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LEGAL AND INSTITUTIONAL INFRASTRUCTURE OF ETHICAL ADMINISTRATION IN TURKEY

Prepared by:

Ugur Omurgonulsen, Turkey
Council of Europe Short-Term Expert

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STE has completed the necessary base (i.e. the gap analysis) for four system studies mentioned above. STE sketched out the ethical (legal and instutional) infrastructure of Turkey through reviewing related legal documents (laws, by-laws, regulations and codes) and institutions-mechanisms.

This Interim Report covers mainly the review of legal regulations and instutional landscape related to anti-corruption strategy and give some early hints for their (in)adequacies and (in)effectiveness.

LEGAL AND INSTITUTIONAL INFRASTRUCTURE OF ETHICAL ADMINISTRATION IN TURKEY

INTRODUCTION: THE AIM AND SCOPE OF INTERIM 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 can also be explained through political-administrative culture of Turkey (see Ömürgönülşen and Öktem, 2005 and 2006). 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 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.

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

In this Interim 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 early clues for the (in)adequacies and (in)effectiveness of legal measures and institutional mechanisms have been figured out.

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 Efficient Management in the Public Sector" (*Kamu Saydamlığın Artırılması ve Etkin Yönetim 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 (see European Commission, 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, 2002) 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. 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 inquires 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. 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 "special 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.

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 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,
- 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.

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)

2.3. 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 civil servants goes beyond the scope of this Interim Report, only some fundamental ethical principles and rules of conduct for public servants, which are taken place in the Constitution, the CSL and By-Law concerning the Code of Ethical Conduct for Public Servants and some other related laws and by-laws, will be mentioned.

The CSL comprises 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). The fundamental principles to secure the proper and ethical conducts of public servants and to prevent different types of corruption, taken place in the Constitution, the CSL and other related laws and by-laws, are as follows:

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

- 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)

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

- 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)

2.3.3. Ethical principles for public servants (prescribed by By-Law concerning the Principles of Ethical Behaviour for the Public Servants):

- 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)

As is seen, the principles determined by the By-Law issued by the Council of Ethics for the Public Service (CEPS/*Kamu Görevlileri Etik Kurulu*) in 2005 are actually 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 ve Arap 2005; Yüksel, 2005).

Firstly, those ethical principles (code 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, 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 the By-Law.

2.4. Disciplinary offences and penalties in the CSL

In order to maintain proper and ethical conducts in the public service, various 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 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 (the CSL, art. 125). However, the operation of disciplinary system (i.e. disciplinary boards at different levels and procedures they follow) and its connection with “unethical conducts” are questionable.

2.5. Corruption crimes, offences and penalties in the Turkish Penal Code

In addition to disciplinary penalties for various disciplinary offences, various heavy penalties (heavy imprisonment and fine) 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”, “peculation”, “extortion”, “bribery”, “negligence in the duty of control”, “misuse of authority”, “revealing secret information about the duty”, “engaging in trade” are the most important ones among them within the framework of felonies against the functioning of the State (Part 4 and Section 1 of the Penal Code). 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. 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.

2.6. Guarantee provided in the 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 crucial for combating corruption: “guarantee provided in the investigation and trial of offences and crimes committed by civil servants in relation with their duties”. There are three possibilities in the application of criminal investigation about civil servants who commit crimes or offence.

Firstly, 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.

Secondly, according to some special laws such as the “Law for Financial Disclosure and Combating Bribery and Corruption” dated 1990 and numbered 3628, the Law numbered 4483 is not applied to the investigation of crimes and offences taken place in this 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 paper, the Law 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).

Finally, but most importantly, both the 1982 Constitution (art. 129), the CSL (art. 24) and the “Law concerning the Trials of Civil Servants and Other Public Servants” dated 1999 and numbered 4483 aim to protect civil servants against any sort of claims about their duties and to subject them to a “special criminal investigation procedure” in the cases of “crimes and offences committed because of their duties”. 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) (see Tutum, 1972: 45-49; and Ömürgönülşen, 1989: 70-74, 76, 280).

The Temporary Law dated 1913 on this subject was long seen as the main obstacle to the transparent and ethical administration in Turkey. 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 was severely criticised by civil society institutions and international organisations as well some jurists and academics (see Selçuk, 1997). With the Law numbered 4483, 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 (see Aslan, 2000; Gözler, 2002: 539-541; and Gözübüyük and Tan, 2001, Vol.1: Chp.6).

As is seen, the Turkish national legislation has, in fact, enough 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 the legislation.

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. CEPS) was newly established in Turkey. The legislative, executive and judicial organs of the Turkish polity are, however, directly or indirectly authorised for combating corruption in the way of establishing an ethical administration in Turkey.

The ways of control of corruption can be usually categorised into three: “legislative control”; “judicial control” and “administrative control”. In addition to these conventional ways of control, the “control of public opinion” (mass media and the institutions of civil society) over corruption can be counted as a new and developing way of control (see Gözübüyük and Tan, 2001, Vol.1: Chp. 8/1 and 3) in the face of increased public reaction against widespread corruption in Turkey as well as many other countries. “International control” through “the European Court of Human Rights” is another new control mechanism for Turkey. “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 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. 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*), “the Public Procurement Authority” (*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).

It should be, however, pointed out that institutions mentioned above, except CEPS, are not deliberately established for preventing and combating corruption and monitoring the issues of public service ethics. Although they do their supervisory functions indirectly, they are not always effective enough to achieve this aim (see Başbakanlık Yüksek Denetleme Kurulu, 1989). 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 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 the Council as an important part of the ethical infrastructure of Turkey. The Council 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). The Council 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, the Council 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 the Council (see Arap and Yılmaz, 2005; Yüksel, 2005; Demirci and Genç, 2007; and Ömürgönülşen, 2008a, 2008b, 2008c). The narrow span of authority of the Council (politicians, military-judical-academic personnel are not covered by the Law) is one of the most significant critisims. It is, however, early to evaluate the effects of the works of the Council since it was put into force in late 2004. Nowadays, the Council 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).

CONCLUSION: SOME EARLY REMARKS ON THE ETHICAL INFRASTUCTURE 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 ve 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 structure (autonomy), authority (monitoring and/or investigating) and capacity (administrative) of the Council of Ethics for the Public Service 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) 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.
- 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;
- 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 and co-operation among policies and institutions should be enhanced;
- More actions in the field of ethics education actions should be taken to raise public awareness of corruption as a serious criminal offence; supporting cultural factors for ethical behaviour should be promoted;
- Dialogue between the parliament, government, public administration and civil society should be strengthened;
- Continuous will and support of the highest political level for the fight against corruption 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.

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