed to the establishment of ethical infrastructure in Turkey since right to information is an important instrument to establish a transparent public administration. This Board was founded with a view to reviewing decisions made in accordance with the Law numbered 4982 upon appeals concerning right to access to information as well as with a view to making decisions on the exercise of right to information by public agencies. The structure and operation methods of Board are quite similar to those of CEPS.

4. SYSTEM STUDIES

Within the framework of four System Studies, firstly, previous and existing international, national and institutional anti-corruption initiatives and activities have been reviewed; secondly, the legal and institutional infrastructure of ethical administration (e.g. existing laws, by-laws, regulations, codes, institutions, strategies, procedures and mechanisms concerning with corruption and public service ethics) has been mapped; thirdly, interviews have been done with related parties in terms of contribution to or participation in anti-corruption strategies, procedures and operational activities; and finally, the effectiveness of the various means (measures and strategies) to address or prevent corruption and unethical conducts have been evaluated by the STE. As a result of all these efforts, some proposals for improvement of management, coordination and monitoring of anti-corruption and pro-ethics strategies in Turkey have been developed.

4.1. System Study No.1: Effectiveness of AC Measures through Code of Ethics

As is mentioned above, there is not any “general code of conduct for all public officials” in Turkey. However, various ethical principles and rules of conduct can be found in the major legislation in this field (e.g. the Constitution, the CSL and By-Law concerning the Principles of Ethical Behaviour of the Public Servants) and in the organisational laws of many public bodies

and the legal regulations about many professions in the public sector. So, not only the effectiveness of anti-corruption measures in the By-Law concerning the Code of Ethical Conduct for Public Servants but also that of the related legislation should be taken into consideration in order to get a broad and true picture of the issue.

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

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

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

4.1.1.1. Duties and responsibilities of public servants (particularly for civil servants): The provisions of the CSL and other constitutional and legal regulations related with the duties and responsibilities of civil servants in accordance with the internal order of CSL are as follows:

- Merit principle (the CSL, art. 3/C)

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

4.1.1.2. Prohibitions for public servants (particularly for civil servants): The provisions of the CSL and other constitutional and legal regulations related with prohibitions for civil servants in accordance with the internal order of CSL are as follows:

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

4.1.1.3. Ethical principles for public servants (prescribed by the By-Law concerning the Principles of Ethical Behaviour of the Public Servants): The principles determined by the By-Law issued by CEPS in 2005 are as follows:

- Public service consciousness in performing a duty (art. 5)
- Consciousness of serving the community (art. 6)
- Compliance with the service standards (art. 7)
- Commitment to the objective and mission of public agency (art. 8)
- Integrity and impartiality (art. 9)
- Respectability and confidence (art. 10)
- Decency and respect (art. 11)
- Notification to the authorities (art. 12)
- Avoiding conflict of interest (art. 13)
- Prohibition against the misuse of duty and authority for deriving benefits (art. 14)
- Prohibition of receiving gifts or deriving benefits (art. 15)
- The proper use of public properties and resources (art. 16)
- Avoiding extravagance and waste (art. 17)
- Unauthorised and factitious statement(art. 18)
- Notification, transparency and participation (art. 19)
- Accountability of administrators (art. 20)
- Restrictive relations with former public servants (art. 21)
- Declaration of assets (art. 22)

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

4.1.2. Some Remarks on the Effectiveness of AC Measures through Various Codes of Ethics

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

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

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

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

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

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

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

4.2. System Study No.2: Effectiveness of AC Measures through the Public Information Act

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

4.2.1. The Law on the Right to Access to Information and the Board of Review of Access to Information: In compliance with equality, impartiality and clarity principles which are the fundamental requirements of democratic and transparent government, principles and procedures concerning the usage of persons' right to access to information in Turkey are regulated with the Law on the Right to Access to Information (so-called the Public Information Act) dated 2003 and numbered 4982. In accordance with the Law, all public agencies (even the Parliament) have established separate units (Access to Information Unit/*Bilgi Edinme Birimi*) within the public relations departments to deal with requests for information. Furthermore, regulations on the right to access to information stipulate that most of the public agencies in central government or many in local governments have had their own special web pages on this issue.

This Law provides the legal basis for all public agencies when responding to requests for information. The main principle of the Law is that everybody, both citizens and foreigners (in accordance with the princiğle of reciprocity), has the right to any information (art.4). Only in cases dealth with administrative acts which are related with personal working life and

professional honour of a person and which are out of the jurisdiction of judicial review, and with information subject to state secrets and national security, economic interests of the country, civilian or military intelligence, judicial and administrative investigations and proceedings, personal privacy, privacy of correspondence, commercial secrets, literary and artistic works, internal regulations and memoranda, and recommendation and consultation requests are the exemptions of the right to access to information (art.15-27). Information already available to the public with various ways (e.g. official publications, leaflets, internet) is not within the scope of the Law either (art.8). If some part of the information requested be confidential, it is removed and the requester is informed of its removal in writing (art.9).

Within the framework of the Law, applications to get information must be made in writing including electronic mail and the requested information should be indicated in detail in the petition. There is also a legal obligation to indicate the name, signature and address of the petitioner, but no obligation to state the reason for the request (art.6). Public agencies are required to apply administrative and technical measures to provide every kind of information and document to applicants and to review and decide on the applications promptly, effectively and correctly (art.5). Public agencies are obliged to process the request within 15 working days. Such a term may be extended to 30 working days if the content concerns more than one public agency or consultation of another public agency is required or another unit of the agency hold the information (art.11). If the information requested is not described clearly or more detail is required, the requester may be asked for further information. The applicant may also be directed to another public agency which holds the information requested (art.7). All situations should be notified to the requester. The public agency should state the legitimate grounds for refusing to disclose information requested (art. 12). Public servants who do not properly practice the provisions of the Law with negligence, fault and malicious act are subject to the general provisiosn of the Turkish Penal Code and the disciplinary provisions of the CSL (art.29).

A decision to reject a demand for information, which was given by superior who has the authority for appointment based on the view of access to information unit concerned, may be appealed within 15 days to the Board of Review of Access to Information and, ultimately, before an administrative court. An appeal to the Board halts the official time for appealing to

administrative court. The Board has to take its decision with 30 working days (art.13). The decision of the Board can also be appealed to the court.

With this Law (art.14), the Board of Review of the Access to Information was set up and strated to operate in 2004. As mentioned above, this Board reviews administrative decisions made in accordance with the Law upon appeals about right to access to information. Public agencies may ask the Board for its opinion in specific cases. The Board may invite the members of public agencies concerned to its meetings in order receive more information about certain issues. The STE was informed that during the period of 2004-2008, 4962 applications were submitted to the Board. 2086 applications were rejected; 1676 applications were totally and 702 applications were partially accepted. On 144 applications, public agencies demanded the view of the Board on particular issues. Some precedent decisions of the Board are displayed in its website in order to provide useful hints for both people and public agencies in this field. This also creates a psychological effect over public servants to make them behave in compliane with legal and ethical rules. The number of applications/opinion demanded under review were 38 in the end of 2008. Most of the appeals submitted to the Board were made by public servants about public payments, contracts, appointments, transfers and administrative investigations. Each public agency also submit an annual report to the Board on statistics, such as the number of applicants received, totally or partially accepted, refused and directed to another public agency. The Board provides this information annually to the Parliament with its general report (The Law art.30 and the By-Law art. 44). The details of annual report is regulated by the Circular of the Office of Prime Ministry (*Başbakanlık Genelgesi*) dated 2005 and numbered 2005/3. In the first year of the Law, 2004, there had been about 395 thousands applications and almost 20 thousands of them had been refused (GRECO, 2006: 26). The number of application increased rapidly in the early years of the implementation of Law and then normalised.

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

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

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

There are other uncertainties in the Law as well. There is no clear guideline about the amount and collecting the fees for requesting information (see art. 10 and 11). No information about the

classifaction of applications in accordance with their subjects is provided by the units and the Board.

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

4.2.2. The relevance of the Law numbered 4982 and Board of Review of Access to Information to AC Measures: There are direct and indirect effects of the Law and the Board on public service ethics and anti-corruption measures. In terms of indirect effects, many kinds of information in the hands of public agencies are now accessible for the public. Any piece of information can be used against a public servant anytime; so, public servant prefers to obey the code of conducts by. In terms of direct effects, if a person receives enough information through his/her application on corruption or any kinds of irregularities, he/she has the right to go the court.

4.3. System Study No.3: Effectiveness of AC Measures in Criminal Law

Effectiveness of anti-corruption measures should be reviewed within the farmework of the Turkish Penal Code and related laws.

4.3.1. Crimes, offences and penalties in the Turkish Penal Code related with the violations of ethical principles and rules of conduct prescribed in the Turkish legislation

Various penalties (imprisonment and fine) are determined by the Turkish Penal Code dated 2004 and numbered 5237 for various violations of ethical principles and rules of conduct prescribed in the Turkish legislation.

4.3.1.1. Crimes, offences and penalties related with the violations of duties and responsibilities of civil servants

- **Loyalty:** Loyalty is the first duty of civil servants in Turkey. Various penalties according to the TPC (within the framework of felonies against the State in Part Four, Chapter Four to Eight of Book Two of the TPC) are applicable to civil servants who are regarded by the court not loyal to the State in accordance with the provisions in the Constitution (art. 129) and the CSL (art. 6 and 7). Due to this heavy penalty, the civil servant concerned is also terminated from the Civil Service according to the CSL (art. 48/5 and 98/b).

- **Responsibility towards supervising officer and implementation of orders:** The TPC prescribes various penalties (art. 257), depending on the nature and seriousness of the case, for civil servants who fail to comply with the orders given them by their superiors and to carry out the duties imposed upon them in accordance with the provisions of the Constitution (art. 137) and the CSL (art. 10 and 11).

- **Financial liability of civil servants for damages done to the administration or the third parties:** The personal financial liability of civil servants for damages done to the administration or the third parties (persons) is firmly established in the Turkish legislation in accordance with the principles of rule of law and public service ethics. Heavy penalties (imprisonment and deprivation from the public service temporarily or in perpetuity) according to the TPC (art. 257) are applicable to civil servants who cause any direct or indirect damage in the administration in accordance with the principles prescribed in the Constitution (art. 40, 125 and 129/5), the CSL (art. 12 and 13) and the "Law on Administrative Trial Procedure" (İdari Yargılama Usulü Kanunu) dated 1982 and numbered 2577 (art. 28).

- **Releasing information and making statement through the press about public affairs:** If civil servants release information and make statement through the press about public affairs without any authorisation, they are subject to a penalty according to the TPC (art. 258).

4.3.1.2. Crimes, offences and penalties related with the violations of prohibitions for civil servants

- **Prohibition against accepting gifts or obtaining benefits:** Civil servants who accept any gift or obtain any benefit are subject to penalties according to the TPC (art. 250, 252, 254, 255 about the offences of extortion and bribery).

- **Prohibition against revealing secret information:** Civil servants who release such kind of information are put on trial according to TPC (within the framework of felonies against the secrets of State in Part Four, Chapter Seven of Book Two of the TPC).

4.3.1.3. Crimes, offences and penalties related with other corrupt behaviour of civil servants

Various heavy penalties (heavy imprisonment and fine), some of which are mentioned above in relation to the duties and responsibilities of and prohibitions for civil servants, are determined by the Turkish Penal Code dated 2004 and numbered 5237 for various corruption crimes and offences committed by public servants. Penalties for “embezzlement” (art. 247), “peculation” and “extortion” (art. 250), “bribery” (art. 252), “negligence in the duty of control” (art. 251), “obtaining benefits from an unauthorised duty” (art. 255), “misuse of authority” (art. 257), “revealing secret information about the duty” (art. 258), “engaging in trade” (art. 259) are the most important ones among them within the framework of felonies against the State (felonies against the reliability and functioning of public administration in Part Four, Chapter One of Book Two of the TPC). The civil servants who are punished due to such crimes and offences are also deprived from the public service temporarily or in perpetuity. In a similar way, the civil servants concerned lose their one of the prerequisites for civil service employment due to these heavy penalties given them and then terminated from the Civil Service according to the CSL (art. 48/5 and 98/b). This is one of the serious measures taken against corruption in the way of establishing an ethical administration.

4.3.2. Investigation and trial of crimes and offences committed by civil servants in relation with their duties

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

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

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

4.3.2.2. Criminal investigation according to some special laws: According to the Laws numbered 5816, 298, 1402, 3628, 3713, 625 and 4081, the Law numbered 4483 is not applied to the investigation of crimes and offences taken place in these laws; and public prosecutors start investigation about civil servants who commit these crimes and offences without having any permission from any administrative authority. For the purpose of this Report, the “Law for Financial Disclosure and Combating Bribery and Corruption” dated 1990 and numbered 3628 is quite important because it brings a special investigation procedure for offences and crimes described in this Law (e.g. unjust enrichment, untrue declaration of financial assets) and for many kinds of corruption (e.g. extortion, peculation, embezzlement, bribery, smuggling, fraudulent act in public contract and procurement, revealing the secrets of the State). The Law numbered 4483 is not applied to the investigation of such crimes and offences; and public prosecutors are given some special authority in the investigation process. Public prosecutors start investigation about civil servants who commit these crimes and offences without having any

permission from any administrative authority but inform the concerned officers who are authorised for appointment (art. 17-21). The investigation and trial of civil servants about aforementioned offences and crimes are undertaken by judicial authorities. It should be noted that this exception in having permission from the administrative authority is not in contradiction with the provision of the 1982 Constitution (art. 129) mentioned below.

4.3.2.3. Criminal investigation according to the Law concerning the Trials of Civil Servants and Other Public Servants dated 1999 and numbered 4483: Temporary Law concerning the Trials of Civil Servants (*Memurin Muhakematı Hakkında Kanunu Muvakkat*) dated 1913 brought a special procedure for the investigation of crimes and offences committed by civil servants in relation to their duties and in the course of carrying out their duties. In fact, this Temporary Law of the Ottoman Empire was the traditional source of the general provisions about special investigation procedure for civil servants in the 1982 Constitution and the CSL.

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

With these provisions, the Constitution, the CSL and the Temporary Law dated 1913 altogether aim to protect civil servants against any sort of claims about their duties and to subject them to a special criminal investigation procedure. Civil servants cannot be subject to criminal investigation, except in some cases, without the permission of administrative authorities concerned. These constitutional and legal provisions are actually an extension of the principle of "security of tenure" prescribed in the 1982 Constitution (art. 128 and 129) and the CSL (art. 18). This special investigation procedure is not a privilege provided for civil servants but it should be regarded as a guarantee for the well functioning of the public service. The aggravating effect of

being a civil servant in criminal law can be balanced in this way. Putting civil servants in front of judicial authority immediately after a just or unjust complaint may humiliate them, delay public services, and weaken the authority of the State. Therefore, the permission system and the protection of civil servants against untrue claims and calumnies (the CSL art. 25) are indispensable parts of the security of tenure regime (see Tutum, 1972: 45-49; and Ömürgönülşen, 1989: 70-74, 76, 280). As a matter of fact, the Constitutional Court rejected many claims of constitutional contradiction about the Temporary Law on the ground of equality among citizens both in the periods of 1961 and 1982 Constitutions (see Aslan, 2000: 61-62).

In spite of the decisions of the Constitutional Court, the permission system is often criticised by some jurists and academics on the technical ground: contradictions with the principles of the unity of judicial power and the separation of power and equality of citizens before law. It is also argued that the investigation of crimes or offences committed by civil servants is the fundamental task of judicial authorities as a significant requirement of the rule of law. Only judicial authorities, not administrative authorities, are able to judge whether necessary conditions are exist for filing a suit against a civil servant. Furthermore, this authority of permission may be regarded by the public as an indirect protection of civil servants who commit crimes or offences by their administrative authorities (see Özek, 1961; Mumcu, 1971; Kunter, 1974: 94-99; also see Ömürgönülşen, 1989: 74-76). In addition to this rather technical criticisms, the possibility of evasion of civil servants from investigations and trials through the permission system even in the cases of serious corruption and human rights violations is severely criticised by civil society institutions and international organisations as well some jurists and academics (see Selçuk, 1997).

The scope of the Temporary Law dated 1913 was first restricted by the Law numbered 3628 in terms of crimes and offences closely related with corruption and permission system was abolished for such crimes and offences as mentioned above. Then, the Temporary Law, which was long seen as the main obstacle to the transparent and ethical administration in Turkey, was eventually abolished by the “Law concerning the Trials of Civil Servants and Other Public Servants” (*Memurlar ve Diğer Kamu Görevlilerinin Yargılanması Hakkında Kanun*) numbered 4483 in 1999. With this Law, the permission system has, in principle, been kept but it has been

modestly changed by taking such criticisms into consideration to a certain extent. The scope of the system has been narrowed in terms of persons, and crimes and offences subject to the Law; and the administrative investigation process has been shortened and criminal investigation process has been accelerated (see Aslan, 2000; Gözler, 2002: 539-541; and Gözübüyük and Tan, 2001, Vol.1: Chp. 6). According to the Law numbered 4483, in circumstances deemed necessary for the safety of public services, civil servants for whom criminal investigations are being carried out by public prosecutors may be suspended by the administrative authorities (art. 6/1).

4.3.3. Criminal proceedings and its relation with ethics inquiry

Civil servants for whom disciplinary or criminal investigation is being carried out can also be suspended from their offices as a precautionary measure in the interest of the public service (the CSL, art. 137 and 140). However, the slow-working of Turkish judicial system and general amnesties practised very often are the most significant obstacles in the effectiveness of Turkish penal law system.

4.4. System Study No.4: Effectiveness of AC Measures through Disciplinary Provisions in the Legislation and Existing Structures

AC measures in the disciplinary system of Turkish public personnel regime are mainly prescribed by the statements of the CSL numbered 657 and the "By-Law about the Disciplinary Boards and Disciplinary Superiors" (*Disiplin Kurulları ve Disiplin Amirleri Hakkında Yönetmelik*) dated 1982 within the framework of the main principles of article 129 of the Constitution. In addition, there are few other special legal arrangements for certain categories of civil servants (e.g. policemen, teachers or civil servants employed in the Ministry of Interior). As a matter of fact, the CSL clearly states that the provisions of special laws about disciplinary offences and penalties (art.125) and about disciplinary superiors and boards (art.126) are in reserve. Thus, special laws are implemented for some categories of civil servants if they are contrary to the provisions of the Constitution. However, the effectiveness of AC measures in this area should be mainly assessed within the framework of provisions, structures and procedures of CSL and their applications.

4.4.1. Disciplinary system of the CSL

The most important piece of legislation in this area is, without any doubt, the CSL and the related By-Law. So, it needs to be reviewed and assessed in terms of AC measures very carefully.

4.4.1.1. Disciplinary investigation: The structure (e.g. disciplinary authorities) and procedure (e.g. the ways of rending judgement of disciplinary boards, hearing, appeal, lapse of time, implementation of penalties, deletion of penalties, amnesty for penalties, relations between criminal and disciplinary proceedings) of disciplinary proceedings in the Turkish public personnel regime is formally designed by the CSL and the related By-Law. Although there are various provisions about the different steps of disciplinary proceedings, there is no clear statement about the details of investigation procedure carried out by administrative superiors and/or inspectors in practice in the CSL or in other pieces of the legislation related with the disciplinary system. Therefore, disciplinary investigation is usually carried out in accordance with traditional investigation procedures and then investigation files are hand in disciplinary superiors and boards. When disciplinary authorities are received information about disciplinary offences by means of complaints, notices, inspection or administrative investigation reports or criminal proceedings, they immediately start disciplinary investigation and use all sorts of documents they have and take the views of witnesses and experts.

Although procedures which are followed by disciplinary boards and especially by the high disciplinary board of public agency are formally determined, the ways of rending judgement of disciplinary superiors are not clear. It can be said that those superiors also make their decisions about light penalties in accordance with traditional procedures. In fact, the degree of reliability of disciplinary proceedings, particularly with respect to ethical inquiry, is closely related with the actual practice of investigation process.

4.4.1.2. Disciplinary offences and penalties in the CSL

The CSL comprises some comprehensive rules which describe conducts of civil servants in Part I (Section 2, 3 and 4). The CSL has also comprehensive sections about discipline (Part IV, Section 7) and suspension (Part IV, Section 8) (see DPB, 2002; also see Gözübüyük and Tan, 2001, Vol.1: Chp. 6; and TODAİE, 2002: Chp. IV). In order to maintain proper and ethical conducts in the public service, 5 categories of disciplinary offences and disciplinary penalties (warning, reprimand, delay in the salary step increase, deduction from monthly salary, and discharge from the civil service), varying according to the nature and seriousness of the case, are prescribed one by one for civil servants who fail to comply with the orders given them and to carry out the duties imposed upon them and who do things which are forbidden. Matters of aggravation and extenuation are also prescribed in the CSL (art. 125). Thus, no discretionary power is recognised to disciplinary superiors or disciplinary boards. Civil servants for whom disciplinary investigation is being carried out can also be suspended from their offices as a precautionary measure in the interest of the public service. The disciplinary penalty of "discharge from the civil service" is the heaviest penalty among such penalties and also the most important one for both the security of tenure and anti-corruption policies.

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

4.4.1.2.1. Disciplinary offences and penalties related with the violations of duties and responsibilities of civil servants

- **Impartiality:** One of the major duties of civil servants in Turkey is impartiality. According to the CSL (art. 7), "civil servants shall not register membership in political parties nor shall engage in any practice to the interest or damage of any political party, person or group; shall exercise no discrimination carrying out their duties on account of language, race, sex, political and philosophical affiliations, religion and creed; shall not make political and ideological actions and statements and shall not participate in any kind of political and ideological activities". Heavy disciplinary penalties (deduction from monthly salary and discharge from the civil service)

according to the CSL (art. 125/D and E) are applicable to civil servants who violate this provision. Actually, the essence of this provision based on the principle of "the equality of people in front of the laws", that is a constitutional rule (the 1982 Constitution, art. 10).

- **General principles of conduct:** The general principles of conduct have been determined in the CSL (art. 8). According to this article, "in their conduct in and outside the service, civil servants shall demonstrate that they are worthy of the respect and reliance which their official ranks require". Similar obligation is also valid for their conducts in abroad (art. 9). In article 8, it is also emphasised that "in establishing the working relations of civil servants, co-operation shall be essential". In added article 19 (by the Law numbered 2670), the "general appearance and dress" of civil servants is also regulated. These general principles of conduct actually indicates that civil servants should obey certain social norms in their conducts such as "manner", "respect", "reliance", "dignity", "co-operation", "courtesy" and "tidiness in general appearance and dress". Various disciplinary penalties according to the CSL (art. 125), depending on the nature and seriousness of the case, are applicable to civil servants who do not conduct in accordance with these provisions.

- **Responsibility towards supervising officer and implementation of orders:** According to CSL (art. 11), "civil servants are responsible for following the essences which are set in laws, regulations and by-laws and for carrying out the orders given them by their supervising officers; and responsible to their supervising officers for the satisfactory and correct performance of duties". The CSL prescribes various disciplinary penalties, according to the nature and seriousness of the case, for civil servants who fail to comply with the orders given them and to carry out the duties imposed upon them (art. 125). With these provisions, on one hand, it is aimed to prevent delay in the functioning of public services because of civil servants who refrain from carrying out orders through deliberately misinterpreting the subject matters of their supervising officers' orders as an offence. On the other hand, it is clearly prescribed that "supervising officers shall not give illegal order to civil servants under their authorities" (the CSL art. 10) and supervising officers who give "illegal orders" to their subordinates cannot evade any responsibility (the CSL art. 11). In this case, supervising officers are responsible for their orders in terms of disciplinary, financial and criminal responsibilities. An order which in

itself constitutes an offence shall under no circumstances be executed; the person who executes such an order shall not evade responsibility (the 1982 Constitution art. 137 and the CSL art. 11). It should be pointed out, however, that the complexity of public services, insufficiency in the opportunities of inquiry provided for civil servants and the subjective nature of hierarchical relationship between the superior and his/her subordinate are the main obstacles in the careful examination of the content of orders (Tutum, 1972: 31-40; Ömürgönülşen, 1989: 64-68).

- **Financial liability of civil servants for damages done to the administration or the third parties:** The personal financial liability of civil servants for damages done to the administration or the third parties (persons) is firmly established by both the 1982 Constitution (art. 40, 125, 129/5) and the CSL (art. 12 and 13) in accordance with the principles of rule of law and public service ethics. In addition to their financial liability, certain disciplinary penalties (warning, reprimand, and delay in the salary step increase) according to the CSL (art. 125/A, B and C) are also applicable to civil servants who cause any damage in the administration due to their malicious intent, negligence or recklessness.

- **The declaration of assets:** The declaration of assets (financial disclosure) as an instrument to control usage of government positions for private gains has been stipulated by the CSL (art. 14). Civil servants who fail to comply with this duty are subject to a disciplinary penalty (deduction from monthly salary) (art. 125/D).

- **Releasing information and making statement through the press about public affairs:** The CSL brings some important restrictions for civil servants on releasing information and making statement through the press about public affairs (art. 15). Civil servants who violate this provision are subject to a heavy disciplinary penalty (deduction from monthly salary) according to the CSL (art. 125/D). This restriction is supported on the ground that statements made by various officials through various channels of communication may mislead public opinion. However, this is a heavy restriction on the freedom of communication. Furthermore, this provision has a special importance as an obstacle to the transparency of public administration in Turkey.

- **The use of official documents, materials and instruments:** In order to prevent any sort of misuse of public documents and instruments, the CSL (art. 16) clearly prescribes that "civil servants shall not take official documents, materials and instruments out of authorised premises and shall not use them for private purposes. Civil servants on termination of their duties are obliged to return to appropriate authorities all official documents, materials and instruments which were until then maintained in their possession". Civil servants who violate this rule are subject to general provisions in the compensation of financial damage done to government. They are also subject to various disciplinary penalties (warning, reprimand, and delay in the salary step increase) (art. 125/A, B and C).

4.4.1.2.2. Disciplinary offences and penalties related with the violations of prohibitions for civil servants

- **Prohibition against engaging in trade and other profit-making activities:** According to the CSL (art. 28), "civil servants shall not engage in activities which would classify them under the Turkish Commercial Law as merchant or tradesman; they shall not accept any duty in industrial and commercial corporations; they shall not work as commercial representative or commercial liaison; they shall not accept partnership in collective or limited corporations. Civil servants' duties of representation of their departments in the joint enterprises of the department concerned are excluded here. Civil servants engaged in duties such as the membership of administrative and controlling boards of their construction, development and consumption co-operatives and financial assistance funds and duties prescribed by specific laws are excluded here. Civil servants are required to notify their departments within 15 days when their spouses, children who are under the age of discretion and who are under the care of a guardian become engaged in such prohibited activities". The aforementioned notification is important for the safety of public services. With this notification, the administration may transfer the civil servant whose relatives engaged in such prohibited commercial activities to another place or duty, which is not related to the subject of commercial activity. Civil servants who violate these provisions are subject to disciplinary penalties (reprimand and deduction from monthly salary) according to the CSL (art. 125/B and D). This is, without any doubt, one of the most violated provisions of the CSL. Some civil servants are engaged with such business activities through their close relatives

who are not civil servant without any notification. Also, many civil servants at lower grades work in the marginal sector since their purchasing power has been diminished because of the inflationary economic policies of governments. Under such severe economic conditions, their supervising officers usually condone them despite their activities against the Law.

- **Prohibition against accepting gifts or obtaining benefits:** According to the CSL (art. 29), "civil servants shall not request any gift or benefit, directly or indirectly, and even when they are not on official duty, accept gifts for the aim of obtaining benefits or ask the people with whom they have official relations to lend them money". Civil servants who obtain any benefit are subject to a disciplinary penalty (deduction from monthly salary) according to the CSL (art. 125/D). Although gifts and benefits are the most common tools of bribery, gift giving is, in particular, still a well-established tradition in the Turkish bureaucracy as well as many other public bureaucracies. In societies where this tradition continues to be effective, individuals do not regard gifts to civil servants as against the rules, and civil servants are not averse to receive them. This tolerance stemming from traditions creates an appropriate ground for corruption (Berkman, 1983: 71-73). Therefore, the degree of conventional hospitality and the value of a minor gift should be determined by law in order to prevent misuse for this tradition. A similar rule is brought by the Law numbered 3628 (art. 3) for civil servants who receive small gifts (up to ten times of net minimum wage) from foreign people, government or institutions. The By-Law concerning the Principles of Ethical Behaviour of the Public Servants dated 2005, in principle, envisage a prohibition against accepting gifts or obtaining benefits but not accept a "zero-tolerance" policy (art. 15). Small and symbolic gifts and various donations (there is no clear-cut monetary limit) are not covered by this general prohibition.

- **Prohibition against obtaining benefits from an enterprise under his/her control:** According to the CSL (art. 30), "under no circumstances shall a civil servant obtain any kind of benefit, directly of indirectly, from any enterprise under his/her control, or which has any association with the duty his/her performing or with the department where he/she is employed". Since this is a complementary provision to that of article 29, same disciplinary penalty (deduction from monthly salary) according to the CSL (art. 125/D) is applicable to civil servants who violate this provision.

- **Prohibition against revealing secret information:** According to the CSL (art. 31), "civil servants are prohibited to reveal secret information related to public services without the written permission of the minister concern, even if they are no longer associated with their official duties". Where there is no clear definition of "secret information" this rule might be an important obstacle in front of investigation related with corruption. Many bureaucrats as well as politicians can evade trial thanks to the protective shield of the concept of secret information. Whoever releases such kind of information faces to lose his office due to the heaviest disciplinary penalty (discharge from the civil service) according to the CSL (art. 125/E).

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

In general, ministers, superiors authorised for the appointment (e.g. ministerial undersecretaries and general directors), governors, district governors, mayors, superiors authorised for performance appraisal, disciplinary boards and high disciplinary boards are all defined as disciplinary authorities. According to the CSL (art.134), there is a disciplinary board and a high disciplinary board at the centre of each public agency. At the centres of provincial or regional units of public agencies and the local directorates of the Ministry of National Education, a disciplinary board also exists. The existence of various disciplinary authorities makes the disciplinary system too complex. Furthermore, disciplinary boards have been transformed into advisory boards in time due to some modifications made on the related articles of CSL.

According to the same article, the details about disciplinary superiors and boards are determined by a by-law. This by-law was issued by the Council of Ministries in 1982. The significant

features of By-Law with respect to both security of tenure and ethical inquiry about civil servants are as follows:

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

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

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

- Disciplinary boards are composed of high-level superiors representing the public agency concerned and the heads or sub-heads of units such as personnel, legal affairs, inspection and inquiry (art.4). The commission period of board members is 2 years. The members of which the period has expired can be reappointed for the same period.

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

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

4.4.1.4. Decision-making procedure of high disciplinary board and the right to hearing: As the discharge from the civil service is a gross disciplinary penalty, imposing this penalty is subject to a difference procedure and basic procedural guarantees are granted to civil servants. According to the CSL (art.126), this penalty is determined by the high disciplinary board of public agency on the demand of disciplinary superior concerned. This board does not have the authority to determine another penalty; it either accepts the penalty suggested or rejects it. In the case of rejection, the superior authorised for appointment is free to determine another penalty within 15 days.

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

4.4.1.5. Appeal against disciplinary penalties: According to the article of 129 of the Constitution, “civil servants shall not be subject to disciplinary penalty without their being granted the right to defence. Disciplinary decisions shall be subject to judicial review, with the exception of warnings and reprimands”. The right to appeal is also granted to civil servants for the penalties of warning and reprimand in the CSL. Civil servants can appeal to administrative

courts for judicial review of disciplinary penalties such as delay in the salary step increase, deduction from monthly salary, and discharge from the civil service (art. 135).

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

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

4.4.1.7. Implementation of disciplinary penalties: According to the article 132 of CSL, disciplinary penalties are put into effect on the date of determination and they are implemented immediately, in principle, by superiors who are authorised for appointment. This arrangement that does not consider the result of the appeal against disciplinary penalty may cause tension between the administration and civil servants particularly in respect to the issues of security of tenure and unethical conducts. Superiors who are authorised for performance appraisal and the State Personnel Department (only in the case of penalty of discharge from the civil service) are informed.

4.4.1.8. Deletion of disciplinary penalties: Disciplinary penalties (excluding discharge from the civil service) which are registered to the personal records of civil servants may be deleted from these records by superiors authorised for appointment after a certain period (5 years for warning and reprimand; 10 years for other penalties) on the request of civil servant concerned (art.133). Superiors who are authorised for appointment monitor and consider the conducts of civil servant

concerned within such periods. So, discretionary power is given to the administration of public agency concerned. In the case of penalty of delay in the salary step increase, the view of disciplinary board is also taken. With this mechanism, civil servants are protected from the unfavourable effects of disciplinary penalties on their career prospects as disciplinary prospects constitute an obstruction for their appointment to particular offices (art.132). The ways of administrative hearing and judicial review over decisions taken against the request for the deletion of a disciplinary penalty are also available for civil servants concerned. However, the situation of ethical violations which caused certain disciplinary penalties remains quite controversial even if such penalties are legally deleted.

4.4.1.9. Amnesty for disciplinary penalties: In Turkey, in almost every decade, disciplinary penalties are pardoned with all of their results except the penalties of permanent discharge. On one hand, those amnesties try to reestablish organisational harmony by reducing tensions and conflicts between civil servants and their superiors; on the other hand, they provide an important opportunity for civil servants who are sorry for their faults (Korkmaz, 1987: 72-73). However, such amnesties which are practised very often may reduce the corrective effects of disciplinary system and ethical inquires in the long run.

4.4.1.10. Central data collection for disciplinary penalties: Until last year, there was not any central mechanism or even an attempt to collect data for disciplinary penalties apart from the penalties of discharge from the civil service which are reported to the State Personnel Department. There was not any coordination in this field among public agencies either. With the Circular of the State Personnel Department dated 2008 and numbered 2008/1, a new system for central data collection for disciplinary penalties at national level has been established in accordance with GRECO's recommendation based on OECD Convention of 1997. According to the Circular (art.13), public agencies report all disciplinary penalties which are imposed by disciplinary superiors or disciplinary boards and all disciplinary penalties which are deleted by the authorities concerned to the State Personnel Department. Public agencies use the official report form in the web-site of State Personnel Department and authorised web operational personnel enter and then update data about disciplinary penalties online through the internet. All transactions in this system must be done in accordance with the principle of secrecy.

However, there are some gaps in the system. Only disciplinary penalties but not disciplinary offences are mentioned in the form for data collection. Not only disciplinary penalties which are deleted by administrative authorities but also those which are abolished by administrative courts on the appeal of civil servants for judicial review should be reported. Information about dissciplinary actions and general and disciplinary amnesties in the past are not mentioned in the form. So, the system does not provide any information about the past. There is no mechanism for the verification of data quality is provided in the system either. Such inadequacies should be immediately rectified and the operation of this brand new system should be monitored closely.

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

4.4.2. Disciplinary and criminal proceedings and its relation with ethical inquiry: Since disciplinary boards, which is entitled to give penalty of delay in the salary step increase, are authorised for evaluation of claims about unethical conducts according to the Law numbered 5176 and the related By-Law, there is an inherent relation between disciplinary proceedings and

ethical inquiry. However, legal and administrative connections between disciplinary and criminal proceedings and its relations with ethical inquiry is somehow controversial or at least unclear. An ethical inquiry can be carried out independently from criminal proceedings and even from disciplinary proceedings since unethical conducts do not always breach legal of disciplinary rules. Also, as it is stated in the Law numbered 5176, ethical inquiry (examinations and investigations) performed by CEPS or disciplinary boards in accordance with this Law does not constitute a hindrance for criminal or disciplinary proceedings (art.5). So, it can be argued that decisions made at the end of ethical inquiry should be independently taken and implemented from connections between criminal and disciplinary proceedings mentioned above. During ordinary administrative inspections or legal investigations, inspectors should review cases not only in terms of legal, administrative or disciplinary responsibilities but also "ethical" responsibilities. If a public servant's conduct is regarded as unethical as a consequence of such inspection or investigation, the investigation file should be sent to the CEPS or authorised disiciplinary board for further ethical inquiry.

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

As mentioned above, the acts and actions of public servants violating ethical principles are announced by the Prime Ministry to the public as a Council decision via the Official Gazette (The Law numbered 5176, art. 5). Since this is a heavy penalty and the way for judicial review is open (if such a decision is annuled via adjudication, the adjudication excutes its verdict and makes it announced at the Official Gazette), CEPS did refrain to use this way for its first 4 years. Although this attitude was generally perceived by mass media and public opinion as a political timidity of CEPS, CEPS almost totally preferred soft measures rather than hard measures. Only recently the Council's decisions about few cases have been announced by the Prime Ministry to the public as a via the Official Gazette. In order to sort out this problem, various and lighter

penalties (e.g. ethical warning or reprimand) should be prescribed in the Law rather than relying only on the announcement of heavy ethical violations in the Offical Gazette. As a result of ethical inquiry, these lighter penalties, apart form disciplinary penalties, can be imposed on public servants. As an alternative way, ethical penalties or sanctions can be accommodated within disciplinary penalties through changes in the article 125 of CSL. Such lighter penalties can be filed to the personal performance records of public servants. In fact, according to article 23 of the By-Law, authorised superiors for performance appraisal evaluate the personal performance of public servants in terms of compliance with the principles of ethical behaviour arranged in this By-Law.

In sum, the actual operation of disciplinary system and its connection with "unethical conducts" are questionable. The existence of various disciplinary superiors and boards at different levels; and the existence of special provisions for certain categories of civil servants have made the system complex and confused the authorities from time to time. Transformation of disciplinary boards into advisory boards in time and the lack of representation of civil servants or their unions in disciplinary boards have made such boards ineffective in disciplinary system. At least, a member of departmental ethics commission should be represented in disciplinary boards since the ethics training of disciplinary boards' members are generally not enough. Determination of the details of disciplinary system (disciplinary superiors and boards and the procedures they follow) by the By-Law dated 1982 can be considered as a deviation from the principle of the regulation of the statutory affairs of civil servants by law. The legal procedure for whistleblowing and the protection mechanism of whistleblower should also be developed in compliance with GRECO's recommendation based on OECD Convention of 1997. The connections among disciplinary proceedings, criminal proceedings and ethical inquiry are still not clear legally.

CONCLUSION: SOME REMARKS ON THE OSBTACLES AND FACILITATORS FOR ESTABLISHING AN ETHICAL ADMINISTRATION IN TURKEY

The Turkish public administration is equipped with necessary legal instruments and institutional mechanisms (i.e. hard measures of compliance based ethics management) against many kinds of

corruption in the way of establishing an ethical administration (see Öktem and Ömürgönülşen, 2007: Chp.5; Ömürgönülşen, 2008a, 2008b and 2008c) in spite of some deficiencies in terms of international standards (i.e. there is no a special code of conduct for all public servants and an ombudsman for ethical issues). Furthermore, a special institution for monitoring the issues of public service ethics (i.e. CEPS) was newly established and some legal regulations and institutional arrangements on the issues of right to information, transparency, and financial management and control were recently completed. In other words, the insufficient aspects of ethical infrastructure have been rectified partly in the process of accession to the EU (see Ömürgönülşen and Öktem, 2005 and 2007: Chp.5). If so, why does corruption have still a widespread effect on the Turkish polity? Why are such legal and institutional instruments and mechanisms not enough to establish an ethical administration in Turkey? Is there any serious deficiency in the application of legal-administrative rules and sanctions and the operation of institutions due to some cultural factors in spite of recent attempts and improvements?

The most important aspect of the fight against corruption is, of course, not only enacting anti-corruption legislation, but also the enforcement of legal provisions and continuous monitoring of activities of all public servants in the light of this legislation. In spite of improvements which were recently made in the legal and institutional infrastructure, most of the legal-administrative institutions and mechanisms are not operated properly in practice. This is the most serious obstacle in establishing an ethical administration in Turkey. “Socio-political traditions” (collectivist culture based on solidarity and traditional spoils culture), “administrative traditions” (e.g. patronage in entering the public service, gift giving and taking, and keeping business relations with the government department after retirement), “legal uncertainties” (e.g. lack of definition of secret information or lack of regulation in the case of morally or ideologically repugnant order), “complexity of public services” (e.g. difficulties in the examination of the content of orders), and “socio-economic problems” (e.g. the side effects of neo-liberal economic policies and new managerial techniques conducted without questioning enough their philosophical essence and illegal commercial activities of public servants because of their lower salaries) are significant obstacles in the enforcement of legal-administrative instruments in practice (see Emre, Hazama and Mutlu, 2003; Ömürgönülşen, 2003; Ömürgönülşen and Öktem, 2005 and 2006). As is seen, most of he deficiencies in the operation of such institutions and

mechanisms and application of legal-administrative rules mainly stem from “cultural factors”. Therefore, it can be argued that cultural factors are other important elements for an ethical administration. Combating corruption and unethical conducts has to be supported with “cultural strategies” as well as legal-administrative strategies (see, Ömürgönülşen and Öktem, 2005 and 2006). Public service ethics, without any doubt, is not only concerned with the conscience of individual public servant or with some legal-institutional measures. The prevention of unethical conducts of public servants cannot be only maintained by punishing public officials who committed corruption, but through understanding the “cultural dimension of ethical administration”. The most important thing is to establish an administrative climate in public administration based on ethical values; and even to create an understanding based on ethics in the society as a consequence of the legal-institutional measures and cultural-behavioural efforts.

Within this framework, some early remarks and suggestions can be made to develop an ethical administration in Turkey as follows:

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

- The need of an “independent anti-corruption body” (as a hard measure of compliance based ethics management) should be clarified; if it is needed, links between this body and the Council of Ethics (as soft measure of integrity based ethics management) and links between this body and other existing auditing& supervisory bodies should be clearly established; all elected and appointed public officials should be covered by these two bodies;

- If two important institutions for combating corruption, “Ombudsman” and the “Office for Right to Information” are established, their accommodation within the Council of Ethics should be seriously considered.

- Links among CEPS, institutional “ethics commissions”, “disciplinary boards” and “authorised superiors for personal performance appraisal” should be reconsidered; necessary steps (e.g. merging or mixing ethics commissions and disciplinary boards) should be taken; and relations among criminal proceedings, disciplinary proceedings and ethical inquiry should be clarified by changing the related legislation;

- A comprehensive “anti-corruption law” should be enacted; the structure and language of the present national legislation should be simplified; and the links between this general anti-corruption law and other national legislation should be clearly regulated;

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

- Transparency in governmental activities should be developed through the right to information; accountability mechanism should be improved through legal measures and modern managerial techniques;

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

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

- More actions in the field of ethics training should be taken to raise public awareness of corruption as a serious criminal offence; ethics training (including training at probationary period, training for the members of institutional ethics commissions and disciplinary boards;

training for ethical leadership, and training for professional codes of conducts for certain categories) at central and organisational levels should be institutionalised and then disseminated to the whole public sector.

- Not only unethical conducts of public servants are punished but also, and more importantly, good patterns of conduct of public servants (e.g. exemplars) should be rewarded on the base of information gathered from institutional ethics commissions; ethical awareness and ethical conducts should be used more in personal performance appraisal of public servants;

- National and organisational cultural factors which are support for ethical behaviour should be promoted;

- Certain categories of public agencies and public servants which are notoriously vulnerable to corruption should be monitored more closely with the help of various information technologies and e-government practices;

- Dialogue between the parliament, government, public administration and civil society should be strengthened; trust between public servants and citizens should be established;

- Continuous will, decisiveness, support and honesty of the political power for the fight against corruption (e.g. restrictions on political immunities and financing political activities) should always be welcome.

It should always kept in mind that developing an infrastucture for establishing an ethical administration is a long term and hard task. It necessitates not only legal and institutional reforms but also transformation in mentality and attitude. Experience of other countries provide insightful hints for any national reform attempt in this area but it is clear that most of solutions come from national experience just like problems stems from.

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