

BASIC
ANTI-CORRUPTION
CONCEPTS

A training manual

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

BASIC
ANTI-CORRUPTION
CONCEPTS

A training manual

*The opinions expressed in this work
are the responsibility of the authors
and do not necessarily reflect the official
policy of the Council of Europe.*

All requests concerning the
reproduction or translation of all
or part of this document should
be addressed to the Directorate of
Communication (F-67075 Strasbourg
Cedex or publishing@coe.int).
All other correspondence concerning
this document should be addressed
to the Directorate General Human
Rights and Rule of Law.

For more information on the subject of
the publication, please contact:

Economic Crime and Co-operation Unit,
Action against Crime Department,
Directorate General Human Rights
and Rule of Law,
Council of Europe
F-67075 Strasbourg Cedex
E-mail: contact.econcrime@coe.int
Website: www.coe.int/corruption

Cover design: Documents
and Publications Production
Department, Council of Europe
Layout: Jouve

2nd edition © Council of Europe,
January 2015
Printed at the Council of Europe

Contents

FIGURES AND TABLES	5
FOREWORD	7
INTRODUCTION	9
1. CORRUPTION	11
1.1. Definition	11
1.2. Forms	13
1.3. Terminology	15
1.4. Causes	18
1.5. Consequences	21
2. MEASURING	23
2.1. Corruption	23
2.2. Excursus: International corruption scores and surveys	30
2.3. Corruption risks	40
3. RESPONSES: OVERVIEW	45
3.1. Opinions and strategies	45
3.2. Reform of legislation and regulations	47
3.3. Judicial reform	47
3.4. Law enforcement	48
3.5. Public administration/civil service reform	48
3.6. Public education and participation of civil society as independent monitors of anti-corruption reforms	49
4. SUCCESS STORIES	51
4.1. The example of Georgia	51
4.2. Other examples	59
4.3. Success patterns	62
4.4. Literature	63
5. ETHICS	65
5.1. Ethics as an anti-corruption approach	65
5.2. How to change an ethical culture?	65
5.3. Regulating ethics	67
5.4. Training in ethics	70
5.5. Integrity testing	76
5.6. Literature	80
6. CRIMINALISATION	81
6.1. Elements of crime	81
6.2. Non-liability	89
6.3. Immunities as an obstacle to prosecution	89
6.4. Sponsorship and criminal law	90
6.5. Literature	92

7. POLITICAL FINANCING	93
7.1. Background	93
7.2. State and private funding	94
7.3. Integrity in political finance	95
7.4. Misuse of public resources	97
7.5. Transparency in political finance	97
7.6. Literature	99
8. INTERNATIONAL STANDARDS	101
8.1. Background to international standards	101
8.2. Conventions	104
8.3. Comparison of international agreements	110
8.4. Implementation and monitoring	114
8.5. Non-binding standards	118
9. APPENDICES	123
9.1. General literature	123
9.2. Internet sources	123
9.3. International standards: Council of Europe	124

Figures and tables

FIGURES

Figure 2.1: Transparency International's Corruption Perceptions Index, 2012 (mapped by country)	31
Figure 2.2: Global Corruption Barometer, 2010 (by public service sector)	36
Figure 2.3: Perception v. experience of corruption	37
Figure 2.4: Percentage of respondents in Azerbaijan who believe unofficial payments are used (by public service sector)	37
Figure 2.5: Belief that unofficial payments in Georgia remain quite infrequent (as % of respondents who believe such payments are used)	38
Figure 2.6: Reasons for making unofficial payments or gifts in countries of the former communist bloc (by public service sector)	38
Figure 3.1 The OECD Integrity Framework	48
Figure 4.1: The position of Georgia in perception v. experience of corruption	52
Figure 8.1: Signatories to the United Nations Convention Against Corruption	107
Figure 8.2: Types of bribe	112
Figure 8.3: Implementing the Council of Europe's Twenty Guiding Principles for the Fight against Corruption	119
Figure 8.4: Implementing the Council of Europe's Common Rules against Corruption in the Funding of Political Parties and Electoral Campaigns	120

TABLES

Table 1.1: Dichotomies	16
Table 2.1: Transparency International's Corruption Perceptions Index, 2012 (score by country)	31
Table 2.2: Transparency International's Global Corruption Barometer, 2010	34
Table 6.1 Criminal inviolability of office-holders in Europe	90
Table 7.1: Possible arguments pro and contra public and private funding of political parties	95
Table 7.2: Types of corruption in political finance	95
Table 7.3: Preventing corruption in political finance	96
Table 8.1: Landmark legislation and treaties	110
Table 8.2: Effects of outcome and facilitation payments	113
Table 8.3: Legal status of facilitation payments under international conventions	113

Foreword

Ever since positions of public power or trust came to exist in society, people have misused them for personal gain. Although in most cultures this has been seen invariably as a bad thing to do, corruption evolved in so many subtle ways and has so many faces that, to this date, there is no single, universally recognised definition for it.

Nevertheless, the current trend is to re-focus on the original meaning of the word *to corrupt*, which is *to destroy*. There has been an increasing recognition of the capacity of corruption not only to undermine good governance and cripple economic growth, but also to destroy trust in public institutions. Women and men across the Council of Europe area are less and less prepared to tolerate graft, and sanction the Governments for failing to tackle corruption. Very recently in Europe and beyond, we have seen how corruption, when left unchecked, can become the cause of upheaval and disorder with far-reaching, painful and costly consequences.

As an organisation dedicated to upholding the respect for Human Rights, democracy and the rule of law, the Council of Europe acted early on to address the threat brought on by corruption.

Starting in the 1990s, it adopted the Criminal Law and Civil Law Conventions on Corruption, as well as a series of Recommendations to member States – on the twenty guiding principles for the fight against corruption, on codes of conduct for public officials, on common rules against corruption in the funding of political parties and electoral campaigns.

By establishing international legal standards and “soft law” recommendations, the Council of Europe acts in line with its statutory mandate to help member States *achieve a greater unity for the purpose of safeguarding and realising the ideals and principles which are their common heritage and facilitating their economic and social progress*.

At the turn of the century, the Council of Europe established a monitoring body to evaluate compliance with these standards - the Group of States against Corruption (GRECO). GRECO is a mechanism for mutual evaluation and peer pressure - in strict respect of the equality of rights and obligations of all its members. The Group collects information through questionnaires and on-site country visits. The evaluation reports are examined and adopted at GRECO plenary meetings. They contain specific recommendations, which are in turn, subject to follow-up evaluations.

As a logical next step, the Council of Europe developed an outreach capacity. Technical cooperation projects, conceived, planned and implemented together with the beneficiary countries, support them in putting into practice specific recommendations and, more generally, in meeting their commitments as Council of Europe members. The outreach work facilitates access to the best European experience and knowledge and promotes the mainstreaming of good practices and solutions.

This manual on Basic Anti-corruption Concepts is the final product of an extensive effort by the Council of Europe experts-trainers, Secretariat staff and participants in trainings. It takes on the lessons learned from peer exchanges and expert interventions carried out in different member States of the Council of Europe in the framework of specialised training activities over the last two years.

The training concept, the preparation and layout of the training material and the refinement of the methodology are in many ways a novel contribution. A first publication of its kind by the Council of Europe, this manual is intended to serve as a tool in support of technical cooperation activities. I am confident that trainers will find in it helpful guidance for structuring and sequencing their training sessions, whereas trainees will use the book as a reference in following and understanding training in basic anti-corruption concepts.

I thank the authors Ms Vera Devine and Mr Tilman Hoppe, all experts and participants in the trainings, as well as my colleagues from the Economic Crime Cooperation Unit at the Council of Europe, whose professional knowledge and commitment underpinned the successful completion of the manual.

Ivan Koedjikov
Head of Action against Crime Department
Directorate General Human Rights and Rule of Law
Council of Europe

Introduction

This training manual, *Basic anti-corruption concepts*, forms part of the Council of Europe's technical co-operation activities with its member states. The development, preparation and publication of this deliverable has been fully funded by the Council of Europe.

The initial draft of the training manual was piloted at a training event in May 2012 in Moscow, Russian Federation. The training itself was conceptualised around an interactive, four- to five-day seminar, and it was delivered in the format of training and reading materials. Later on, Council of Europe experts and national participants at the May 2012 training session supplied additional input; all this further development aimed to make the training material more complete.

The manual's purpose is two-fold: for trainers, it serves as a suggested sequential outline of the training session(s). For trainees, it is a source of reference in following and understanding the training, as well as for individual follow-up after the event.

The manual focuses on corruption and possible responses to it, as documented by international standards and understandings. However, although general statements about corruption can be made, corruption is largely country specific, as are possible responses to it.

Chapters 1 and 3, and the Excursus in Chapter 2, were written by Council of Europe expert Ms Vera Devine (United Kingdom); the rest of Chapter 2 and Chapters 4 to 9 were the work of Council of Europe expert Mr Tilman Hoppe (Germany).

1. Corruption

Objectives

The purpose of section 1.1 is to familiarise participants with key definitions of corruption, as well as with terminology frequently used in the corruption debate. At the end of this part, participants should be able to recognise and distinguish various forms of corruption.

1.1. Definition

No society is free of corruption, though there are noticeable differences in the levels of acceptance of corruption from one country to another. What they have in common is that corruption is stigmatised across cultures: this is reflected, for example, in the fact that most countries now have anti-corruption legislation. The often prolific use of the word “corruption” (in many languages) is proof of the stigma attached to corruption itself. The word is already there, ready to describe a wide variety of situations.

In countries where corruption is widespread, people tend to quickly attribute anything that goes wrong to corruption: even a failed application for a job, a lost court case or a bad exam result. In each of these cases, corruption might have happened. Equally though, the outcomes may have been the result of personal failure, mismanagement, incompetence, failure of a civil servant to understand the spirit and letter of a law, regulation or rule, or imperfect procedures; any of these can create the impression of corruption. There can be a host of reasons why a situation played out the way it did, and they may have nothing to do with corruption.

Definitions, here as elsewhere, can help to distinguish corruption from, for example, mismanagement.

Despite a significant volume of academic research and the many international instruments dedicated to legislating against corruption, there is, maybe surprisingly, no universally agreed definition of corruption.

Corruption can be defined through specific angles: it can be seen through the lens of philosophy, through a moral-ethical prism or as part of an economic school of thought. All of these angles have shaped the international legal consensus on corruption that is now laid out in the major international legal instruments, as well as in national legislation of many countries.

This training manual focuses on the legal standards governing corruption, but it is important to set the ground for this discussion by looking at the wider debate. At

least a couple of definitions are used more frequently than others in the general debate about corruption. One frequently quoted definition is that of the World Bank (WB): “Corruption is the abuse of public power for private benefit.”¹

Another definition, cited more often than any other, is that of Transparency International (TI),² a global non-governmental organisation (NGO) that specialises in the fight against corruption. Transparency International defines corruption as “the abuse of entrusted power for private gain”.

The World Bank definition emphasises the relationship between the public sector and private interests. The focus here is on state actors – civil servants, functionaries, bureaucrats and politicians – that is, anyone with the discretion to decide how public resources are being spent.

Transparency International, however, takes this definition further. It covers any abuse of entrusted power, and hence it also covers private-sector corruption, for example when a chief executive officer (CEO) abuses the trust placed in him/her by shareholders. This type of corruption, also referred to as private-to-private corruption, has increasingly become the subject of international debate, whereas in the early 1990s there was much greater emphasis on private-to-public corruption. The Transparency International definition of corruption would cover a case like that of Enron,³ where a private-sector company engaged in corporate fraud and corruption on a massive scale, and abused the trust of its shareholders.

What the Transparency International and World Bank definitions (and other definitions that are not quoted here) have in common is that, for an act to qualify as corrupt, an illegitimate gain must have been made.

To return, then, to our initial distinction: a civil servant who breached rules and regulations because he/she misunderstood them would be incompetent rather than corrupt. If there was an element of illegitimate personal gain for the civil servant involved, we would speak of corruption.

In reality, the distinction is not always easy to draw, in particular because it is not always obvious what the illegitimate gain is. Consider the case of a person in a position of authority who recruits candidates to vacancies without following the correct recruitment procedures. There is no material gain for the official, who however might want to be seen to be able to “move things” and might gain an advantage (though possibly not immediate) in terms of loyalty from the recruit.

Another difficult case to argue would be that of a father using his influence to make *protégés* of his children and get them into good jobs: in some countries, this would be seen as not only legitimate, but even as his duty to his children. This example illustrates favouritism, a form of corruption defined in section 1.2. The counter-argument here would be that favouritism is unfair to those who are also looking for a job but whose lack of connections puts them at an unfair disadvantage.

-
1. See the World Bank’s discussion on the various possible definitions of corruption and an explanation why the organisation has settled for this definition, at www1.worldbank.org.
 2. Transparency International has national chapters in many countries, which have separate websites with country-specific information. See www.transparency.org.
 3. See a user-friendly synopsis of the Enron case in *Wikipedia*.

The corrupt act takes place when the responsible individual or party accepts an illegitimate advantage or reward, or violates conflict-of-interest rules. This advantage or reward can be money, a reward in kind or any other form of advantage. It does not have to be for the individual personally: it can be for somebody else or, for example, a political party or interest group. The responsible individual, then, misuses his/her official powers by providing undue favours or by only performing his/her duty in return for an undue reward.

For example, in the health sector, it is a corrupt act when a patient is seen only if he or she pays the nurse or doctor when by law this service is free of charge – a common occurrence in many countries in Eastern Europe. Equally, it would qualify as corruption if a state official demanded more than the officially displayed cost, for example to issue a passport or document (in these cases, often, the official provides no receipt, or the receipt is made out for a lesser sum than what was actually paid to the official); a state official might also gain an undue advantage by procuring an illegal donation to a political party, or by hiring (or facilitating the hiring of) somebody on the ground of him/her being a family member. It would also count as corruption if a political party received a donation off the books.

Both the World Bank and the Transparency International definitions have been criticised for emphasising only one side of the corrupt act – the official that is being corrupted – but not the citizens and business people who are corrupting the official. In many countries, citizens initiate bribes, even without being prompted by an official. Yet, the debate often focuses solely on the corrupt official who accepted the bribes. However, quite a few citizens might argue the other way: they would deplore the lack of an opportunity to bribe, for example in order to obtain a building permit for a house that contravenes building regulations.

Banerjee (2011) defines corruption as “an incident where a bureaucrat (or an elected official) breaks a rule for private gain.”⁴ While this covers most types of corrupt act, it too focuses solely on the public official, the corrupted, and also does not cover the possibility of the illegitimate gain not being for the individual personally.

Objectives

At the end of section 1.2, participants will be able to recognise and distinguish the different forms corruption can take.

1.2. Forms

This section heavily draws from a Glossary of Corruption put together by the U4 Anti-Corruption Resource Centre,⁵ a think-tank that has specialised in practitioner-oriented research on corruption.

Corruption is more than bribes, which is probably what comes to mind first when the topic is discussed.

4. A. Banerjee, R. Hanna and S. Mullainathan (2011) *Corruption* at economics.mit.edu.

5. See www.u4.no for the Glossary, which also contains more examples of corruption manifestations, as well as definitions of other key terms used in the corruption literature and debate.

Bribery is the payment of an undue advantage, such as a fixed sum, percentage of a contract or other favours in kind to a public official in order that the official acts or refrains from acting in the exercise of his or her official duties. A kickback is a bribe; it is an illegal, secret payment made in return for a favour. The term is used to describe the gain from rendering a special service.

Another form of corruption is embezzlement, which is the theft of (public) resources by an entrusted authority. Unlike other forms of corruption, embezzlement requires just one party – the thief. Power-holders can embezzle by systematically using political office to gain, secure and expand their private wealth.

Consider the case of James Ibori, ex-governor of an oil-rich Nigerian state (Delta), who was sentenced to 13 years' imprisonment in spring 2012, after a UK court found him guilty of fraud and embezzlement amounting to US\$77 million. Ibori admitted to 10 counts of embezzlement and money laundering, including a US\$37 million fraud pertaining to the sale of Delta State's share in the Nigerian privatised phone company V Mobile. According to the court, Ibori, during his eight-year tenure as governor, amassed real estate in the UK and South Africa worth over US\$7 million, and a fleet of luxury vehicles worth about US\$2 million.⁶

Favouritism (or cronyism) is a process that results in a biased distribution of state resources. It involves granting offices or benefits to friends and relatives regardless of their qualifications. It can be a form of corruption when power is abused for individual gain. So, in the political sphere for example, allies may receive preferential treatment in order to secure their support.

Favouritism was perceived by the media to be a key element in the controversy surrounding the resignation, in early 2012, of the president of Germany, Christian Wulff, who stood trial in 2013/2014 for allegedly accepting favours during his tenure as prime minister of the federal state of Lower Saxony. Wulff was accused of having taken important decisions on the granting of state subsidies to the film sector to an influential producer who had repeatedly invited him and his wife on expensive holidays. The controversy began when information emerged about him having received a personal loan of €500 000 on attractive repayment terms through an influential entrepreneur's wife, and not disclosing this information to the German parliament when prompted.⁷ Wulff was, however, cleared of all allegations in a final verdict by the Hanover regional court in early 2014.⁸

Nepotism is a special form of favouritism involving kinsfolk or family members. Parts of the Balkans in Europe and some African societies are often quoted as examples of places where nepotism is widespread because of the importance of belonging to a certain family or clan, and the loyalties and expectations that arise from these concepts. Favouritism and nepotism have an impact on democratic systems: when, for example, jobs and posts are awarded to unqualified individuals, this can result

6. See "Former Nigeria governor James Ibori jailed for 13 years". BBC, 17 April 2012 at www.bbc.co.uk.

7. A summary of the controversy is available in *Wikipedia*. See also *Der Spiegel* (in German).

8. See, for example, "Wulff Freispruch: Endlich Schluss", *Die Zeit*, 14 June 2014 at www.zeit.de.

in systems becoming inefficient. Favouritism and nepotism also undermine trust in the fairness of procedures and regulations.

Nepotism and favouritism occur at high and low levels of influence and power. Consider some countries in the western Balkans, where the public sector is one of the very few employers. Although public sector service jobs are not well paid, they are still very attractive: they offer security of income and benefits, such as pensions and annual holidays, as well as paid sick leave. For example, school directors, who have discretion over employing teachers, are accused of hiring not on merit but because of close ties to candidates' families. There is often no obvious financial gain to be made by the school director. The motivation can be that he/she is seen in the community as someone able to "make things happen".

Extortion is, like embezzlement, a form of corruption where only one side benefits. There is disagreement on what is considered to be extortion. Typically, it refers to a situation where there is a severe threat to the life or physical well-being of an individual or an individual's family. Racketeering is a typical example of extortion, as is the use or threat of use of force by military or paramilitaries in order to extract money, or as a precondition for an individual or company to do business. The terms blackmail and extortion are frequently used interchangeably, often because mitigating circumstances apply in criminal law in cases of extortion. However, while extortion is an extreme form of blackmail, not all blackmail is extortion. Extortion is a situation from which the extorted cannot walk away, while many cases of blackmail leave that option.

Trading in influence refers to the exchange of undue advantages between a public official (or a person in an entrusted position, such as a judge) and a member of the public. The public official or person in an entrusted position might promise to use his or her real or supposed influence to the benefit of another person in exchange for money or other favours.

One of the most prominent examples of trading in influence is that of the former governor of Illinois, Rod Blagojevich, who is serving a 14-year prison sentence after being found guilty of 18 corruption charges, including his attempt to sell or trade President Obama's senate seat when Obama became president.⁹

Objectives

At the end of section 1.3, participants should understand the terms used in discussing corruption.

1.3. Terminology

It is important to recognise and understand the terminology most frequently used in the corruption debate and literature, including the dichotomies shown in Table 1.1, discussed below.

9. See "Rod Blagojevich begins 14-year prison sentence in Colorado", *The Guardian* (15 March 2012) at www.guardian.co.uk.

Table 1.1: Dichotomies

demand-side	supply side
active bribery	passive bribery
administrative corruption	political/state capture
situational corruption	systemic corruption
petty corruption	grand corruption
local, regional corruption	central-level corruption
private corruption	public-sector corruption

A distinction often used is that of “demand” vs. “supply” of corruption. As we have seen, in almost all cases, corruption involves at least two parties: one who takes or receives the undue advantage, and one who gives the undue advantage. The latter can be an individual, or any non-governmental or non-public entity.

Another important distinction is that between active and passive bribery. Active bribery refers to the person who supplies the bribe; passive bribery refers to the person who accepts the bribe.

In 2004, the British newspaper *The Guardian* reported that BAE, one of the UK’s biggest arms exporters, had won, in the 1980s, a US\$40 million deal to supply the Government of Saudi Arabia with weapons by bribing Saudi officials. The bribes, amounting to 30% of the overall value of the deal, were allegedly paid through a slush fund. In this example, BAE would be the active side of bribery, having supplied it, while the Saudi counterparts would be the passive side, even though they might well have been very actively soliciting it.¹⁰

These distinctions – “demand” side vs. “supply” side, and “active” vs. “passive” bribery – can be confusing, because the side that would be called the passive side is actually often very active in soliciting the bribe. The distinctions are mentioned here for the sake of completeness: this terminology is widely used in the anti-corruption literature, specifically in the legal frameworks that address corruption.

Consider, for example, the Council of Europe Criminal Law Convention on Corruption, which makes extensive use of the dichotomy of active and passive bribery. According to the Convention, active bribery is “the promising, offering or giving by any person, directly or indirectly, of any undue advantage ... for himself or herself or for anyone else, for him or her to act or refrain from acting in the exercise of his or her functions”, whereas passive bribery is “the request or receipt ..., directly or indirectly, of any undue advantage, for himself or herself or for anyone else, or the acceptance of an offer or a promise of such an advantage, to act or refrain from acting in the exercise of his or her functions”.¹¹

10. The case, also known as the “Al Yamamah deal”, has been particularly notorious because UK political leaders are alleged to have hindered investigations into the deal. It has received wide coverage in the international media. *The Guardian* newspaper (which first broke the news after lengthy, detailed investigations into the case) runs a dedicated website, “The BAE Files” at www.guardian.co.uk, with background, articles and findings.

11. See the Council of Europe Criminal Law Convention on Corruption at conventions.coe.int.

Another important and frequently used distinction is that between grand and petty corruption. Grand corruption can also be referred to as political corruption. Petty corruption is often called administrative corruption. The U4 Anti-corruption Resource Centre describes grand and petty corruption as follows: “High level’ or ‘grand’ corruption takes place at the policy formulation end of politics. It refers not so much to the amount of money involved as to the level at which it occurs – where policies and rules may be unjustly influenced. The kinds of transactions that attract grand corruption are usually large in scale – and therefore involve more money than bureaucratic or ‘petty’ corruption. Grand corruption is sometimes used synonymously with political corruption, referring to corruption involved in financing political parties and political campaigns.”¹²

Political corruption is also used to refer to any corruption in the political process, for example corruption during elections, when votes are bought.

Allegations of electoral fraud have marred every single Albanian election since 1990. For example, in the aftermath of the 2009 parliamentary elections, five election commissioners from the Democratic Party (which won the elections by a narrow margin) were found guilty of falsifying ballots in the village of Ruzhdie.¹³

The presence of grand corruption can lead to state capture. This is a term coined by the World Bank to describe contexts in which powerful businesses are able to obtain the passing of favourable legislation or regulations, in exchange for the transfer of significant material favours (bribes, equity stakes, informal control) to politicians or legislators. Institutions that can be captured are the executive, the legislature, the judiciary and regulatory agencies. The capturing can be done by private firms; interest groups; oligarch clans or criminal organisations.

Examples of state capture can be found throughout the transition process in Montenegro, particularly in the privatisation of state-owned enterprises. NGOs allege that legislation governing the privatisation process has been heavily influenced by private interests, with the officials in charge of drafting the legislation being accused of materially benefiting from shaping the rules in a specific way.¹⁴

Petty, administrative or bureaucratic corruption occurs when state officials deal with citizens. “Petty” is used in contrast to “grand” corruption to qualify the scale. It is important to remember, though, that petty corruption can be very substantial for the people affected by it. The informal payment required can be a large part of that person’s household budget.

Petty corruption is frequent in many countries. Doctors might refuse to see patients; patients might not even get past the nurse who controls access to the doctor. Pupils might not receive the grades they deserve if their parents do not give gifts to the teacher or ‘voluntarily’ enrol their child for paid private tuition with the teacher.

12. See U4 Anti-corruption Resource Centre, Glossary, at www.u4.no.

13. See “Eight Indicted for Fraud in Albanian Elections”, *Balkans Insight* (15 March 2012), at www.balkaninsight.com.

14. See, for example, a discussion of the privatisation process in Montenegro in M. Trivunovic and V. Devine, “Corruption in Montenegro” (2007) at bora.cmi.no.

Drivers bribe their way out of alleged or actual traffic offences by paying the police officer on the side to avert an official penalty.

Both grand corruption and petty corruption have grave consequences.

Objectives

This section summarises the most frequently discussed causes of corruption. At the end of it, participants should be able to recognise and discuss the causes of corruption in their country.

1.4. Causes

An imagined, ad hoc survey with the question “What causes corruption?” will probably yield mainly two answers: greed and poverty. Let’s examine these first.

Poverty

In countries with high levels of corruption, the low level of public service salaries will often be quoted as a reason for officials demanding bribes to “complement” their meagre salaries. The argument by public servants (in many countries these include judges, prosecutors, doctors and teachers) is: “If only I received a salary that would allow me to provide for a decent life for my family, I wouldn’t need to take bribes.” This line of argument, then, makes poverty the cause for corruption.

In many eastern European countries, it is common practice for teachers to force their pupils to take payable tutorials outside class hours. Refusal to take (or inability to pay for) these tutorials will often result in pupils not receiving a good mark. This widespread practice has often been justified by the low salaries teachers receive and the resulting need to top up their income by such private classes. While this is, intuitively, a strong argument, it has a major weakness as the relation can be reversed: it can be argued that corruption is the cause of poverty.

There is a plethora of research that shows the losses to state budgets because of corruption – money that could usefully be spent, among other things, on increased public sector salaries. According to the World Bank, US\$1 billion is paid annually in bribes (this figure does not include the estimated loss to the countries’ budgets as a result of embezzlement or theft).¹⁵

So, there is no general agreement on whether corruption is the result or the cause of poverty, the arguments are inconclusive and explanations vary. Nonetheless, despite the fact that a causal link between corruption and poverty is not proven, it is worth mentioning that many of the world’s poorest countries also have very high levels of corruption. For example, the DRC, Zimbabwe, Liberia, Burundi, Somalia and Afghanistan are among the world’s 10 poorest countries by GDP per capita. They are also among the poorest performers on the Transparency International Corruption Perceptions Index.

15. “Six questions on the cost of corruption with World Bank Institute Director of Global Governance Daniel Kaufman” at web.worldbank.org.

However, and probably controversially for public servants, research has shown that increasing public sector service salaries will not stop corruption in contexts where such corruption is being practised and is widespread.¹⁶ Increasing salaries – in the absence of stronger monitoring and control, and the real prospect of substantial penalties – will not suddenly get rid of the solicitation of bribes by employees. Any salary increase needs to go hand in hand with systemic reforms, where other factors are equally important, for example the prestige and reputation of the public service in society; the self-image of public servants as having been recruited to their positions on merit and achievements; and career prospects in the civil service being equally based on meritocratic principles.

Consider the case of a country like France, which has had a number of high-profile, large-scale corruption scandals. While grand corruption exists, French civil servants are not involved in administrative or petty corruption. The French civil service is a reputable, prestigious employer, offering career advancement, security of employment and income, as well as a number of attractive benefits. It can be argued that few French civil servants would risk their position for a comparatively small, short-term material gain.

Greed

One of the most frequently cited explanations within this school of thought is that of Klitgaard, MacLean-Abaroa and Parris, who say that “corruption is a crime of calculation, not of passion. People will tend to engage in corruption when the risks are low, the penalties mild and the rewards great.”¹⁷ This statement translates into the following formula:

$$\text{Corruption Risk} = \text{Monopoly} + \text{Discretion} - \text{Accountability}$$

In 2010, the UK was rattled by a major political scandal around parliamentarians’ expenses. Members of Parliament had used their monopoly and discretion, as well as the lack of accountability, to misuse allowances and expenses. The most notorious example was that of an MP claiming reimbursement for a duck house in the middle of the pond on his estate. The scandal caused outrage among the public, and is widely held to have caused widespread disillusionment of citizens with politics.¹⁸

The prime criticism against Klitgaard’s formula is that it does not take into account moral or ethical convictions that will be a reason for people not to seize opportunities for personal enrichment, even when all the formula’s parameters are in place. Consider, for example, the case of the German Constitutional Court. The Constitutional Court has an impeccable track record of delivering justice: judges of the court, despite ample opportunity, are not corrupt. And not all members of the UK Parliament abused the system despite the formula’s parameters being in place.

16. See William D. Savedoff, “Pay for Honesty? Lessons on Wages and Corruption from Public Hospitals” (May 2008) at www.cmi.no.

17. R. E. Klitgaard, Ronald MacLean-Abaroa and H. Lindsey Parris, *Corrupt cities – a guide to cure and prevention*, World Bank Publications, Oakland CA/Washington DC, 1996.

18. See a good synopsis in *Wikipedia*. A commentary by the *Daily Telegraph*, one of the most important UK newspapers, in spring 2013 analyses the long-term impact on public trust in politics four years after the scandal broke out: see www.telegraph.co.uk.

The greed-and-opportunity line of argument suggests that, given the opportunity, everybody would engage in corruption. To control corruption, then, means that institutions need to be in place to provide sufficient checks and balances.

Culture

Another, frequently cited cause of corruption is that of culture. This school of thought holds that there are societies and countries where corruption is a normal and accepted way of life. Typically, in such contexts – so the argument goes – gifts are not considered corrupt; and we have already discussed how a family member’s support in getting a job would in many countries be usual, expected behaviour. There are at least a couple of counter-arguments here. First, even in countries where corruption is allegedly a way of life, there are laws penalising corruption. Second, when it comes to gifts – often said to be gratitude for good service received – the case could be approached in reverse: would the service be provided without the gift? Is it certain that there will be a follow-up service if a gift is not given? Are there repercussions for not giving a gift (for example to a teacher at school)? If so, what are they?

The question of a national culture determining corrupt behaviour is not, however, to be rejected out of hand. In many countries of the former communist bloc, there is recognition of the fact that citizens readily initiate bribes, assuming that this is expected from them, even when the public official has not even hinted at, or tried to solicit, a bribe. For example, according to results of research carried out in 2010, just over 50% of citizens of the Russian Federation would be ready to initiate a bribe if the amount of the bribe was cheaper than the cost of the service they were seeking. Another 63% said they would get involved in corruption if there was no other means of resolving an issue. Only 12% of citizens would be ready to report corruption to the police – a reflection of the widespread acceptance of corruption, but also of the low trust in law-enforcement institutions.¹⁹

Institutional culture is another cause for corruption, in particular in countries with endemic corruption: consider the case of an apprentice doctor working in a hospital where bribe taking has been a reality of life for years. Not joining this system would probably result in considerable problems for the young doctor, despite him/her having all the necessary qualifications. In this way, corruption becomes a self-replicating system.

In the case of countries in transition, some argue that corruption is a temporary phenomenon, and that it will disappear once the transition process to democracy and a market economy has been completed. This argument will need to be re-examined, as it is based on the assumption (originating from the period of the immediate aftermath of the collapse of the Soviet Union) that a transition to a market economy is in fact taking place; this is not necessarily the case in all countries. The opposite point of view will argue that it is corruption that undermines the consolidation of a democratic society and a free market economy, that because of corruption no real transition to democracy and market economy can happen.

19. Figure quoted in: “Report on the effectiveness of anti-corruption events and civil society participation in the implementation of the anti-corruption policy carried out by the Russian Federation”. Report by the Civil Chamber of the Russian Federation, 2011, at www.oprf.ru (in Russian).

Organised crime is an important phenomenon to mention when discussing corruption: the nexus between the two is strong, and it is impossible to dissect whether corruption is a cause or a consequence of organised crime. What is clear is that, without corruption, there would not be organised crime. For example, for large-scale smuggling of drugs, law-enforcement officers (border and customs guards, police) must either be part of the scheme or be bribed to look away.

1.5. Consequences

Until the mid-1990s, corruption was not openly discussed. Many people saw it as an enabling, rather than a hindering factor, for business. Through corruption, one could get things done. While some people might still agree with this view, the consensus is now that corruption is unambiguously negative and has a detrimental impact on all aspects of a society.

For our purposes, we can distinguish three main consequences of corruption, though in reality they are closely interconnected:

- ▶ consequences for democracy and the rule of law;
- ▶ consequences for social services;
- ▶ consequences for economic development.

Corruption, where it is endemic, results in a perception of lawlessness. Although formal rules and laws are in place, citizens see them not being applied, resulting in a loss of trust in the system. And corruption also has consequences for the availability and quality of social services, such as health and education.

Consider the example (above) of private tutorials in the education sector, or gifts to teachers. By providing tuition on a private basis, for cash, teachers stop fulfilling the job that the public purse pays them to do. The principles of the basic right to education and equal opportunities are eroded, because there are families that are unable to pay for these private classes, or to buy gifts for teachers.

Corruption in the education sector can take place at many different junctures – for example during exams; or during teacher recruitment or promotion. Corruption in education results in the inequality between rich and poor becoming deeper, and leads to individuals graduating who do not have adequate professional qualifications.²⁰

The consequences of corruption are also considerably in the health sector. In many countries, informal or undue payments are a daily practice. Often medical personnel is poorly paid, and staff relies on additional payments to survive. So the modest funds allocated from the national budget are, in effect, supplemented unofficially by the patients themselves. The consequence is that those who cannot afford medical treatment are not receiving it. This undermines the basic principles of equality and fairness.

The economic consequences of corruption are obvious too. Corruption impedes economic development and reduces the revenue that the state collects – and

20. For a concise analysis of the consequences of corruption in the education sector, see, for example, a briefing paper published by U4 at www.u4.no (in English).

redistributes. The higher the level of corruption, the lower the tax revenue, as people bribe their way out of tax obligations.

According to Global Financial Integrity's report *Illicit financial flows from developing countries: 2002-2006*, Russia lost (through money gained illegally, from corruption or otherwise, being transferred to financial safe havens abroad) an average of US\$32-38 billion per year over the four-year period studied.²¹ In 2008, a senior prosecutor estimated that annually around US\$120 billion is siphoned off the Russian state budget by corrupt officials.²²

The lower the level of tax revenue, the less the government has available to spend on social services, including on salaries for health care staff and employees in the education sector.

Corruption also deters foreign investment and leads to less efficient markets – it is not the best product that prevails, but the one by the most corrupt producer.

One other consequence of corruption in the civil/public service is demoralisation of those civil servants that are not corrupt, because the public is likely to lump all civil servants together in their perception.

21. D. Kar and D. Cartright-Smith, *Illicit financial flows from developing countries 2002-2006*, Executive Report, Global Financial Integrity (2008), at www.gfintegrity.org.

22. "Corruption costs Russia US\$120 billion annually", *Moscow Times*, at themoscownews.com.

2. Measuring

We need to distinguish two aspects of corruption that are usually measured:

- ▶ the occurrence of corruption itself (frequency of bribery etc.);
- ▶ the factors facilitating corruption (corruption risks, such as absence of effective sanctions).

2.1. Corruption

Before looking into various ways in which corruption can be measured, we should remind ourselves why we want to measure it.

- ▶ We want to understand the scale of the problem, how serious and widespread it is.
- ▶ We want to understand where corruption happens, in which sectors of society.
- ▶ We need to know the scale and the manifestations of corruption if we want to be able to discuss and devise interventions that will address corruption.

In the previous chapter, we discussed how corruption seems to be on everybody's minds, and how the term is often used loosely. But how could we speak about corruption in a more substantiated way? How do we measure it? Measuring corruption is difficult, and there are several reasons for this:

- ▶ Corruption by its nature is a secretive transaction. Neither party involved has an interest in exposure – this will influence the type of answers respondents give to the question of whether or not they are, or have been, involved in corruption.
- ▶ Not everybody understands corruption in the same way. As we have seen above, what is considered corrupt or not can vary between countries, and within countries, depending on who you ask.
- ▶ Official figures, for example of the sentences that courts have issued for corruption offences, provide only one side of the story – the one that shows the resolved cases; the volume of offences that are never brought to light cannot be known.
- ▶ There is a discrepancy between perceived and actual levels of petty corruption; the public tends to perceive corruption levels as higher than they are.

Despite these difficulties, there are nonetheless several important tools that have been developed, over the years, attempting to measure corruption.

2.1.1. Types of information

Corruption assessments can be based on two kinds of information, statistical and analytical.²³

Statistical information includes statistics of crime, misconduct or the length of administrative procedures, but also accounts of experience (as opposed to perceptions) of corruption, compiled by media, ombudsmen, citizens, officials, NGOs and others.

Analytical information is based on perceptions, opinions and conclusions about corruption by citizens, experts, domestic or foreign business, NGOs and others.

Statistical information should not automatically be treated as a reliable measure of corruption, just as analytical information is not necessarily less reliable. For example, statistics on crime may be an indicator of the level of corruption or they may equally be an indicator of the activity of law-enforcement institutions. Conversely, interviews with well-informed experts may sometimes provide very accurate indicators of the incidence, severity and nature of corruption.

2.1.2. Gathering information

Desk review

This is the first step, looking at what is already available, such as previous reports or assessments of the prevalence of corruption compiled by academics, NGOs, international organisations or the media, for example. The quality and coverage of information, however, depends on what is available. International organisations or NGOs regularly assess corruption in a wide range of countries. Existing corruption surveys are often used as data in desk reviews. The following are some of the most popular ones.

Transparency International

- Corruption Perception Index (CPI):²⁴ perceptions of corruption in the public sector
- Global Corruption Barometer (GCB):²⁵ perception and experience of petty bribery and high-level corruption
- Bribe Payers Index (BPI):²⁶ likelihood of foreign firms paying bribes (perception)

23. The text of section 2.1.1 is taken from *Handbook on designing and implementing anti-corruption policies*, prepared in the framework of the Eastern Partnership-Council of Europe Facility Project on Good Governance and Fight against Corruption, Council of Europe Publishing, Strasbourg 2012 (in English, Russian), www.coe.int/eap-corruption.

24. For a summary, see www.transparency.org.

25. For a summary, see www.transparency.org.

26. For a summary, see www.transparency.org.

World Bank

- Control of Corruption Index (perception)²⁷
- Enterprise Surveys (perception and experience)²⁸

Freedom House Nations in Transit:²⁹ assessment (perception of selected experts)

European Bank for Reconstruction and Development and World Bank: Life in Transition Survey (perception and experience)³⁰

For further details, see Excursus: International corruption scores and surveys (below, after 2.1.3).

Surveys

If done properly, surveys can provide valuable data. Many countries have carried out national surveys of both perceptions and experience of corruption.

- ▶ Armenia: Corruption Survey of Households 2010 (USAID)
- ▶ Georgia: Public Officials Survey 2009 and General Public Survey 2009 (Council of Europe/Netherlands)
- ▶ Moldova: Evolution of the Perception regarding the Corruption Phenomenon in the Republic of Moldova 2005-09 (Council of Europe); Moldova Anti-Corruption Assessment 2006 (USAID)

Unless the questionnaire design is highly sophisticated with input from experienced practitioners, the survey is administered by trained interviewers and the interpretation of the results is conducted by independent and respected experts, the benefits gained through public surveys may be small.

Key factors for obtaining useful data

Defining the objective of the survey clearly – what do we want to find out?

- ▶ attitudes (e.g. tolerance of corrupt practices, willingness to ask for a bribe, willingness to participate in reforms, to report corruption or to vote for corrupt politicians);
- ▶ perceptions (e.g. how public perceives public officials actually behave);
- ▶ experience (e.g. actual experience of e.g. bribery).

Achieving the right sample of the population – what is the target group?

- ▶ general population (e.g. survey on bribery in general);
- ▶ a sample that avoids over-representation of certain groups, e.g. urban population (despite them being easier and cheaper to survey) or internet users, whose answers may be easier to collect;
- ▶ people with specific experience (particularly important in a survey on procurement, for example).

27. For a summary, see info.worldbank.org.

28. For a summary, see www.enterprisesurveys.org.

29. For a summary, see www.freedomhouse.org.

30. For methodology and latest report, see www.ebrd.com.

See, for example, the Georgian General Public Survey 2009 (p. 6) – “The sample includes the adult population of Georgia residing in both rural and urban areas” – or a survey in Moldova: “39% of respondents were from urban whereas 61% were from rural areas.”

Anonymity and confidentiality

- ▶ Corrupt officials and bribe-givers may fear sanctions.
- ▶ Victims and vulnerable participants in corrupt transactions may fear retaliation, as could any respondent.

The right questions

- ▶ Interviewers have to start off with general questions to gain trust, and leave the most sensitive questions to the end; this is particularly important with interviewees who can be expected to be especially insincere, e.g. bidders in public procurement, who are willing givers of bribes.
- ▶ Specific questions are important (not about “corruption”, but about “gifts” or “payments”) – otherwise each respondent will have a different concept of “corruption”.
- ▶ One needs to avoid shame, so ask hypothetical questions – “what would you do if” or “did anyone in your household or your business experience a request for money”.
- ▶ Respondents need to be told at the beginning that there are “no right answers” to the survey questions.
- ▶ Respondents’ knowledge of public institutions needs to be tested to see if knowledge correlates with greater or lesser trust in the integrity of institutions (if the more informed people trust less, it could be the sign of a greater problem).
- ▶ Questions should be understandable regardless of the respondent’s background.

A pilot phase to iron out methodological and practical problems is essential. See, for example, the Georgian General Public Survey 2009 (p. 6): “Prior to the fieldwork, a pilot survey was conducted and findings were incorporated into the final survey questionnaires.”

The main problem of surveys is cost. A survey with a sample of at least 1 000 respondents can easily cost from €10 000 upwards, depending on the location, the number of questions and the service provider. According to the Compliance Report of GRECO (1st & 2nd Round) the unpublished public survey in Azerbaijan carried out by a contractor in 2007 cost €15 000.

One also has to keep in mind that surveys provide information which is more “statistically accurate” but which will not allow more in-depth information on the functioning of the institutions and processes under scrutiny,³¹ as would be the case with interviews with focus groups.

31. See Council of Europe Technical Paper by Quentin Reed and Mark Philp for the PACA Project, “Corruption risk assessment methodology guide”, 2010, at www.coe.int/corruption.

Interviews

Interviews are generally held with targeted members of government and/or civil society, such as NGOs observing the corruption situation or maintaining advocacy centres, practitioners, businesspeople, citizens/focus groups, officials, politicians, experts, law-enforcement officials or judges. Interviews are either semi-structured (flexible, allowing new questions to be brought up during the interview as a result of what the interviewee says, within a framework of themes to be explored) or structured (with a more strictly pre-determined set of questions, typically formulated in a written questionnaire).

Key factors for obtaining useful data are:

- ▶ either select unbiased interviewees or make a balanced selection of biased interviewees;
- ▶ avoid leading questions (ones that encourage certain answers);
- ▶ always combine structured interviews or questionnaires with an opportunity to speak outside these constraints.

Part of the Moldovan “Methodology of corruption risk assessment in public institutions”³² is a questionnaire, which contains 70 questions, such as: “Have you ever heard of attempts by external parties to improperly influence a colleague’s professional decisions? (Yes/No) If yes, do you know if these attempts have been formally reported within your organisation? (Yes/No)”. At the same time, the methodology envisages the use of “target groups ... invited to discuss subjects of specific interest.”

Focus group discussions

Focus groups are targeted interest groups who hold in-depth discussion sessions. They can be asked to produce assessments on the forms and venues of corruption. One has to keep in mind, though, that focus group discussions are rather a means of inspiring a mutual exchange, whereas the more confidential setting of bilateral interviews can encourage group members to voice dissenting opinions.

There are the following differences between focus groups and surveys:

- ▶ sample size and precision,
- ▶ questions posed to group instead of individual,
- ▶ open discussion among target group following questions.

The survey in the Moldova Anti-Corruption Assessment 2006, which combined interviews and focus groups, stated: “Final Report Moldova Survey responses were obtained from 35 individuals, most of whom were participants in focus group discussions, structured individual interviews or small group interviews. Of the 35 respondents, 26 were from NGOs, 6 from other entities, and 1 from the state. The remaining 2 did not note their affiliation.”

32. Council of Europe Project against Corruption, Money-Laundering and Financing of Terrorism in the Republic of Moldova (MOLICO), draft Methodology of corruption risk assessment in public institutions (English translation), at www.coe.int/molico.

Mix of sources

Many assessments combine several of the above tools of collecting information. For instance, the Ukrainian Survey on Corruption Risks in Administration 2009 (p. 11) is based on: “a) Nation-wide poll of population of Ukraine; b) Interviews with entrepreneurs; c) Focus-groups in 5 towns of Ukraine; d) Extended interviews.”

Case studies also usually use several of the above means of collecting information for examining specific occurrences of corruption in detail. Thus the “Case study in combating corruption in the Armenian customs system” (2002)³³ examines in detail the causes of corruption in the Armenian customs system and gives recommendations on possible governance measures.

2.1.3. Analysing information

One needs to ask three questions in order to properly analyse data. Who provided the data? What was the question? What data are missing?

Who provided the data?

When assessing the validity and reliability of responses, one should consider the following.

- ▶ How much are the respondents likely to know about specific forms of corruption (domestic or foreign national, central or local, experts or ordinary citizens, business people or members of a private household)? For example, a 2010 survey by UNDP in Serbia showed 65% of the population perceiving prosecutors as corrupt. However, only a low percentage of these people would have had actual contact with prosecutors – the exact percentage not being revealed by the survey – and only 1% actually reported having given a bribe to prosecutors.
- ▶ What interest may respondents have in overstating or understating the problem, such as public officials as opposed to representatives from NGOs?
- ▶ Are the respondents, in the narrow sense, rather losers or winners from corruption?
- ▶ Would fear of prosecution, reprisals or shame distort the results?

Often, different corruption assessments share the same source and thus can provide additional information only to some extent. Where possible, preference should be given to original data sources.

Thus the Heritage Foundation Index of Economic Freedom (perception)³⁴ is based on ten “freedoms”. The “freedom from corruption” is “derived primarily from Transparency International’s Corruption Perceptions Index (CPI)”³⁵ and therefore does not provide any new information. In addition, the 2012 “freedom from corruption” index is based on the 2010 CPI, which in 2012 was already overtaken by newer data.

33. Publisher does not make the document available online anymore.

34. Freedom from corruption is one of 10 specific components of economic freedom: see www.heritage.org.

35. See www.heritage.org.

What question did the data answer?

Answers are likely to be very different depending on the question that is being asked: a question about “corrupt officials” will not yield the same answers as one about “money or gifts expected by officials”. In other words, what is “corruption”? Every respondent is likely to have a different concept of it.

According to the EBRD Life in Transition Survey (LiTS) 2010, 65% of respondents perceive corruption to happen in Azerbaijan, but only 15% do so in Belarus. By contrast, the perception of corruption according to Transparency International’s CPI 2010 is almost the same in both countries (2.5/2.4). The contradiction is solved if one looks at the fine print: “Corruption” in the LiTS is defined as bribery, whereas “Corruption” in the CPI is “all-inclusive”.

Analytical data must be treated with caution. Such data may not necessary reflect reality, but rather:

- ▶ a general dissatisfaction with the public administration;
- ▶ distortion through media coverage because of either censorship or excessive appetite for sensation;
- ▶ generally high levels of tolerance of corruption;
- ▶ raised awareness of corruption, rather than an actual increase in corruption levels. The International Country Risk Guide (ICRG), indicating political risk from corruption, rated Ireland very favourably with a “5” in the years when Charles Haughey was Prime Minister (1987-92), but downgraded it in 1997 to a mere “2” with revelations of his corrupt activities in office, even though he was long retired by then. In January 2011, Ireland still ranked only at “3.5”.
- ▶ A public belief contradicting experience.

The Armenian Corruption Survey of Households 2010 showed that 68% of respondents believed corruption to be common in the healthcare system, whereas only 22% of those respondents who had been in contact with the healthcare system said that they had been asked for a bribe. Surprisingly, even the reverse can be the case: According to the EBRD Life in Transition Survey 2010, 40% of respondents in Ukraine had experienced unofficial payments or gifts, whereas only 20% perceived such as the practice.

However, subjective data are often the only source available and can tell us much about the attitude to corruption.

What kinds of data are missing?

Do the data cover all forms of corruption?

- ▶ Whereas most surveys focus only on administrative corruption, the Armenian Corruption Survey of Households 2010 included political parties as possible actors in the questionnaire on perceived levels of corruption, without asking any specific questions.

Which segments of society are not covered?

- ▶ For practical reasons, the Georgian General Public Survey 2009 does not cover the population in “military bases and correctional institutes”.

Are there regional differences?

- ▶ The World Bank’s 2011 Enterprise Survey of Azerbaijan shows a 20% higher occurrence of informal payments in certain regions than in the capital Baku.

The data available might not necessarily support a compelling conclusion.

- ▶ A survey might find a high percentage of respondents answering the following question in the affirmative: “Did you ever have to give money to a judge in order to facilitate the handling of your case?” However, data might be missing as to whether this bribe had been paid directly to the judges or via a lawyer. If it has been channelled at least in some cases through lawyers, then this might mean that the lawyer only pretended that the judge had requested a bribe.

In order to allow the analysis of data, surveys regularly make the questions asked and the sample of respondents transparent in the published version. A 30-page appendix to the Georgian General Public Survey 2009 shows all the questionnaires used; a similar appendix is found in the Armenian Corruption Survey of Households 2010.

2.2. Excursus: International corruption scores and surveys

As discussed in section 2.1 above, the most prominent efforts to assess corruption levels using scores within or across countries are based on people’s perceptions, rather than actual experience, of corruption. Here we look at some better-known international surveys and indices of corruption levels.

2.2.1. Perception: Transparency International (TI)

Transparency International’s annual Corruption Perception Index (CPI) started in 1995 and is probably the best-known example. The CPI ranks countries according to their perceived levels of corruption as determined by expert assessment and opinion surveys.

From 1995 until 2011, the TI CPI used a score from zero to ten, on which zero signified the most corrupt country and ten the least corrupt one. In the last CPI using this scale, the CPI published in 2011, New Zealand was, with a score of 9.5, the least corrupt country in the world. Somalia, as in previous years, along with North Korea, was considered to be the most corrupt country, scoring 1.0.

From 2012 onwards, Transparency International began using a new, improved methodology, which tries to remedy some of the criticism levelled against it over the years. To signify the departure from the previous methodology and in order to avoid the impression of the new scoring being comparable to the “old” one, the CPI now uses a scale from 0 to 100. Using this scale, Figure 2.1 and Table 2.1 show the picture that emerged in 2012.

Figure 2.1: Transparency International's Corruption Perceptions Index, 2012 (mapped by country)

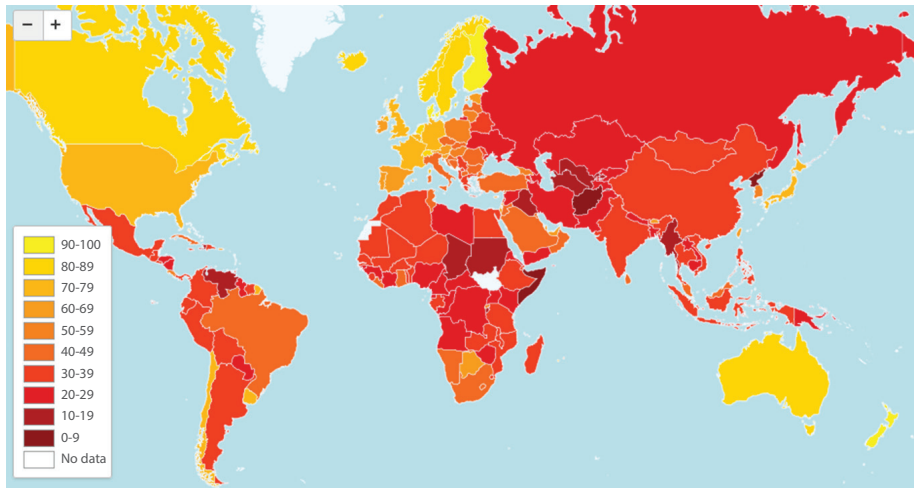


Table 2.1: Transparency International's Corruption Perceptions Index, 2012 (score by country)

RANK	COUNTRY/TERRITORY	SCORE	RANK	COUNTRY/TERRITORY	SCORE
1	Denmark	90	22	Saint Lucia	71
1	Finland	90	25	Austria	69
1	New Zealand	90	25	Ireland	69
4	Sweden	88	27	Qatar	68
5	Singapore	87	27	United Arab Emirates	68
6	Switzerland	86	29	Cyprus	66
7	Australia	85	30	Botswana	65
7	Norway	85	30	Spain	65
9	Canada	84	32	Estonia	65
11	Netherlands	84	33	Bhutan	63
12	Luxembourg	80	33	Portugal	63
13	Germany	79	33	Puerto Rico	63
14	Hong Kong	77	36	Saint Vincent and the Grenadines	62
15	Barbados	76	37	Slovenia	61
16	Belgium	75	37	Taiwan	61
17	Japan	74	39	Cape Verde	60
17	United Kingdom	74	39	Israel	60
19	United States	73	41	Dominica	58
20	Chile	72	41	Poland	58
20	Uruguay	72	43	Malta	57
22	Bahamas	71	43	Mauritius	57
22	France	71			

RANK	COUNTRY/TERRITORY	SCORE
45	Korea (South)	56
46	Brunei	55
46	Hungary	55
48	Costa Rica	54
48	Lithuania	54
50	Rwanda	53
51	Georgia	52
51	Seychelles	52
53	Bahrain	51
54	Czech Republic	49
54	Latvia	49
54	Malaysia	49
54	Turkey	49
58	Cuba	48
58	Jordan	48
58	Namibia	48
61	Oman	47
62	Croatia	46
62	Slovakia	46
64	Ghana	45
64	Lesotho	45
66	Kuwait	44
66	Romania	44
66	Saudi Arabia	44
69	Brazil	43
69	FYR Macedonia	43
69	South Africa	43
72	Bosnia and Herzegovina	42
72	Italy	42
72	Sao Tome and Principe	42
75	Bulgaria	41
75	Liberia	41
75	Montenegro	41
75	Tunisia	41
79	Sri Lanka	40
80	China	39
80	Serbia	39
80	Trinidad and Tobago	39
83	Burkina Faso	38
83	El Salvador	38
83	Jamaica	38
83	Panama	38
83	Peru	38

RANK	COUNTRY/TERRITORY	SCORE
88	Malawi	37
88	Morocco	37
88	Suriname	37
88	Swaziland	37
88	Thailand	37
88	Zambia	37
94	Benin	36
94	Colombia	36
94	Djibouti	36
94	Greece	36
94	India	36
94	Moldova	36
94	Mongolia	36
94	Senegal	36
102	Argentina	35
102	Gabon	35
102	Tanzania	35
105	Algeria	34
105	Armenia	34
105	Bolivia	34
105	Gambia	34
105	Kosovo	34
105	Mali	34
105	Mexico	34
105	Philippines	34
113	Albania	33
113	Ethiopia	33
113	Guatemala	33
113	Niger	33
113	Timor-Leste	33
118	Dominican Republic	32
118	Ecuador	32
118	Egypt	32
118	Indonesia	32
118	Madagascar	32
123	Belarus	31
123	Mauritania	31
123	Mozambique	31
123	Sierra Leone	31
123	Vietnam	31
128	Lebanon	30
128	Togo	30
130	Côte d'Ivoire	29

RANK	COUNTRY/TERRITORY	SCORE
130	Nicaragua	29
130	Uganda	29
133	Comoros	28
133	Guyana	28
133	Honduras	28
133	Iran	28
133	Kazakhstan	28
133	Russia	28
139	Azerbaijan	27
139	Kenya	27
139	Nepal	27
139	Nigeria	27
139	Pakistan	27
144	Bangladesh	26
144	Cameroon	26
144	Central African Republic	26
144	Congo Republic	26
144	Syria	26
144	Ukraine	26
150	Eritrea	25
150	Guinea-Bissau	25
150	Papua New Guinea	25
150	Paraguay	25

RANK	COUNTRY/TERRITORY	SCORE
154	Kyrgyzstan	24
156	Yemen	23
157	Angola	22
157	Cambodia	22
157	Tajikistan	22
160	Democratic Republic of the Congo	21
160	Laos	21
160	Libya	21
163	Equatorial Guinea	20
163	Zimbabwe	20
165	Burundi	19
165	Chad	19
165	Haiti	19
165	Venezuela	19
169	Iraq	18
170	Turkmenistan	17
170	Uzbekistan	17
172	Myanmar	15
173	Sudan	13
174	Afghanistan	8
174	Korea (North)	8
174	Somalia	8

The following are some of the typical sources that Transparency International uses to arrive at that score.

- ▶ Bertelsmann Foundation – Bertelsmann Transformation Index
- ▶ Economist Intelligence Unit – Country Risk Service and Country Forecast
- ▶ Freedom House – Nations in Transit
- ▶ Global Insights – Country Risk Ratings
- ▶ Institute for Management Development – World Competitiveness Report
- ▶ World Economic Forum – Global Competitiveness Report

The Corruption Perception Index is a very good advocacy tool: typically, when the CPI is published every year, it receives a significant amount of attention from the media and the public.

Another example of a perception survey is TI's Global Corruption Barometer (GBC). Table 2.2 shows an excerpt from page 43 of the GBC for 2010, answering the question "To what extent do you perceive the following institutions in this country to be affected by corruption? (1: not at all corrupt, 5: extremely corrupt)".

Table 2.2: Transparency International's Global Corruption Barometer, 2010

COUNTRY/TERRITORY	POLITICAL PARTIES	PARLIAMENT/LEGISLATURE	POLICE	BUSINESS/PRIVATE SECTOR	MEDIA	PUBLIC OFFICIALS/CIVIL SERVANTS	JUDICIARY	NGOs	RELIGIOUS BODIES	MILITARY	EDUCATION SYSTEM
Ireland	4.4	4.0	3.0	3.5	3.0	3.3	2.7	2.5	3.9	2.3	2.5
Italy	4.4	4.0	3.0	3.7	3.3	3.7	3.4	2.7	3.4	2.8	2.9
Latvia	4.0	3.7	3.3	3.0	2.5	3.6	3.2	2.1	1.8	2.3	2.6
Lithuania	4.2	4.2	3.7	3.5	2.9	3.8	4.0	2.6	2.5	2.4	3.0
Luxembourg	2.9	2.5	2.5	3.0	2.7	2.7	2.5	2.3	2.7	2.3	2.3
Netherlands	3.0	2.7	2.6	3.1	2.9	3.0	2.6	2.5	2.9	2.5	2.3
Norway	3.0	2.2	2.1	3.2	2.9	2.8	1.9	2.7	3.2	2.4	2.4
Poland	3.6	3.4	3.2	3.5	2.8	3.4	3.3	2.6	2.7	2.4	2.6
Portugal	4.2	3.7	3.2	3.6	2.8	3.2	3.4	2.6	2.6	2.6	2.5
Romania	4.5	4.5	3.9	3.6	3.1	3.8	4.0	2.9	2.3	2.4	3.1
Slovenia	4.3	3.7	3.2	3.7	3.1	3.6	3.5	2.7	3.2	2.8	2.9
Spain	4.4	3.5	3.1	3.5	3.4	3.5	3.4	2.8	3.5	2.7	2.6
Switzerland	2.9	2.6	2.1	3.3	3.0	2.6	2.3	2.2	2.5	2.2	1.8
United Kingdom	4.0	3.8	3.1	3.5	3.4	3.4	2.8	2.9	3.0	2.5	2.5

2.2.2. Limitations of perception

As previously discussed, perception-based surveys and indicators have obvious limitations. The surveys are not detailed enough to distinguish between various forms of corruption, for example petty/administrative corruption and grand corruption. The TI Corruption Perceptions Index is an elite survey, which captures the views of business people and experts but does not at all reflect the views of ordinary citizens. Perceptions can be influenced, for example by media coverage. More stories may mean greater levels of corruption – or they may simply signal greater freedom of the media. The CPI ranks countries according to the score they achieve, and this is particularly problematic because not all countries are covered due to a lack of information; those that are excluded may be even more corrupt than those with the lowest scores.

Despite the drawbacks mentioned above, the CPI does give a good indication of the scale of a problem in a given country. Consider the 2011 score of 1.0 for Somalia, mentioned earlier: it is unlikely that the score is entirely off the mark, and that Somalia should be considered a country with moderate levels of corruption instead.

Also, perceptions give important information about respondents' trust in the system. If the judiciary in a country is widely perceived to be corrupt, then this will have an impact on the way people use the judicial system. They might not even bring their cases to court if they think that the system is corrupt anyway and will not resolve their case fairly.

As mentioned above, though the CPI is useful as an indication of overall levels of corruption, it is of limited use if one wants to understand the spread of corruption across sectors or if one searches for information, for example, on which stratum of the population is most confronted by corruption.

Incidentally, it is often the representatives of countries with low ratings that bring up such questions. Nonetheless, they will eventually concede that their ranking is an adequate reflection of the general level of corruption in their country.

2.2.3. Other indices: perception and experience

There are a few other well-known indices. Apart from Transparency International's Global Corruption Barometer (GCB), which combines perceptions with actual experiences of corruption, we can mention the World Bank's Doing Business and the World Economic Forum's Global Competitiveness Index, among others.³⁶

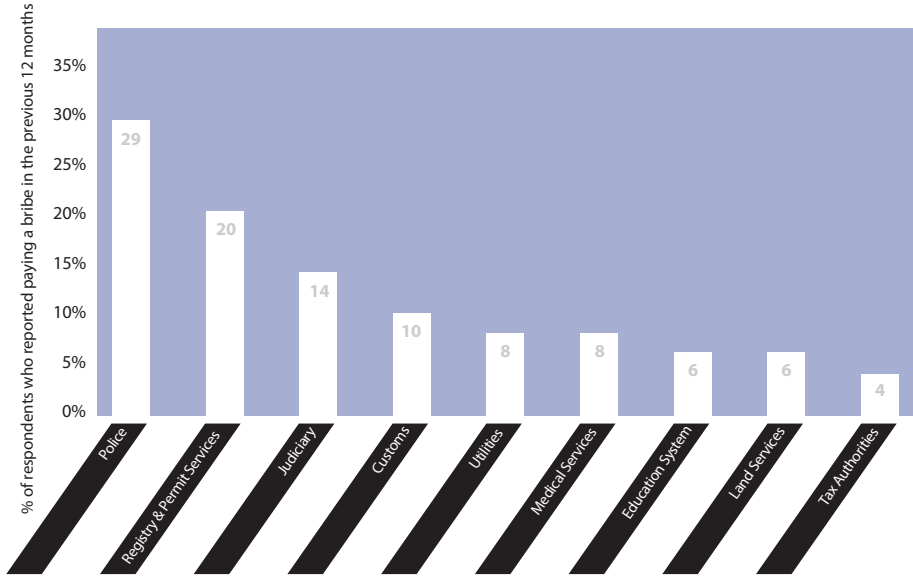
The Global Corruption Barometer

The GCB is interesting in that it considers the views of ordinary people (unlike the CPI). Furthermore, it contains information about how people experience corruption in real life, and not only how they perceive/believe corruption to happen.

36. See www.rai-see.org.

The average of all people interviewed in 86 countries for the GCB 2010 provides a picture of the sectors that are most prone to corruption. Based on those results, Figure 2.2 shows the percentage of respondents who reported paying a bribe in the previous 12 months.

Figure 2.2: Global Corruption Barometer, 2010 (by public service sector)



The Life in Transition survey (LiTS)

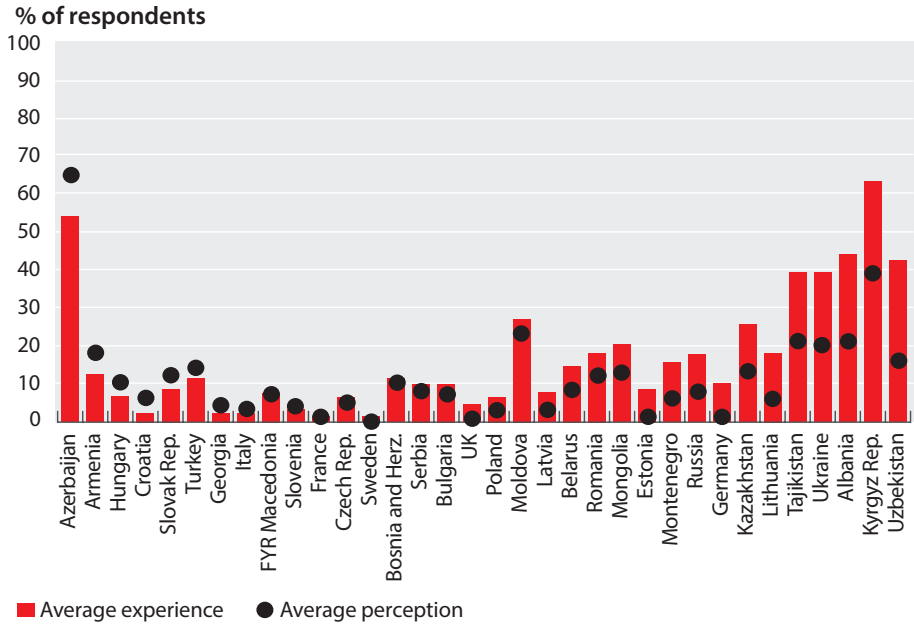
It is also possible to juxtapose how people perceive corruption, and how they actually experience it. The European Bank for Reconstruction and Development (EBRD), together with the World Bank (WB), has, over the past decade, carried out repeat surveys on the transition economies of the former communist bloc. The Life in Transition survey (LiTS),³⁷ already cited, includes questions about perceived and experienced levels of corruption, and compares the answers country by country, as seen in Figure 2.3.

Taking the example of Azerbaijan, one can see that sometimes people believe the situation to be even worse than it already is. Then again, there are countries where people have the perception of almost no corruption at all, whereas the level of actually experienced corruption is much higher than the level of perceived corruption (for example, Germany).

Perceptions about corruption can be broken down into the different public sectors. Staying with the example of Azerbaijan, Figure 2.4 shows the picture that emerges.

37. The latest edition of the survey, published in 2010, available at www.ebrd.com.

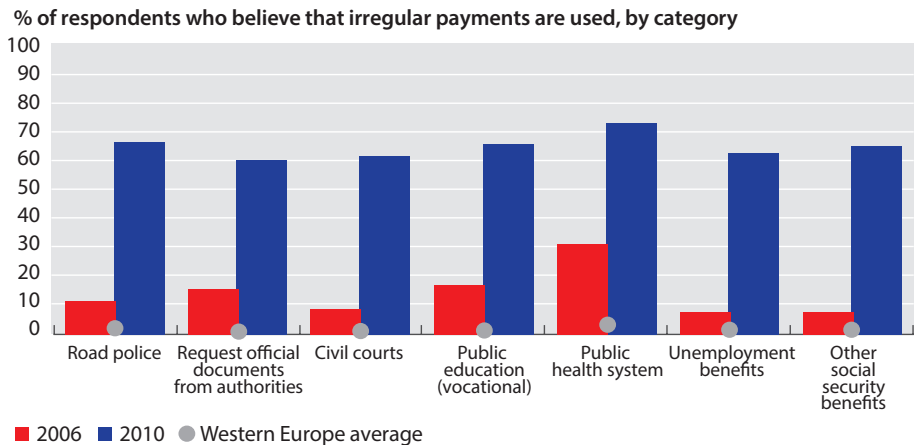
Figure 2.3: Perception v. experience of corruption



Source: Lits II (2010).

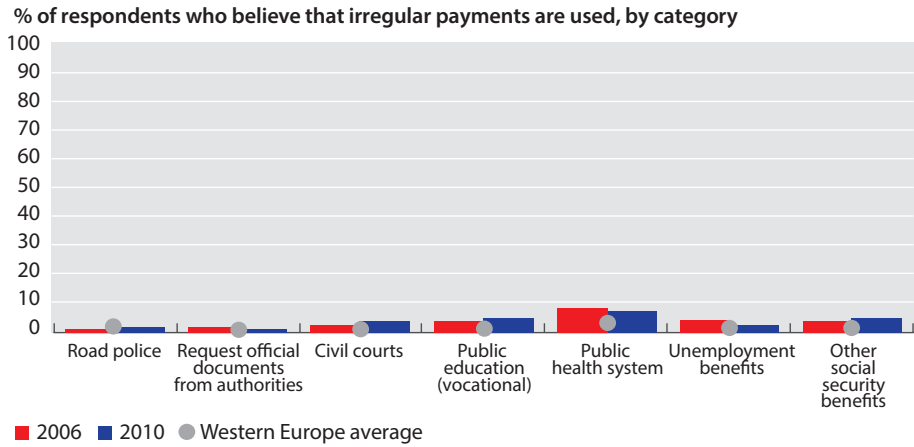
Note: "Average perception" refers to the proportion of respondents who say people like themselves usually or always have to make unofficial payments or gifts averaged across all public services covered by the survey. "Average experience" refers to the proportion of respondents who say they or a member of their household have made an unofficial payment or a gift in the past 2 months averaged across all public services covered by the survey.

Figure 2.4: Percentage of respondents in Azerbaijan who believe unofficial payments are used (by public service sector)



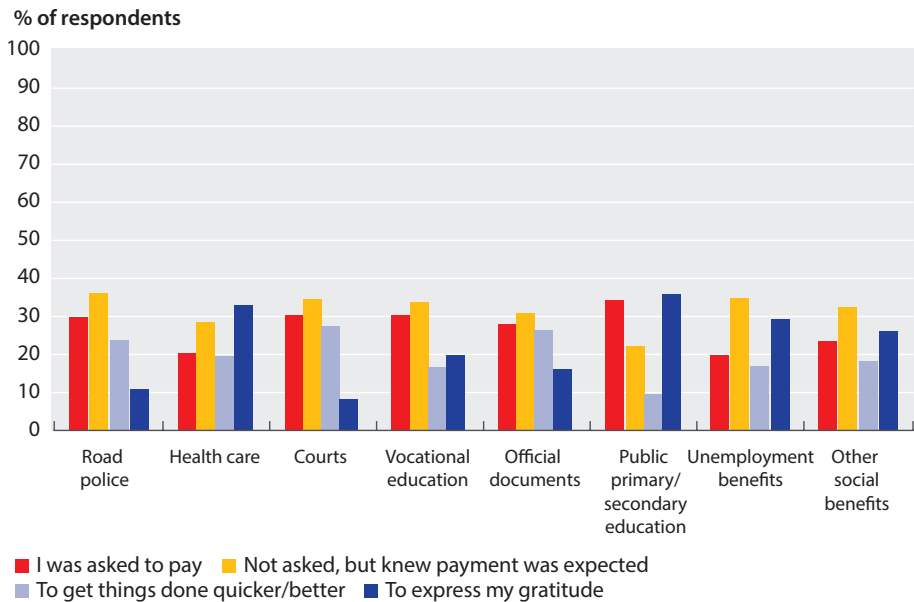
The graphic shows that in 2010 the population of Azerbaijan perceived that all sectors were affected by almost the same high level of corruption, whereas the sectors differed in 2006. By contrast, Georgia is perceived (Figure 2.5) to have almost zero corruption in the traffic police, but comparatively more in public health, though in absolute figures much less than in Azerbaijan:

Figure 2.5: Belief that unofficial payments in Georgia remain quite infrequent (as % of respondents who believe such payments are used)



Surveys can also analyse the reasons for giving gifts/bribes, as seen in Figure 2.6, based on LiTS II (2010).

Figure 2.6: Reasons for making unofficial payments or gifts in countries of the former communist bloc (by public service sector)



Source: LiTS II (2010).

Note: "Gratitude" refers to the proportion of respondents who say that they made an unofficial payment or gift in the given public service in order to express gratitude.

"Quicker" refers to the proportion of respondents who say that they made an unofficial payment or gift in the given public service in order to get things done quick or better.

"Expected" refers to the proportion of respondents who say that they were not asked to make an unofficial payment or gift in the given public service but such payment or gift was expected.

"Asked" refers to the proportion of respondents who say they they were asked to make an unofficial payment or gift in the given public service.

The statistics show that, in courts, gifts/bribes are often demanded from users, but are rarely given voluntarily to express gratitude. Then again, in education, it is quite common to provide a gift/bribe to express gratitude.

Victimisation surveys try to capture the actual experience people have with corruption: these surveys typically ask how much, and where, people have been asked to pay a bribe over a set period of time. Such surveys are useful also in order to contrast perceived corruption with actual levels of corruption. Here, too, caveats apply: often, respondents might not give the full information, knowing that bribing is a prosecutable offence under their country's legislation. Interestingly, such studies often find that people's perceptions of corruption do not correlate with their personal experience: in many cases, perceived levels of corruption are higher than actual experience of corruption.

There are a number of non-perception-based measurements of corruption; these, too, try to capture more objective indicators of corruption.

The Business Environment and Enterprise Performance Survey (BEEPS)

BEEPS was developed by the World Bank and the European Bank for Reconstruction and Development. It involves face-to-face interviews with owners and senior managers in firms in transition countries. The first survey was conducted in 1999 and included 24 countries. Questions cover the following corruption-related issues:

- ▶ Corruption as an obstacle: how problematic is corruption for the operation and growth of a firm?
- ▶ Bribe amount: on average, what percentage of total annual sales do firms typically pay in unofficial payments/gifts to public officials?
- ▶ Bribe frequency: how common is it for firms to have to pay some unofficial "additional payments/gifts" to get things done with customs, taxes, licences, regulations and services?
- ▶ State capture: to what extent have payments or gifts to parliamentarians, government officials, court officials in criminal and commercial cases, central bank officials and political parties had a direct impact on business?

Public Expenditure Tracking Surveys (PETS)

There are also the so-called Public Expenditure Tracking Surveys, or PETS. These examine the audit trail in a specific sector (usually education or health) to identify discrepancies between the budget and funds actually received. Leakages indicate potential corruption. PETS have become increasingly popular to track the money trail in the education system.³⁸

38. See, for example, a discussion at www.unesco.org.

2.3. Corruption risks

There are several handbooks comprehensively listing corruption risks and relevant governance measures, and covering more or less all aspects of society, including law enforcement, access to information, public awareness of rights, complaints mechanisms, budget integrity, procurement systems, audit and control:³⁹

- ▶ UNODC, *UN Anti-corruption toolkit* (3rd edition 2004);⁴⁰
- ▶ UNODC, *Technical guide to the UNCAC*, 2009 (English, French, Spanish, Russian);⁴¹
- ▶ OSCE, *Best practices in combating corruption*, 2004 (English, Russian);⁴²
- ▶ Transparency International, *Confronting corruption: the elements of a national integrity system*, TI Source Book 2000 (English, Arabic);⁴³
- ▶ UNODC, *UNCAC-self-assessment checklist* (English, Arabic, French, Russian);⁴⁴
- ▶ OECD, *Managing conflict of interests in the public service: a toolkit*, 2005; *Specialised anti-corruption institutions: review of models*, 2006 (English, Russian); *Lobbyists, government and public trust*, 2009; *Asset declarations for public officials: a tool to prevent corruption*, 2011 (English, Russian); *Bribery awareness handbook for tax examiners*, 2009, etc;⁴⁵
- ▶ Checklists of corruption risks for different sectors (customs, health, political parties etc.), e.g. *USAID Corruption Assessment Handbook* (2009),⁴⁶ Annex 3, page 94, Diagnostic guides;
- ▶ U4 Anti-Corruption Resource Centre.⁴⁷

Most of these sources are based on the belief/assumption that certain legal and institutional arrangements help to prevent or control corruption. In other words: If corruption is prevalent in a country, the absence of comprehensive counter-measures is seen as the cause. There is consensus that governance measures need to include both repressive and preventive aspects, and should cover all sectors (public, business, civil).

The exercise of assessing governance measures is often called corruption risk assessment or integrity assessment. Its aim is to review what governance measures are missing in a country or in a sector.

39. The text for section 2.2 is taken from: *Handbook on designing and implementing anti-corruption policies*, prepared in the framework of the Eastern Partnership-Council of Europe Facility Project on Good Governance and Fight against Corruption, Council of Europe Publishing, Strasbourg 2012 (in English, Russian).

40. See www.unodc.org.

41. See www.unodc.org.

42. See www.osce.org.

43. See transparency.org.

44. See www.unodc.org.

45. See www.oecd.org.

46. See www.usaid.gov.

47. See www.u4.no.

2.3.1. Types of information

Statistical information:

- ▶ information on legislation, institutional framework, capacity and public awareness.

Analytical information:

- ▶ perceptions of or opinions about the cause of corruption (the lack of certain governance measures, expectations by public officials, citizens, experts, domestic/foreign business, NGOs);
- ▶ motives assumed by parties involved in corruption.

2.3.2. Gathering information

Even though objective data are available on the lack of certain governance measures, identifying the relevant measures is mainly a matter of subjective opinion. Is corruption in procurement procedures due to a lack of prosecution, a lack of internal inspections, a lack of complaints mechanisms or other reasons? The absence of certain measures does not necessarily mean that their absence is responsible for corruption, or that it even facilitates it. In any given case, opinions will vary, depending on whether one asks a citizen, a public official at expert level or executive level, an NGO or a foreign expert. To get as many and as varied perspectives as possible, one can use basically the same methods as for gathering data on measurements of corruption itself.

Desk review

This is the first step: to look at what is already available, such as previous reports or assessments of the state of counter measures, written by academics, NGOs, international organisations, media, etc.

In order to know if certain good governance measures have been adopted, usually the first and most reliable source of information will be official documents – legislative enactments and policy planning documents. These are highly valid and reliable sources, although they do not necessarily show how much political commitment there is to back up the documents.

International organisations and NGOs regularly assess institutional integrity in a wide range of countries. These existing integrity assessments, often used as data in desk reviews, are of several kinds.

- ▶ Compliance with international conventions:
 - GRECO monitoring reports (Council of Europe Conventions and Recommendations);
 - country reports on the implementation of the OECD Anti-Bribery Convention;
 - UNCAC Review Mechanism.
- ▶ Integrity analyses:
 - the Global Integrity Report;
 - OECD Anti-Corruption Network monitoring reports (eastern Europe);

- national integrity systems assessments by Transparency International;
- other assessments, for example by the Economic Research Forum (ERF) on the Arab region.⁴⁸
- ▶ UNCAC-self-assessment checklist⁴⁹ (Arabic, English, French, Russian).
- ▶ National reports/methods, for example:
 - Armenia: Institutional Sources of Corruption in the Case of Armenia 2009 (USAID);
 - Moldova: Government Decision No. 906 on Methodology for assessing the risk of corruption in public institutions.

Surveys

As for obtaining valid data, basically the same rules apply as for assessing corruption (see above at 2.1.2). Questions about possible governance measures include the following.

- ▶ Which governance measures do citizens make use of and which not? Why? Lack of awareness, lack of trust?
- ▶ How are additional governance measures perceived?
- ▶ What are the causes of corruption? (mirrors the question on future governance measures) Is it, for example, too much personal contact in service administrations?
- ▶ What are the expectations? For example, how do the public want public servants to behave?

In addition, as with assessing the extent of corruption, interviews and discussions by focus groups are possible tools for gathering information.

For example, (written) interviews, focus groups and case studies are part of the Moldovan Methodology of corruption risk assessment in public institutions, Government Decision no. 906 of 28 July 2008:⁵⁰

In order to verify the properness of the assessment of employees' resistance against the corruption risks within the institution, a questionnaire is to be distributed to the personnel. ...

The analysis of concrete corruption cases assumes detailed investigation of actual or typical corruption cases, committed by the employees of the institution, in order to identify eventual shortcomings in the management of the organization, as well as to determine the real or potential capacities of the institution to prevent the phenomenon. ...

48. ERF, Detecting corruption and evaluating programs to control it: some lessons for MENA, December 2012, www.erf.org.eg.

49. UNODC, Comprehensive self-assessment checklist on the implementation of the United Nations Convention against Corruption, www.unodc.org.

50. Council of Europe Project against Corruption, Money-laundering and financing of terrorism in the Republic of Moldova (MOLICO), draft Methodology of corruption risk assessment in public institutions, English translation, www.coe.int/molico.

The target groups are concrete groups, invited to discuss subjects of specific interest. This technique produces a qualitative assessment rather than a quantitative one, offering detailed information regarding visions on the corruption, its reasons, as well as ideas regarding the possibilities of a specific authority in fighting corruption.

2.3.3. Analysing information

The same three questions that apply to measuring corruption are also used in analysing information on governance measures.

Who provided the data?

How much do the respondents know about reform measures? Respondents will often only recommend the option they know best and might be completely unaware of other possibilities and their pros and cons. For example, there is a strong preference among lay people for repressive solutions.

How much was copied from other sources? The data of the Freedom House Nations in Transit survey 2011 for Kosovo (under UNSCR 1244/99) is in some parts “only” a compilation of the EU Progress Report on Kosovo 2010: “The European Commission 2010 Progress Report also noted that the Office of Auditor General needs more financial independence, as the government continues to influence it through budgetary control. ... The EC’s 2010 report on Kosovo criticised the government for continuing to delay significant public administration reform.”

What question did the data answer?

Leading questions make a big difference to the answer, but are somewhat unavoidable:

Do you think it could help reduce the risk of getting bribe demands, or present requests, from administration officials if one did not have to contact them personally but could instead mail one’s papers or submit them to a one-stop shop?

What kinds of data are missing?

- ▶ Do the data cover all corruption risks and possible governance measures?
- ▶ Which segments of society are not covered?
- ▶ Are data available on the general respect for laws and the rigour of their implementation in the country? This tells us roughly how much credit to give to the mere fact that a certain law exists.
- ▶ Are data available on the transparency of institutions and procedures? This gives us an idea of how sure we can be about something being (or not being) implemented. For example, if there is an anti-corruption body, we can see whether they are doing any good.

3. Responses: overview

Objectives

This part of the training considers some of the possible ways to address corruption at the country/state level. At the end, participants should be able to distinguish possible directions of reform and to put reforms in their own country into perspective.

3.1. Opinions and strategies

As before, we could approach possible responses to corruption through an ad hoc survey among participants. In all likelihood, we would arrive at the following answers.

- ▶ Corrupt people should be prosecuted, whatever their level of influence or their connectedness to the political elite.
- ▶ The legal framework needs to be reformed.
- ▶ The whole law-enforcement system needs to be reformed.
- ▶ The public service needs to be reformed, and that cannot happen if people working there do not have decent salaries.
- ▶ Public servants need to understand the laws and regulations better – at the moment, many do not even know what the law requires them to do.
- ▶ Citizens need to stop paying or offering bribes; they, too, need to better understand the legal framework to be better able to demand and enforce their rights.
- ▶ Administrative barriers need to be limited, so that business can operate normally without having to bribe government officials.

So, possible responses to corruption can approach the problem from all sorts of directions. This is now an international consensus reflected, for example, in the United Nations Convention against Corruption (UNCAC – see section 8.2.4) or in the 20 Guiding Principles against Corruption by the Council of Europe (see sections 9.3.5 and 8.2.2): addressing corruption requires a combination of work on law enforcement, education and prevention.

In many countries, these anti-corruption efforts are part of wider reforms, typically laid down in national anti-corruption strategies. Anti-corruption strategies are usually commissioned by the government and elaborated by one of the line ministries (often the Ministry of Justice) or core institutions (for example specialised anti-corruption agencies) of a country; they are then adopted by parliament. One of the institutions is assigned the lead in overseeing implementation of the measures, which are often further broken down into shorter-term action plans, and it reports to parliament or the executive. Frequently, civil society groups are invited to participate in monitoring and oversight (for example, in Armenia).⁵¹

In some cases, a specialised anti-corruption body is set up to co-ordinate the implementation of the anti-corruption strategy. Specialised anti-corruption bodies have been one of the responses to corruption in many countries.⁵² The mandate and authorities of these agencies differ; they can broadly be divided into the following groups:

- ▶ multi-purpose agencies with law-enforcement functions (such as the Special Investigation Service [STT] in Lithuania; the Corruption Prevention and Combating Bureau [KNAB] in Latvia; and the Independent Commission against Corruption in Hong Kong);
- ▶ law-enforcement institutions (such as the Bureau for Combating Corruption and Organised Crime/USKOK in Croatia);
- ▶ bodies with a preventive mandate (such as the United States Office of Government Ethics).⁵³

The most successful example of a specialised anti-corruption agency is that of the Hong Kong Independent Anti-corruption Commission (ICAC), established in 1974, when Hong Kong suffered from endemic corruption. The ICAC has investigative and prosecutorial authority; its mandate also includes work on preventive aspects, and on community education about corruption. The Hong Kong ICAC has been the model for numerous specialised anti-corruption agencies worldwide. The Lithuanian Special Investigation Service (STT), for example, was inspired by ICAC. Emulating the success of ICAC has been difficult, though: ICAC was established in conjunction with a liberalisation of legislation on gambling and prostitution, which had been key factors allowing corruption to thrive.

In contrast to other specialised anti-corruption agencies, ICAC was and still is very well resourced, and this is considered the key to its success. In 2011, its budget was US\$106 million, which corresponds to US\$15 per capita of the Hong Kong Special Administrative Region. ICAC currently employs 1,300 staff (for further details of ICAC and Hong Kong, see below at 4.2).⁵⁴

The question whether a new law-enforcement body needs to be established, or whether efforts should not rather focus on the reform and strengthening of existing structures, has been the subject of intense debate over the years. In favour of

51. See, for further details: *Handbook on designing and implementing anti-corruption policies*, Council of Europe Publishing, Strasbourg 2012 (English, Russian), www.coe.int/eap-corruption.

52. For an overview of the backgrounds, institutional and legal frameworks, and human and material resources of anti-corruption agencies, see the International Association of Anti-corruption Authorities at www.iaaca.org.

53. See www.oecd.org (English, Russian).

54. See www.oecd.org (English, Russian).

establishing such an agency is the logic that, where corruption in law-enforcement forces is endemic (i.e. it is part of the problem), they cannot be part of the solution.

However, before establishing an agency along the ICAC model, a thorough costing exercise needs to be done to understand the resource implications of running such an agency in the short, medium and long term. Also, indicators for monitoring the success of the agency have to be established.⁵⁵

Whether or not they are part of national anti-corruption strategies, there are, as mentioned above, other possible reform areas.

3.2. Reform of legislation and regulations

This involves the adoption of legislation that addresses corruption. Legislative reform has, in many countries, been the most obvious starting point for reform.

Legislative reform includes criminal and civil sanctions against corruption. It can also mean that legislation on transparency and accountability is enacted, such as laws on asset declarations of public officials, freedom of expression and media freedom, or political party and election campaign financing. Also relevant are the public procurement regime and legislation on conflicts of interest. Specialised anti-corruption agencies, too, need a clear legal mandate in order to be established and to operate.

However, experience suggests that passing legislation in itself is insufficient: often implementation is a challenge; in some countries, the law is applied selectively; or existing legislation is merely decorative. There is agreement that legislative reform needs to be accompanied by other measures, including training of the judiciary and enforcement of the new legislation.

3.3. Judicial reform

In many countries with endemic or systemic levels of corruption, corruption in the judiciary is a key problem. Reforms typically target issues like transparency, independence and accountability of judges, prosecutors and the courts, including the establishment of structures for independence and self-governance of the judiciary (for example to deal with issues like establishing criteria and procedures for appointing judges and court staff); elaboration of codes of conduct/ethics for members of the judiciary; oversight of implementation of these codes; issuance of disciplinary measures or dismissal of staff; and provision of adequate salaries. Other measures include drafting and passage of procedural legislation that provides guidance to judges on how to implement anti-corruption legislation.

In response to widely perceived politicisation of, and corruption in, the judiciary, the High Judicial and Prosecutorial Council (HJPC) of Bosnia and Herzegovina was established in the late 1990s. The HJPC has issued Codes of Ethics for Judges and Prosecutors, and an Office of the Disciplinary Judge investigates and sanctions breaches of the codes. The HJPC is also continually working on the establishment and improvement of objective recruitment criteria for judges and prosecutors.

55. A useful publication on monitoring the success of anti-corruption agencies is J. Johnson, H. Hechler and H. Mathisen, *How to monitor an anti-corruption agency*, U4/CMI 2012, at www.cmi.no.

Judicial reform is particularly challenging because, in most countries, the judiciary is a tier of society whose independence is guaranteed by the constitution. The will for reform therefore has to come from inside the sector – it is difficult to impose reforms from the outside.

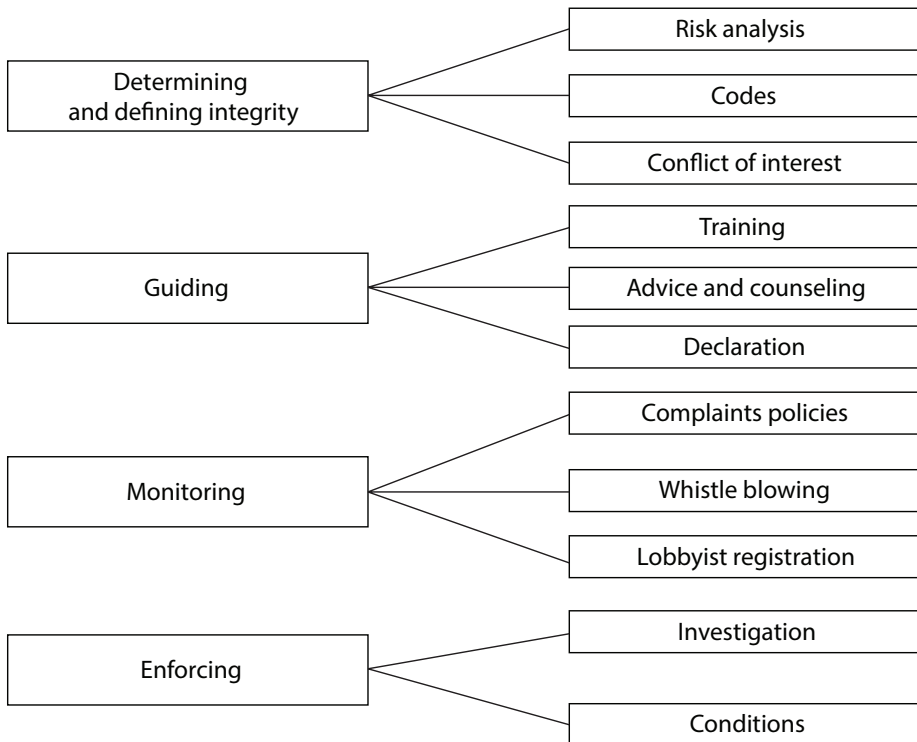
3.4. Law enforcement

The law-enforcement sector is a key player in the fight against corruption. The police investigate alleged corruption cases, while the prosecution takes alleged corruption offences to court. Measures can include training and capacity-building of specialised anti-corruption units of the police; in many cases, special anti-corruption agencies with law-enforcement powers have been created (see above). Anti-corruption reforms typically include similar measures – training and capacity-building – aimed at the prosecution, as well as measures to de-politicise the prosecution.

There are at least two angles to reform of law enforcement in relation to corruption: reforms that address corruption within law-enforcement agencies themselves; and building the ability and capacity of law enforcers to detect and prosecute corruption, including corruption driven by organised crime.

3.5. Public administration/civil service reform

Figure 3.1: The OECD Integrity Framework



Corruption prevention measures to curb and control the discretionary powers of public officials typically include the establishment of fair, transparent, merit-based and challengeable recruitment procedures; the introduction of measures to enhance accountability and efficiency; and the introduction of codes of ethics or conduct, to enshrine values of impartiality and honesty in the civil service. In this context, increasing the salaries of civil servants has been a subject of discussion for many years, but has proved to be an ineffective reform if done in isolation.

The Organisation for Economic Co-operation and Development (OECD) has, since 2003, developed what the organisation calls an Integrity Framework for the public sector, as shown in Figure 3.1.⁵⁶

3.6. Public education and participation of civil society as independent monitors of anti-corruption reforms

There is, internationally, a consensus on the need to accompany anti-corruption reforms with public education efforts. These can include media campaigns by the government or specific law-enforcement institutions, as well as work with young people in schools and universities. Public education work is part of the responsibility and mandate of the specialised anti-corruption agencies. Outreach can also include the establishment of telephone hotlines for citizens to report instances of corruption to the relevant authorities, often anonymously. Public education campaigns work in those cases where there is a convincing effort by the government to seriously combat corruption. Where this is not the case, such campaigns have been known to increase cynicism among the population about the government's real will to address corruption seriously.⁵⁷ The important role that civil society can play in monitoring the implementation of anti-corruption policies, too, has become part of the international consensus. In many countries of the former communist bloc, civil society has a formal role in anti-corruption monitoring bodies.

Outreach can also mean soliciting the input of various sectors or stakeholder groups on the extent of the problem, and their views on possible solutions. However, the real impact of this participation is often questionable – governments want to be seen to involve civil society, but their willingness to take civil society's comments on board does not always go beyond formally allocating a seat to an NGO in such structures. In the case of Armenia this led, in the mid-2000s, to a high-profile resignation of one NGO from its role in the anti-corruption monitoring body.

In the Russian Federation, since 2000, a substantial number of measures have been taken from each of the reform areas discussed above. The 2011 Report of the Civic Chamber of the Russian Federation on the effectiveness of anti-corruption policies listed a considerable number of relevant laws and regulations at the national and sub-national levels, including:

- ▶ adoption of a National Strategy for the Prevention of Corruption and a National Strategy for the Fight against Corruption;

56. For a more detailed, narrative explanation of the Integrity Framework concept, see www.oecd.org.

57. See D. Smilov and M. Tisné, *From the ground up: assessing the record of anticorruption assistance in Southeast Europe*, Central European University Press, Budapest, 2004.

- ▶ creation of a Presidential Anti-corruption Council, which includes representatives of civil society;
- ▶ adoption of the Law on Corruption Prevention;
- ▶ reform of the Criminal Code to include the possibility of seizure of assets;
- ▶ introduction of anti-corruption expertise in the law-drafting process;
- ▶ establishment of commissions, at various levels and institutions, overseeing adherence to conflict-of-interest regulations;
- ▶ establishment of a system of asset declarations by public officials;
- ▶ legislation to regulate access to information.

The report is sceptical, however, as to whether this intensive legal and regulatory activity has had a noticeable impact on corruption levels.⁵⁸

58. Report on the effectiveness of anti-corruption events and civil society participation in the implementation of the anti-corruption policy carried out by the Russian Federation. Report by the Civil Chamber of the Russian Federation, 2011 (in Russian), pp. 9-12 (ДОКЛАД об эффективности проводимых в Российской Федерации антикоррупционных мероприятий и участии институтов гражданского общества в реализации антикоррупционной политики), at www.oprf.ru.

4. Success stories

This unit aims to answer the following questions.

- ▶ Are there countries with considerable success in the fight against corruption, where corruption levels have substantially dropped as a result of reforms? What factors have led to this success?
- ▶ Can those examples simply be copied, or have other factors played a role, such as a revolution, change of government or civil unrest?

4.1. The example of Georgia

In 2003, Georgia scored 1.8 in Transparency International's Corruption Perceptions Index (CPI). This was as low as, for example, Afghanistan would score in 2008 or Iraq in 2011. To enter university without sitting the required entrance exams, US\$15 000 was the average bribe. Obtaining a passport would require US\$100 in addition to the official fee. However, Georgia's CPI score rapidly improved, jumping from 1.8 in 2003 to 2.8 in 2006, and then to 5.2 by 2012.

This was a better score than, for example, Croatia or Italy. Other indicators showed an even greater improvement:

Transparency International's Global Corruption Barometer ranked Georgia first in the world in 2010 in terms of the relative reduction in the level of corruption and second in the world in terms of the public's perception of the government's effectiveness in fighting corruption. In 2010, only 2 percent of Georgia's population reported paying a bribe over the previous 12 months. Georgia also broke the connection between the state and organized crime. Crime rates fell sharply, to among the lowest in Europe, according to an international survey conducted by the Georgia Opinion Research Bureau International (GORBI) in 2011.⁵⁹

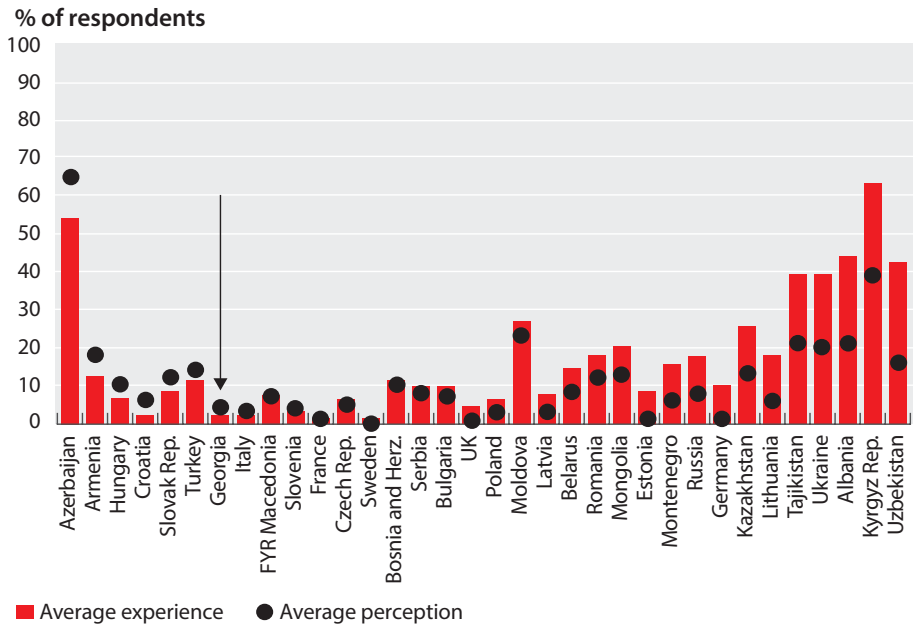
Having been at the low end of the international corruption scale only 10 years ago, Georgia can today compete with those European countries that have the lowest level of bribery in public services, such as the United Kingdom, as Figure 4.1 shows.

What are the reasons for this success story? For answers, one can look at four sectors as examples:

- ▶ patrol police;
- ▶ tax services;
- ▶ public and civil registries;
- ▶ universities.

59. The World Bank, *Fighting corruption in public services: chronicling Georgia's reforms*, 2012, 104 pages, openknowledge.worldbank.org.

Figure 4.1: The position of Georgia in perception v. experience of corruption



Source: Lits II (2010).

Note: "Average perception" refers to the proportion of respondents who say people like themselves usually or always have to make unofficial payments or gifts averaged across all public services covered by the survey. "Average experience" refers to the proportion of respondents who say they or a member of their household have made an unofficial payment or a gift in the past 2 months averaged across all public services covered by the survey.

Sections 4.1.1 to 4.1.4 quote from the World Bank account of Georgia’s reforms in these sectors.⁶⁰

4.1.1. Patrol police

Before reforms

Before 2003, a policeman, prosecutor, or judge would earn US\$15 to 60 per month.⁶¹ To be appointed to the position of policeman, one had to pay between US\$10 000 to 20 000. The money had to be

earned back through an internal pyramid scheme funded by illegal pursuits. ... Each week, for example, patrolmen paid a fixed amount from the bribes they extracted from citizens for various 'offenses' to their immediate supervisors, who in turn were expected to share a cut with their bosses, and so on. Traffic cops were always on the take. On an hour's drive, one could expect to be stopped at least twice and asked to pay a small fine.⁶²

60. Ibid.

61. Ministry of Justice, Georgia, Anti-corruption Reforms, Presentation at Council of Europe Eastern Partnership Panel, 20 May 2011, Publisher does not make the document available online anymore.

62. The World Bank, *Fighting corruption in public services*.

Reforms

Georgia decided on some remarkably bold reforms.

The unconventional idea of firing all 16,000 traffic police overnight was broached and debated. Some policy makers were concerned about what would happen to traffic safety after the police were fired and before the new patrol police could be hired and trained. The reformers realized that this concern was of little practical consequence, as the traffic police never really did anything to promote traffic safety; the only reason the traffic police stopped anyone was to get a bribe.

Many worried about the reaction to a mass firing. In the end, the reformers believed it was the only way to begin establishing a credible and competent police force. So in perhaps the boldest move of the young government, in a single day, it fired and took off the streets 16 000 officers. To soften the blow, the government provided two months' pay and amnesty from past crimes. Some officers went without fuss; others joined the opposition. Chaos did not ensue – many observers believe that the roads were actually safer without the traffic people waving motorists over all the time – and a new patrol police force was created.

Zero tolerance did not stop with the firing of the traffic police and the hiring of new blood. Undercover officers were assigned to make sure the police followed the rules. An ordinary officer might be partnered with a covert officer and never know it – unless he or she broke a rule. Spot checks were carried out to make sure police were following protocol. An undercover agent filed a complaint of domestic violence at a police station to see if complaints were followed up on. A driver cruised around at night with a headlight out. When stopped, he would say he was on his way to fix the light and offer GEL20. Police officers caught taking bribes were fired. Such practices sent a strong message to new recruits that the ministry was serious about its code of conduct and the ethical practices of its police.

To further protect citizens from abuse, the government introduced a 24-hour hotline that allows citizens to complain about police or report being asked for bribes. Video cameras went up all over Tbilisi, as well in other major cities and along highways, giving police and citizens proof of violations or evidence to the contrary. Fines were no longer collected on the spot but paid at commercial banks, eliminating opportunities for the police to pocket the money. Citizens finally had some leverage. They did not pay police directly and could report abuse and dispute fines through official channels.⁶³

4.1.2. Tax services

Before reforms

As with the traffic police, Georgia was better off without its existing tax inspectors.

Businesses routinely paid bribes to receive favorable tax treatment and avoid punitive tax audits. These bribes lubricated negotiations between the tax

63. Ibid.

authorities and business owners on what the final tax liability would be. It was easier for businesses and tax authorities to negotiate payments, including the amount to be paid in taxes and the amount to be paid in bribes, unofficially than to try to understand what the tax code actually required.

A former deputy finance minister recalled one such negotiation, in a district of Tbilisi, that became so heated it ended with a tax inspector stabbing the company manager. As a result, all tax inspectors in the district were suspended for a month. Without the inspectors on duty, collections in the district were the highest ever recorded, as companies tried to figure out the best they could what they owed and paid it.⁶⁴

Reforms

The first step was to announce and enforce a policy of zero tolerance for corruption. The zero-tolerance policy was seared into the minds of the public and civil service. The police hit hard at well-known corrupt individuals. Television news captured scenes of masked and armed police forcibly closing down noncompliant businesses and arresting officials from the former government and other influential people. Among those arrested were the minister of energy and the minister of transport and communication, the chairman of the Chamber of Control, and the head of the civil aviation administration, the chief of the state-owned railway company, the president of the football federation, the president of the state-owned gold-mining company, and some oligarchs.

Those arrested could buy their freedom through controversial plea bargain arrangements that stretched the limits of existing laws. The government extracted significant resources from those arrested to begin replenishing the empty treasury account. One plea bargain with a prominent businessman resulted in a \$14 million payment to the treasury. Although these arrangements let those arrested buy their freedom, they also sent an unequivocal message that even the powerful would be punished and that corruption would no longer be tolerated.

New laws were quickly adopted to reinforce the zero-tolerance policy. These laws simplified procedures for arresting officials suspected of corruption and allowed for confiscation of their property if they could not prove they acquired it legally.

The government also approved tax amnesty legislation at the end of 2004 that allowed all taxpayers except government officials to declare all unreported assets before the end of 2005. Declared property could be legalized after the owners paid 1 percent of its cost to the budget.

Changing staff incentives

The zero-tolerance messages were not lost on people working in the tax department. Part of the immediate challenge facing government officials was that they could not fire and replace every tax collector and inspector, even though most had been corrupted under the previous regime. The immediate answer to this dilemma was to leave no doubt in their minds that the rules of the game had changed.

64. Ibid.

Nogaideli recalls meeting with the staff of the tax department the night he was appointed finance minister. "I really didn't have the luxury to change staff beginning that particular night. I told them my judgment of their performance would not be on what they did in the past but how they performed in the coming months." Staff who continued with past practices were dealt with forcefully. Arrests and harsh sentences for corrupt tax collectors and inspectors quickly diminished corruption.

Later, cameras were installed in tax offices to deter corruption. A room in the ministry was equipped with a wall of video screens showing every tax office in the country. Such scrutiny minimized the possibility for tax officers to cut side deals with taxpayers. Target volumes of collections were set and carefully monitored. Failure to meet targets was not taken lightly.

As revenues increased, salaries were raised substantially, further decreasing incentives for bribe taking. Gradually, over a two-year period, new, better-educated, and less corruption-prone staff were recruited, eventually replacing the carryovers from the previous regime.

A new tax code was passed in 2005. The main goals were to stimulate economic growth, improve the efficiency of the tax system, and broaden the tax base, but the changes also had an anticorruption element, as the complexity of the old system created a medium in which corruption schemes could flourish. The new code simplified the tax system; reduced rates; and eliminated the pollution, property transfer, gambling, tourism, advertisement, and other minor local taxes, which had been bringing in almost no revenue. Only 7 of 21 taxes remained, with the rates of many of them reduced.⁶⁵

4.1.3. Public and civil registry

Before reforms

To obtain a passport, one had to pay USD100 in addition to the official fee.⁶⁶ Corruption was

so blatant that criminals used civil registry offices to buy passports in different names. Even regular citizens used the registries to illegally change information on their documents, including single women and athletes who changed their ages to make people believe they were younger. Cash from bribes was divided among various officials, including the police.

Officials working at civil registry offices paid \$5,000–\$25,000 to get their jobs. Some people obtained lower-level jobs by giving a television or a refrigerator to the hiring official. Ironically, a 2004 survey on public perceptions related to paying bribes to tax authorities, customs officials, police, and public registry agents revealed that, although respondents found most bribe-takers offensive, they were grateful to public registry officials for registering their property.⁶⁷

65. Ibid.

66. Ministry of Justice, Georgia, Anti-corruption Reforms, Presentation at Council of Europe Eastern Partnership Panel, 20 May 2011, Publisher does not make the document available online anymore.

67. The World Bank, *Fighting corruption in public services*.

Reforms

A new law created

the National Agency of Public Registry (NAPR), a legal entity under the ministry of justice. Set up to provide quick and easy access to public registry information, the new self-financing registry would offer simplified registration procedures, secure ownership rights, and customer-friendly service, ultimately stimulating economic growth. "Before the reforms, the public registry was underfunded, because it received money from the state budget. The first thing we did was to change the system," says Zurab Adeishvili, the minister of justice. "We have transformed the corrupt bureaucracy into a business model that generates 10 times more income and provides efficient services to citizens. Now we have about 1,000 motivated people working in the property registry. They earn their salaries and contribute to the state budget."

According to reform team leader David Egiashvili, the second step was to remove conflicts of interest by restructuring the roles and responsibilities of various agencies handling public registry issues. Under the old system, for example, registrars were responsible not just for registering property but also for monitoring land use and ultimately selling state land, creating an obvious conflict of interest. The new law prohibits registrars from being members of a commission selling land. The monitoring role went to municipalities, which lost the power to help choose regional registrars, power that had led to political influence over land valuations, registrations, and disputes. ...

In 2004, the government created the Civil Registry Agency, a self-funding public entity under the Ministry of Justice. The new agency is responsible for passports; identification cards; birth, death, and marriage certificates; citizenship and migration issues; and the legalization of foreign documents – work previously handled by 78 local offices. New legislation cut red tape. It streamlined the procedures required to obtain civil registry documents and required that officials, not citizens, track down necessary documents kept by their agency and others. "If information is stored in a government agency, our employees can't ask citizens for it," says Giorgi Vashadze, deputy justice minister and head of the civil registry. Databases from various agencies are now unified online, allowing these documents to be accessed in seconds.

All fees charged by the Civil Registry Agency are now clear and in writing – as are the time frames for issuing various documents. In some cases, processes that used to involve bribes were simply formalized and made legal. For example, for a fee, citizens can get documents processed the same day – much like they used to pay bribes to speed things up. "We analyzed the structure of corruption related to the timeline of registration and said, let's just replace it with fees for service," said Egiashvili. An identification card, for example, is issued in 10 days at no charge or in 1 day for a fee of GEL25.

Delivery times have been dramatically cut. For a fee, passports can now be obtained within 24 hours; other documents, including birth, death, and marriage certificates, can be issued within 15 minutes. Georgia even offers VIP service, in which an agency official will show up at a citizen's office with a portable workstation to process a passport application. Like other public agencies, public registry offices do not accept fees directly. Instead, commercial banks or bank representatives present at these offices collect these fees, limiting the ability of

public officials to extract bribes. Front and back offices are separated physically and functionally, meaning citizens could no longer sit around smoking with and chatting up (or paying off) back-office workers involved in decision making. ...

At the civil registry, more than 400 new employees were immediately recruited after passing exams that tested knowledge of civil registry procedures, new legislation, and computer and other skills. All staff had to reapply for their jobs and take the tests. Most failed. They knew the old practices but not the proper way of doing things. Over time, some 80 percent of the original staff has been replaced. New people were recruited through advertising campaigns aimed at attracting highly skilled professionals. Salaries for public registry workers increased by a factor of almost 20 – from about \$20 per month in 2003 to about \$400 in 2005, creating intense competition for jobs and reducing the incentive to accept bribes. Training and workshops were added to upgrade staff skills, along with a new incentive scheme that provided performance bonuses equal to up to two months of wages. The Ministry of Justice, the parent ministry of both the civil and public registries, created a new center that trains registry officials. Similar incentive systems were implemented at the civil registry. Midlevel employees under the old regime earned an average of \$15 a month. The new agency immediately boosted their monthly salaries to \$200 and later \$500. A new bonus scheme was introduced, along with team-building workshops and customer service seminars. Along with improved incentives, the government introduced a system for monitoring performance. “Mystery shoppers” were used to grade services and check for corruption at both registries. They also made sure employees were following procedures. At the civil registry, the results of these visits are factored into employee reviews, leading to bonuses, more training, and even dismissals. A hotline enables citizens to report illegal actions of agency officials.⁶⁸

4.1.4. Universities

Before reforms

University staff had been emulating the traffic police, tax inspectors and registrars.

The university admission system was considered the most corrupt area in higher education. Theoretically, candidates were accepted solely on their performance on university entrance examinations. In practice, a system of patronage permeated the entire process, with university presidents admitting the sons and daughters of politicians in exchange for political support. Other students got in by bribing middlemen – little-known university professors or school employees who were responsible for collecting money and passing it upward to influential university staff and members of the examination panels. Outstanding students were usually able to pass the university entrance exams and gain admission based on their knowledge and performance, but many other students got in based solely on their ability to pay bribes. Some newly established private institutions were actually diploma mills, typically run out of small apartments with a single ‘professor’. Bribes ranged from \$8,000 to \$30,000, depending on the prestige of the program, according to a 2004 survey

68. Ibid.

The biggest bribes were paid to get into law schools and medical schools. The vast majority of students paid unofficial fees, ranging from \$5,000 to \$15,000, to tutors to help them 'prepare' for university entrance exams. These tutors served on the university's examination committee, which set and graded the entrance exams. Students often paid for these sessions only to secure a passing grade, which they did by including special phrases in their essays that identified them as 'tutees' (students' names were not on the tests). Bribes were so common that people negotiated them right on campus. (One elderly woman reportedly stood at the university's reception area seeking 'guidance' from passersby on whom she should approach with the bribe she had prepared to help her grandson gain admission.) The system left students from poor families, especially those in the regions, with little chance of getting a university degree.⁶⁹

Reform

Following a year and a half of intensive preparations, the first centralized university entrance examinations were administered in July 2005. Exams were offered in three subject areas: Georgian language and literature, math, and foreign languages. A general aptitude test, which examined critical thinking and reasoning skills, was also included, as a way of levelling the playing field for students from less academically challenging schools. Top-scoring entrants were eligible for state scholarships.

Before reform, each university gave its own exams, multiplying the opportunities for corruption. Reformers created a new, independent institution, the National Examination Center, which creates and administers exams for all institutions at 14 centers around Georgia. University professors would no longer be involved in test preparation or grading. Exams were designed to Western standards, using the Baltic countries, Israel, Sweden, the United Kingdom, and the United States as models. To build public confidence and dispel rumors, the staff of the National Examination Center visited every district in Georgia to consult with stakeholders about the design of the new system and provide information about why particular changes were being made. ...

To eliminate corruption, build public trust, and garner support for the new system, reformers gave security top priority. Entrance exams were printed at the Cambridge University printing house in England. The sealed examinations were sent back to Georgia and delivered in police cars to the vaults of the national bank, where they were stored until test day. Some 700 local proctors, along with 72 Georgian and 20 foreign observers, monitored the exams. International organizations such as Transparency International monitored the entire process. In addition, 470 police officers and 34 doctors were on hand to ensure the security and health of the students.

The monitors were trained to supervise exams and spot cheaters. Tests were identified by barcode rather than student name to help eliminate bias during grading. Closed-circuit television cameras were installed in every testing room, so that parents could monitor the process from a waiting room outside. Completed tests were scanned and made available on a website for added transparency. An appeals procedure was put in place.⁷⁰

69. Ibid.

70. Ibid.

4.1.5. Critical aspects

Whereas the success of the anti-corruption reforms in Georgia seems to be universally acknowledged, there are some critical voices that point out that success in fighting corruption and democratisation do not necessarily have to go hand in glove.

The media are no longer as free as they used to be. Saakashvili's ruling party, the United National Movement, has steadily chipped away at the independence of the press. The national TV channels are firmly under state control, and their news coverage shows it. A few small outlets are still allowed to report more or less freely in the capital, but most provincial newspapers and broadcast stations are firmly under the government's thumb. In the most recent Reporters without Borders survey of global press freedom, Georgia scored 104 out of a possible 179. That ranking put it below Chad, Northern Cyprus, and Gabon. Sure, that's still better than Ukraine (116) or Russia (142). Not exactly a model, though.⁷¹

The strong determination of the Georgian leadership to implement reform enabled difficult and unpopular decisions such as the firing of policemen. A gradual reform process would certainly not have reached the same dramatic results, or made the same impression on the public. At the same time, there is a danger in emphasising administrative ('petty') corruption as the single most important challenge in institutional reform. Without adequate checks and balances, the result may be a police force still perceived not as protectors of the citizens but rather of executive interests.⁷²

4.2. Other examples

Georgia is probably the most outstanding success story worldwide in the fight against corruption that has happened since the 1990s. However, there are many more such stories that have evolved probably more gradually, over a longer time. For example, all Baltic or central/eastern European states that joined the European Union, or were preparing for doing so, had to have their corruption reduced, and most of them continue to do so (though some of them, like Romania, have deteriorated again). For example, Croatia and Lithuania were rife with corruption in the early 1990s. According to the World Bank's Control of Corruption Indicator (CCI),⁷³ Croatia scored 23.9 in 1996 – the first year the CCI was ever applied, and had more than doubled its score by 2010 (to 59.3). Latvia scored 23.9 in 1996 and rose to 63.2 in 2010. Today, the level of bribery in Croatia is lower than in the United Kingdom, and in Latvia it is lower than in Germany, according to a survey by the European Bank for Reconstruction and Development (EBRD) on experience of corruption (see Figure 4.1).⁷⁴

Other regions of the world know success stories as well. The best-known one in the Asian region is probably Hong Kong, which undertook serious reforms many years

71. Christian Caryl, "The Georgian paradox", *Foreign Policy*, 31 January 2012, at www.foreignpolicy.com.

72. Lilli di Puppò, "Police reform in Georgia. Cracks in an anti-corruption success story", U4 Practice Insight no. 2010:2, p. 5, at www.u4.no.

73. See info.worldbank.org.

74. European Bank for Reconstruction and Development, "Life in Transition Survey" (2010), p. 39, at www.ebrd.com.

ago. In the 1960s, Hong Kong was internationally known for its outstanding and endemic corruption.

The collection and distribution of bribes were institutionalized in the police force. The saying was that once you joined the Police Force, you would find money in your drawer. Every form of public service was affected. The ambulance person would demand tea money before picking up a sick person. Firemen would negotiate payment before turning on the water hose. Restaurants not paying a bribe would find themselves in a long uncertain wait for licenses. Unsafe buildings would be certified fit for occupation through the back door. ...

[F]or a long time, the police were expected to investigate themselves. As it happened, the police themselves were in control of syndicated corruption, both within and outside the force. They sheltered vice, gambling and drug establishments. Reporting corruption to the police was dangerous since, very often, informants and complainants were often fearful for their lives as they did not know if the person receiving the report was himself corrupt.⁷⁵

Nowadays, Hong Kong ranks among the least corrupt countries/regions of the world, well above Germany or the United States – according to Transparency International's CPI. The success goes back to the following factors, among others.

- ▶ Public outrage: "Peter Godber, a Chief Superintendent of Police, was under investigation for suspected corruption. He managed to flee to the United Kingdom in June 1973. This enraged public and students, and the 'Fight Corruption, Arrest Godber' campaign started."⁷⁶
- ▶ An independent anti-corruption body: "On February 15, 1974 the Independent Commission against Corruption (ICAC) was created. The commission has the authority to appoint, manage and dismiss its staff. The ICAC investigates all corruption allegations, including those against the police. Complaints against ICAC officers are investigated by a special unit in the ICAC that acts on the advice of the Secretary for Justice and the Operations Review Committee, which consists of members appointed by the Chief Executive."⁷⁷
- ▶ Reporting crimes: "Confidentiality of the complainant's identity, protection of witnesses and the possibility of ICAC to receive anonymous complaints."⁷⁸
- ▶ Control of investigations: "The Operations Review Committee monitors all ICAC investigations. No investigation may be terminated without its approval. It receives status reports on all cases and monitors investigations, people on bail and court cases."⁷⁹

75. Publisher does not make the document available online anymore. Previous weblink: www.hkjournal.org/archive/2006_spring/wu.html.

76. Ibid.

77. Ibid.

78. Ibid.

79. Ibid.

- ▶ Rise of confidence: “In the early years, about two-thirds of the reports were anonymous. This has now shrunk to under one third, reflecting a much greater degree of public confidence.”⁸⁰
- ▶ Comprehensiveness: “Allegations of election corruption, conflict of interest, misuse of public funds and resources by politicians and officials, favoritism, cronyism and collusion between big business and government” are all within the remit of the ICAC.⁸¹
- ▶ The criminal offence of unexplained wealth: “The burden is on the civil servant to explain his wealth and his standard of living if it is not commensurate with his official earnings. This legal device enables the ICAC to deal with cases where substantial bribes received cannot be linked to a specific act of corruption.”⁸² See also below at section 6.1.7.
- ▶ Prevention: The ICAC “is also often called upon to set up preventive measures on major projects. These could be anti-corruption strategies for government departments or examination of work procedures or tendering and procurement exercises to remove corruption-prone areas. ... The ICAC now sits on the Police Force Anti-Corruption Strategy Steering Committee to advise on strategies to foster integrity. After the substandard piling scandals of the construction industry in the late 1990s, the ICAC introduced a series of corruption prevention measures. ... From institutionalized corruption, Hong Kong has moved on to institutionalizing ethics through corporate governance, transparent procedures, ethical practices” and training.⁸³
- ▶ Funding: The example of Hong Kong shows “that it takes time and considerable effort to curb corruption in a systemically corrupt environment. After more than 25 years, Hong Kong SAR is now spending 90 million United States dollars per year (1998 figure) and employs 1,300 staff, who in 1998 conducted 2,780 training sessions for the private and public sector. The Independent Commission against Corruption (ICAC) is focusing its efforts on three major areas: (a) the Operations Department, which investigates complaints; (b) the Community Relations Department, which conducts community outreach, educational programmes and their development; and (c) the Corruption Prevention Department, which aims at preventing corruption through improved systems and procedures. The amount spent is probably more than all 50 African countries spent on fighting corruption in 1999.”⁸⁴
- ▶ Amnesty: After Chief Superintendent of Police Godber was extradited to Hong Kong and imprisoned in 1977, “off-duty police officers stormed the ICAC headquarters in protest. They demanded an amnesty. To defuse this crisis, an amnesty, excluding heinous crimes and a few other exceptions,

80. Ibid.

81. Ibid.

82. Ibid.

83. Ibid.

84. Tenth United Nations Congress on the Prevention of Crime and the Treatment of Offenders Vienna, 10-17 April 2000, International co-operation in combating transnational crime, Background paper for the workshop on combating corruption, A/CONF.187/9, at www.uncjin.org.

was given for offenses committed before January 1 1977. In the aftermath of the attack on the ICAC, the government quickly moved to clean up the police and to build public respect for the force. Measures were put in place to attract a new crop of younger and cleaner officers. ... Hong Kong had to pay a price by granting an amnesty to the police in the early years. Ironically the amnesty provided a break from the past so that Hong Kong could move on."⁸⁵

For Hong Kong, see also above at section 3.1.

4.3. Success patterns

How do the different anti-corruption measures work together, if they are supported by leadership and effectively implemented? Below are two examples, one for the criminal prosecution of offenders, one for the prevention of future violations.

4.3.1. Criminalisation

A tax inspector might take bribes on a regular basis in exchange for lenience with tax audits. Whereas in the past the risk of detection might have been low, the introduction of effective anti-corruption measures would eventually lead to his prosecution.

- ▶ Criminal legislation is in line with international standards, thus comprehensively and effectively covering all aspects and leaving no loopholes.
- ▶ Random integrity tests by undercover officers (see below at 5.5) help detect the "rotten apples".
- ▶ Annual obligatory financial declarations⁸⁶ by the official and his family members help detect that the official has a higher standard of living than could be explained by his legal income, thus leading to an investigation.
- ▶ A national anti-money-laundering unit monitoring all money movements in the country detects large cash transfers by the official to an account abroad and alerts law-enforcement authorities.
- ▶ Investigators and prosecutors are trained and specialised in anti-corruption patterns and in investigating financial crimes.
- ▶ There is an anonymous whistleblower hotline for corruption cases which a colleague of the tax official turns to; the colleague is also protected by an efficient witness-protection programme in line with international standards.
- ▶ Colleagues and superiors are obliged by law to report any suspicion of corruption.
- ▶ Integrity programmes and undercover integrity tests are also run within the prosecution service and the judiciary; thus, the tax official cannot bribe his way out of prosecution.

85. Ibid.

86. OECD, Asset Declarations for Public Officials: A Tool to Prevent Corruption, at www.oecd.org (English, Russian).

4.3.2. Prevention

Hiring of friends and family members as colleagues at a state body is often easy in countries with weak integrity systems. These anti-corruption measures would eventually prevent such systematic nepotism:

- ▶ clear regulation and training on conflicts of interest;
- ▶ officials having to declare their conflicts of interest to the employer;
- ▶ penalties for violations (disciplinary and criminal);
- ▶ clear regulation of hiring procedures:
 - hiring goes through an external civil service commission;
 - all hiring procedures announced publicly with minimum notice;
 - other candidates having a right to bring legal action and block appointment if unfairly disfavoured;
- ▶ successful legal actions because of independence and professionalism of judges (appointed independently, according to qualification, independent of executive powers/ministries, adequate salary);
- ▶ integrity programmes and undercover integrity tests within the judiciary and civil service commission;
- ▶ freedom-of-information legislation allowing citizens or NGOs to look into hiring procedures and outcomes;
- ▶ public awareness, making candidates and staff aware of rules, rights and possible remedies;
- ▶ an anonymous whistleblower hotline for corruption cases;
- ▶ colleagues and superiors being obliged by law to report any suspicion of corruption.

4.4. Literature

The World Bank, *Fighting corruption in public services: chronicling Georgia's reforms*, 2012 (English, Russian, Ukrainian, Georgian) chronicles the anti-corruption reforms that have transformed public services in Georgia since the Rose Revolution in late 2003. The focus is on the “how” behind successful reforms of selected public services.

In English at
documents.worldbank.org

In Russian at
documents.vsemirnyjbank.org

5. Ethics

This unit will try to answer the following questions:

- ▶ Why is ethics an important entry point in the fight against corruption?
- ▶ How can ethical attitudes within a public administration be changed?
- ▶ How should ethical rules be designed?
- ▶ What should ethics training look like?
- ▶ How can the state prevent unethical behaviour in its public administration?

5.1. Ethics as an anti-corruption approach

Corruption is always embedded in a general culture of

- ▶ lack of service mentality;
- ▶ disrespect or disdain for citizens;
- ▶ absence of care for the public good.

At the same time, the level of respect for and implementation of laws is always low in an environment with a low level of ethical culture. In addition, a low level of ethics almost always creates the perception of corruption, even if there is in reality no correspondingly high level of bribery.

This is why state leaders with experience in anti-corruption reforms often name a change in attitude within the public administration the number one necessity. All laws, new agencies, organisational changes, lifting of salaries and the like will in the end be fruitless without a change in ethical culture. In other words, it is hard to imagine a culture of bribery thriving in an administration characterised by a high level of service, but it is easy to imagine it in an administration with a low level of ethics.

The aim of such ethical changes is to have a public administration where people will abstain from corruption – not because they are afraid of being caught, but because it is the right thing to do.

5.2. How to change an ethical culture?

A low ethical culture is usually not the result of bad regulation, but the result of a long tradition of bad practice that has become systemic through the following factors:

- ▶ Some civil servants with poor standards left over from previous autocratic regimes.

These attitudes are handed down to some extent from senior civil servants to new ones as part of the “formation process”. The (partial) perpetuation of this systemic ethical abuse generates apathy and fear among potentially progressive civil servants and among citizens.

▶ Lack of ethical leadership.

Without such leadership there is little courage or even motivation in the lower tiers for change. Surveys among civil servants in other countries show that ethical leadership is among the top necessities for changing ethical attitudes among civil servants.⁸⁷

▶ Lack of awareness and training.

How are civil servants to deal with ethical dilemmas?

▶ Lack of enforcement.

Some state bodies have outstandingly low numbers of disciplinary proceedings, in stark contrast to the frequent, almost systemic ethical violations reported by citizens.

▶ Lack of public awareness.

Citizens have low awareness of ethics and few of them report violations.

▶ An oligarchic clan structure in public administration.

Violations in conflict-of-interest situations and personal enrichment of the leadership would be the normal consequence of such structure and would always reflect negatively on the ethical motivation of ordinary civil servants (and citizens).

▶ Working conditions.

These seem to be a factor for civil servants performing to a high standard, including ethically. This would concern mainly salaries and office space.

▶ The unquestioned state.

This belief has a strong impact on the attitude of civil servants as well as on the willingness of citizens to stand up for their rights.⁸⁸

▶ Publicity is inappropriate.

Strongly connected with the unquestionable state is the tendency to perceive transparent dealing with ethical violations in public administration as “washing dirty linen in public”.

▶ Past isolation of civil servants from the state elite.

As a consequence, there is little respect for the protection of public assets in practice. Citizens and civil servants tend to see no problem in capturing public assets in illegal ways, as they feel it is now their time to use them.

Even though a low ethical culture is usually not the result of bad regulation, nonetheless, turning ethics in the right direction will be difficult based on bad regulation. So having a clear and useful ethical code in place is an important starting point (see below at 5.3).

87. Jolanta Palidaukaite (Lithuania), Aive Pevkur (Estonia), Iveta Reinholde (Latvia), “A comparative approach towards public service ethics in Estonia, Latvia and Lithuania”, Paper presented at EGPA conference in Madrid, 2007, at www.law.kuleuven.be.

88. See, for Turkey: Omurgonulsen and Oktem, “Towards an understanding of the cultural pillars of ethical administration in Turkey: a qualitative research endeavour”, at www.law.kuleuven.be.

Much more important though is inducing the actual change in attitudes. Experience shows that such change in attitudes is possible. As a rule of thumb, 10% of civil servants are immune to temptations to ethical violations, 10% of civil servants will always be prone to trying to use rules in their favour and 80% of civil servants will adapt to the current system, because either they shy away from conflict or they simply do not see a way out. Those 80% are the target group of training and will in the end make the impact visible.

Often, training sessions are reduced to presenting the code of ethics to participants, pointing out what participants are not allowed to do and answering a few questions. The impact of such training tends to be rather low, even counterproductive. For a positive, high impact, the following should be considered:

- ▶ training sessions should focus on the code of ethics as a useful approach for civil servants (see below at 5.4);
- ▶ ethics is not about memorising solutions, but about raising awareness of ethical dilemmas, and about possible solutions. Therefore, training sessions should have participants actively discussing relevant, real-life scenarios with ethical dilemmas (see below at 5.4.2).

The Council of Europe carried out an ethics project in Turkey in 2007-09.⁸⁹ Besides reviewing existing ethics regulations, the project focused on eventually reaching the whole Turkish public administration through an ethics training programme. The project trained members of the ethics commissions in each public agency to be ethics trainers. Those trained trainers would either train further trainers, or train civil servants on ethics. The ethics training sessions were designed to be interactive, using case scenarios of ethical dilemmas (see below 5.4.2). A second phase of the project is being implemented for the years 2012-14.

5.3. Regulating ethics

5.3.1. Sources

The formal rules

- ▶ code of conduct
- ▶ civil service law
- ▶ anti-corruption law
- ▶ criminal code
- ▶ other (constitution etc.)

The informal rules – personal and social values and behaviours – for example (arguable)

- ▶ a big cash transaction between public officials in public
- ▶ a judge having lunch with a party during a trial
- ▶ accepting a lift in a car with a client
- ▶ not issuing receipts for administrative fees

89. See www.coe.int/corruption.

5.3.2. Rule- or value-based codes of conduct

Group discussion: Should the code of your country have more detail to provide more guidance, or less detail to be more accessible?

Codes can attempt to exhaustively detail ethics standards for all possible eventualities. This can be an advantage, if it includes case scenarios of typical problems and their suggested solution. However, such exhaustive codes have the following disadvantages.⁹⁰

- ▶ Codes can never anticipate every situation in life.
- ▶ Too detailed rules are inflexible, and can be too narrow to catch all possible cases.
- ▶ Too detailed rules risk contradicting each other.
- ▶ Details are no substitute for officials applying reasoning when interpreting the code in the circumstances of the case; rules can be unfair or lead to absurd consequences if applied without reason.
- ▶ Officials can be discouraged from thinking responsively and creatively.

A different approach is taken by codes that provide only the fundamental principles and values that might be relevant to the case at hand. As an advantage, such codes are short and handy, but broadly formulated codes also have disadvantages.

- ▶ Officials will need competence in reasoning based on values and principles to interpret the code in the circumstances of a specific case.
- ▶ Unless they are trained in this task, managers may prefer to take no action at all rather than take a risk.

The Seven Principles of Public Life⁹¹ in the United Kingdom could be seen as an example of a value-based code. The implications of each of the seven principles – selflessness, integrity, objectivity, accountability, openness, honesty and leadership – are spelt out:

- ▶ selflessness:
holders of public office should act solely in terms of the public interest. They should not do so in order to gain financial or other benefits for themselves, their family or their friends;
- ▶ integrity:
holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might seek to influence them in the performance of their official duties;
- ▶ objectivity:
in carrying out public business, including making public appointments, awarding contracts or recommending individuals for rewards and benefits, holders of public office should make choices on merit;

90. Howard Whitton, Beyond the code of conduct: building ethical competence in public officials, U4-Brief 2009:19, at www.u4.no.

91. See www.gov.uk.

▶ accountability:

holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office;

▶ openness:

holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands;

▶ honesty:

holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest;

▶ leadership:

holders of public office should promote and support these principles by leadership and example.

In short, one could say that rule-based codes of conduct focus on the things you can't do, while value-based codes of conduct focus on what is desirable.

Under which category does the code of conduct of your country fall, and which model do you prefer? Are any rules missing that would seem necessary? Is the code of your country accessible and formulated in a clear way?

5.3.3. Added value of code of conducts

Case scenario – Football tickets

Imagine your colleague is responsible for issuing business permits. One day, the owner of the local football team comes to your colleague to have his business licence renewed. The businessman lays two tickets for the next football match on your colleague's table, for seats in his VIP lounge.

Your colleague wonders: should he keep the tickets to be able to prove that the businessman was making an improper approach? What would be the advantages of having a code of conduct in place?

Codes of conduct can:

- ▶ show in one document what is expected;
- ▶ avoid false disciplinary action as a way of improperly intimidating or removing civil servants;
- ▶ help to avoid trouble;
- ▶ help to defend against improper approaches;
- ▶ show how you can clarify an unclear situation;
- ▶ improve the public image;
- ▶ avoid losing time in correcting bad management decisions and dealing with complaints;

- ▶ make public service different to other jobs;
- ▶ be a solid basis for employee training;
- ▶ support equal treatment of civil servants by their employer.

On the introductory case scenario, the model code of conduct would take the following stance:

“If the public official is offered an undue advantage he or she should take the following steps to protect himself or herself:

- ▶ refuse the undue advantage; there is no need to accept it for use as evidence;
- ▶ try to identify the person who made the offer;
- ▶ avoid lengthy contacts, but knowing the reason for the offer could be useful in evidence;
- ▶ if the gift cannot be refused or returned to the sender, it should be preserved, but handled as little as possible;
- ▶ obtain witnesses if possible, such as colleagues working nearby;
- ▶ prepare as soon as possible a written record of the attempt, preferably in an official notebook;
- ▶ report the attempt as soon as possible to his or her supervisor or directly to the appropriate law-enforcement authority;
- ▶ continue to work normally, particularly on the matter in relation to which the undue advantage was offered.”

What do you think of this approach?

5.4. Training in ethics

5.4.1. Definitions

Ethics

For our purposes, ethics consists of formal rules, informal behavioural standards and personal attitudes that public service employees use to guide their own conduct.

Example: Talking about colleagues behind their back is probably not forbidden by formal rules, but might contradict informal rules or personal attitudes.

Ethical dilemma

An ethical dilemma is a situation where two or more ethical rules collide.

Example: Accepting an invitation to lunch might run against gift-accepting rules on the one hand, but refusing the invitation might go against rules of politeness.

Conflict of interest

A conflict of interest involves a conflict between a public duty (ethical rule) and the private interest of a public official, in which the official’s private-capacity interest could improperly influence the performance of their official duties and responsibilities.

Example: A judge who is a member of an association which strongly lobbies for protection of industrial intellectual property is in conflict of interest when deciding an intellectual property case.

It is a common misconception that conflict of interest by itself is corruption. This understanding misses the point: conflicts of interest are everyday situations. Corruption is only involved when the public official in question is not dealing with this conflict in a proper way.

One must be aware that not only real conflict of interests are problematic, but also situations that can be perceived as such. Such apparent conflict of interests can lead to the perception of corruption, something potentially as harmful as corruption itself (see above 1.5).

Case scenario – Appointment of a friend

Dr Miller oversees a department for food safety with five full-time experts and three assistants. She has been given funding to create a position for an expert. The responsibility of the new expert is highly technical and involves special bio-chemical know-how. Dr Miller would like to appoint to this position her longstanding best friend, Dr Jones, who is an outstanding expert on food safety. Nobody knows that Dr Jones is her best friend, and Dr Miller does not tell anyone because otherwise her friend might not be hired just because her employer would want to avoid the perception of conflict of interest. She serves on the appointment committee, but abstains from voting. In the end, the appointment committee decides to hire Dr Jones, who in fact is the best candidate.

Would you see any conflict of interest and/or ethical dilemma in this case?

Suggested solution:

Dr Miller did not commit any criminal corruption offence, as the appointment of Dr Jones is fully legal, as he is the best candidate. Dr Miller acted ethically in abstaining from a vote, because she is in conflict of interest. However, Dr Miller should have made her conflict of interest transparent to the appointment committee for two reasons. The committee, not her, should decide on whether she stays on the committee. Furthermore, her taking part in the committee could still be perceived by the public or by co-workers as corrupt influence on the decision making.

5.4.2. Case scenarios for ethical dilemmas

Case scenario discussions take an important place in ethics training. It is the goal of such discussions to raise awareness of participants about:

- ▶ ethical dilemmas in the scenario;
- ▶ costs or benefits for the parties involved;
- ▶ ethical principles and legal regulations (violated or followed) about the case.

Case scenarios are not about answering a question with one right answer, but rather about raising awareness of the diversity of answers and gaining the skill of solving unforeseen dilemmas.

How to solve ethical dilemmas

- ▶ Which ethical rules apply?
- ▶ Do the rules provide a clear answer?
- ▶ If not:
 - Arguments for and against alternative actions?
 - Which arguments should take priority?
- ▶ Better safe than sorry:
 - Do not stretch the rules.
 - Appearance is as important as reality:
 - Am I prepared for public scrutiny?
 - Can I publicly justify my course of action?

To this end, case studies are performed by the trainer following these steps.

- ▶ Participants are divided into groups of five.
- ▶ After the introduction of the scenario, the trainer briefly explains the purpose of the study.
- ▶ After the groups are seated, each group is asked to assign a spokesperson.
- ▶ First, each participant reads the scenario carefully and silently on their own and the groups then discuss it for 20 or 25 minutes and take notes, answering the following questions.
 - Step 1: What is the ethical issue here? Where has it taken place? Why could it be or why is it an ethical issue?
 - Step 2: Who is involved? Who will be affected? Who wins? Who loses?
 - Step 3: How do the rights and wrongs of the issue under discussion change when you view the scenario from the individual standpoints of those involved?
 - Step 4: What is the most important ethical principle here?
 - Step 5: What action should be taken?
- ▶ Trainers visit all the groups at five-minute intervals, and provide them with support to prevent confusion and to quicken the discussion.
- ▶ Each group reveals the results of their discussions through the spokespersons. Different views will lead to discussions about:
 - the ethical dilemmas that the parties face in the scenario;
 - the conflicting ethical principles which cause ethical dilemmas in the scenario;
 - the relevant legal regulations and their role in the case.

Case 1 – Car crash

Mr Vito works at the private office of Mr Alpha, the Under-Secretary of the Ministry of Administrative Reform. Mr Vito's main work is drafting statements and speeches and any other matter the Under-Secretary decides. He has gained a lot of experience of ministry policy-making, met a number of other senior public officials and learnt much about managing the work and the public statements of the Under-Secretary.

The Under-Secretary Mr Alpha is a very formal man. He has been a public official for nearly 30 years. He is known as organised, firm and ambitious. He expects his officials to act in a formal way and follow his instructions. He is always concerned that his status and reputation in public and among his colleagues is recognised. He is pleased with the work of Mr Vito. While he has said nothing formally, Mr Vito knows that Mr Alpha has mentioned the quality, accuracy and timely delivery of his work to others. In fact, increasingly, Mr Alpha has called on Mr Vito to deal with a range of minor, but sometimes important, issues. These have included drafting letters to under-secretaries in other ministries, dealing with persistent journalists, and occasionally arranging the paperwork relating to some party matters raised by the minister with the under-secretary.

One day, the Under-Secretary Mr Alpha is discussing with Mr Vito a forthcoming presentation to a group of visiting European public officials when his wife calls. The family car is not working and their daughter is arriving shortly at the airport. Mr Alpha sighs, calls his driver, and tells Mr Vito that he may as well come with him to the airport so they can continue their discussions without interruption. Mr Vito and Mr Alpha get in the car and begin to drive to the airport.

On the way, Mr Alpha's mobile phone rings. His daughter has landed and is waiting for him. Mr Alpha leans forward and tells the driver to hurry up. A few minutes later Mr Alpha's mobile rings again and it is his wife, asking where he is and if he would hurry up. Mr Alpha begins to sound increasingly irritable and tells the driver again to speed up. Then, as they are about to pull out past a bus into the outside lane, the car in front, full of people, also pulls out. Mr Alpha's face goes red and he shouts at his driver – "Go round the other side, I'm not waiting all day!" The driver swings back into the inside lane just as a battered old van also comes out of a side road. The car and the van bump into each other and come to a stop.

The ministry driver and Mr Alpha jump out of the car and begin shouting at the van driver. The driver inspects the damage to the ministry car, which is dented on the wing. The damage to the van is worse; it looks as though the wheel is slightly bent. The van driver is also shouting – saying that the ministry car was driving too quickly and dangerously by swinging from one lane to another. He jumps in the van, starts it and finds he cannot drive away because of the damage to the wheel. He jumps out of the van and shouts at the ministry driver and Mr Alpha that they have not only damaged his van, but also that it was their fault. He gets more and more agitated, saying that the van is his income and he has no money to fix it and that it was typical of people in big cars to try and avoid responsibility for what they have done. He begins to appeal to the small crowd that has gathered, just as Mr Alpha's mobile rings again. He glances at it and tells the driver to get going immediately.

Back in the car, Mr Alpha turns to Mr Vito, who has sat in the car all the time, and says: "It's typical of those idiots, driving these wrecks, probably without proper insurance, trying to blame others. As far as I am concerned, it was his fault and that's the end of the matter." He leans forward to the driver and says: "Are you happy with that? Good, get it fixed in the garage tomorrow. Now, let's get to the airport and get my daughter."

Mr Vito says nothing, but two weeks later he gets a call from the Ministry Inspectorate. A complaint has come from the Council of Ethics for Public Service about a collision involving the under-secretary's car. It would appear that the van of the complainant is damaged beyond repair because the axle is bent. He has spoken to the complainant, who wants compensation and says he has witnesses to support him. The inspector would like to meet Mr Vito to discuss this. At this stage, he requests Mr Vito not to discuss the matter with anyone.

The next day Mr Alpha calls in the office and says that his friend who works in the Inspectorate has told him about the complaint and that another Inspector intends to interview Mr Vito. He says it was all an unfortunate accident, caused by the van driver. While he is sure that Mr Vito will support him as he values the loyalty of his staff, he also reminds Mr Vito that if the accident is blamed on the ministry driver, he would have to recommend the driver's dismissal. He then leaves?

Case 2 – Police privileges

Mr Pitt is a police superintendant. He has just completed two years of studies: first, to complete an MA in Police Studies and, second, to take the six-month junior command course at the national police training centre.

His MA is about community-based policing. This concentrates on how to focus police work on serving the public in local areas within the context of new public management (NPM). NPM is about economy, efficiency and effectiveness, and using private-sector management techniques to deliver public services. He concentrated on the impact of NPM on policing and used that to set up a framework for his MA to look at local policing. In particular, it addresses the role of the local police station – how it is staffed, how it appears 'user-friendly' to the public, how it measures its performance, and so on – as the front-line delivery of policing.

For research, he visited police stations and carried out questionnaires among police officers in a number of police stations. His course was intended to train him as a manager in the organisation and delivery of police services, including action plans, customer satisfaction surveys, devolved budgets, working planning, performance indicators and targets. He passes the MA and is highly commended for his work and participation in the course.

He is appointed as superintendent of the capital city where the head of the police is keen to introduce modernisation. Mr Pitt is responsible for 10 police stations and has briefly visited each of them. He returns to the Plaza police station. It is called this because it is close to the Plaza Hotel, and everyone calls it that to explain where it is. The area is a mix of restaurants, cafes, apartments, some embassies and a number of local businesses.

The police station itself is typical – an older building that could do with painting, some posters on the wall, a bench to sit and wait, a counter behind which is a door to the offices. The offices are like police offices everywhere – untidy, full of papers, filing cabinets and lockers.

As Mr Pitt enters, the sergeant and another officer are talking behind the counter while an elderly couple is waiting silently on the bench. He says hello and goes into the offices. He notices that behind some desks are children's drawings on paper pinned to the wall. On the desks are several paper coffee cups from a well-known chain of coffee shops, one of which is close to the police station. He says, as a joke, that he is pleased that salaries are so high that the officers can afford good coffee and that their children have enough paper and pens to make pictures. One of the officers laughs and says: "We are well looked after here".

On his way out, Mr Pitt stops by the counter. The sergeant, Mr John, is now talking to a foreign tourist who has lost her camera. From what he can hear, the tourist was staying at the Plaza Hotel whose manager sent them to the police station with a note to see Mr John. They need the police to record the loss so that they can make an insurance claim when they return home. Mr John takes down the details and then asks them to return in the afternoon for the document they need.

As they leave, Mr John turns to Mr Pitt and asks if he wishes to talk. Mr Pitt says: "Yes, after the couple on the bench have been dealt with." Mr John shrugs and says they can wait. He'll deal with them later. Mr Pitt says: "Deal with them now. I shall return later." He keeps thinking about the conduct of Mr John, the state of the police station and all the new ideas he learnt on his course. He has a list of businesses, politicians, embassies, community associations and so on, intending to collect their views on policing. Many are complimentary about the conduct of the police and the responses from the police stations.

When he visits the Plaza Hotel, the general manager, Mr Eton, is enthusiastic about the service he receives from the police station. The officers are always able to deal with any problems involving his guests and come promptly if there are any problems inside the hotel. In return, he says, he has always been happy to support the police station. Mr Pitt asks: "What support?" Mr Eton says that for his guests who need police documents, he has been happy to supply the police station with some boxes of photocopy paper and other stationery equipment every month. He even gave them an old printer that was about to be replaced.

Mr Eton says that a number of businesses in the area do this, something he knows from the regular meetings of businesses held in his hotel. In fact, the old tradition of police officers going round businesses to collect equipment and other supplies (such as tea or coffee) on a random basis had stopped. The businesses had informally agreed that each would supply on a monthly basis to the police station those supplies they needed.

Mr Pitt was aware of this tradition, but was a little surprised at the way this appeared to be organised. He was also concerned at the impact this had on the culture and attitudes of officers in the police station. Particularly, he remembered the treatment of the tourists and the old couple. He organises a meeting with Mr John, who is a little surprised at Mr Pitt's questions. He explains that the budget for the police station is never enough for the services it provides. He says that he had to send officers to ask businesses for support whenever they were short of supplies, such as photocopy paper, coffee, and pens. He says that Mr Pitt's predecessor tried to organise this on a better basis, so that the businesses close to the police station provided supplies on a regular basis.

It was better for planning, the police station was always able to respond more effectively and relations were good. Mr Pitt was surprised that Mr John seemed to think that such arrangements were normal and sensible. He told Mr John that he was concerned that the police station was more likely to provide a better service to local businesses than to local residents. He mentioned the old couple. Mr John replied that tourists were always in a hurry and wanted proper documents while local citizens were not in a hurry and were, anyway, used to the old ways.

Mr Pitt was concerned that Mr John was dismissive of the old couple as unimportant: they could be told to wait because they did not know their rights. He was also concerned that the arrangements were providing supplies whether or not they were needed (he wondered if some officers were taking supplies home for private use and why they all needed to receive coffee to do their official duties). He thought that there was a possibility that different levels of service were being offered.

He mentions this to Mr John who says: "Ok, if we stop asking businesses, are you going to increase the budget? If not, how can we provide a service not just to businesses but to anyone who comes here? Frankly the arrangements we have work, so why should we change them? I have asked one of the businesses that is having its offices repainted if it would repaint the waiting room and make it look more friendly and modern. My men are happy to work here and know I look after them. If you want to help the citizens, let the businesses help, they can afford it. So what if we help them in return? We can all do well out of this arrangement!" What can or should Mr Pitt do next?

5.5. Integrity testing

How does unethical behaviour come to light? The usual ways are:

- ▶ reporting by citizens;
- ▶ reporting by colleagues.

In order to identify unethical or corrupt acts within the civil service, is it enough to wait for random reports by some courageous citizens or colleagues?

Often, everybody involved in the corruption scheme profits: The taxi driver will pay only half the fine to the policeman, the policeman will pocket the "fine" (bribe), and his superiors often partially profit from the money collected during the day.

Therefore, one wonders what other tools are there to actively detect unethical acts?

5.5.1. N.Y.P.D. – The New York experience

Case study – Testing the New York Police

Police Used in Stings to Weed out Violent Officers

The New York Police Department, long under fire from critics and Federal prosecutors who contend that it coddles abusive officers, has been quietly running an unusual program in which undercover officers pose as angry citizens in elaborate sting operations intended to weed out officers with a propensity for violence.

In one of the variety of scenarios that the department employs, officers responding to a radio call on a domestic dispute encounter a mouthy husband spewing invective about everyone, including the police. But the overheated combatant is actually an undercover officer assigned by the Internal Affairs Bureau, and the dispute is a scripted piece of theatre intended to test whether the officers, one of whom typically has had a history of civilian complaints, will respond to verbal abuse with threats or violence.

...

Police officials said they were reluctant to discuss the program in detail because they believe secrecy about its scope and methods has added to its deterrent effect. But they said that of the 600 sting operations that the department undertakes each year to test the integrity of its officers, several dozen are devoted to evaluating the conduct of officers with a history of abuse complaints.

...

"We all know of integrity tests that see if an officer will turn in a lost wallet," said Joseph V. Toal, president of the Sergeants Benevolent Association. "But when they go this far, to stage a family dispute or something, they are just playing with a very dangerous area because it may come to a situation where the cop thinks his life is in danger."

...

Police officials said they had worked to prevent injuries by carefully preparing for each sting operation, by conducting them in settings that they can control, like rented apartments, and by videotaping everything that occurs.

"There is always a modicum of danger," Chief Campisi said. "But we are very careful in rehearsing and scripting a test before we conduct it."

For example, in one scenario recounted by prosecutors, the department has put five officers on a street corner posing as possible drug dealers and then asked a patrol car to respond and disperse the group. One of the undercover officers then typically begins berating one of the responding officers, the prosecutors said. If the officer reacts violently, there are four other undercover officers right there to act as backup.

As a final precaution, officials said they routinely consulted local prosecutors before employing a new undercover scenario to discuss both safety and legal concerns.

...

The sting operations to expose violent officers resemble another set of integrity tests begun two years ago by Police Commissioner Howard Safir to examine how respectfully officers were responding to the public. In those tests, undercover officers pose as average citizens to explore how officers, at random, respond to an encounter, like a tourist's request for directions.⁹²

How do you see the potential of this method being applied to test the integrity of public officials with regard to gifts and bribes? What are the dangers and potential pitfalls of this method?

92. Article by Kevin Flynn, *New York Times* (24 September 1999), at www.nytimes.com.

Since 1994, the New York City Police Department has conducted integrity tests in this framework:⁹³

- ▶ realistic scenarios, such as the offer of cash from an arrested “drug dealer” played by an officer of the integrity unit;
- ▶ integrity tests recorded by audio and video surveillance and by witnesses placed at the scene;
- ▶ targeted tests aimed at specific officers who are suspected of corruption, based upon previous allegations by citizens, criminals or colleagues;
- ▶ random tests aimed at a random selection of officers;
- ▶ officers’ awareness that such a programme exists, without being told the frequency or occurrence of such tests;
- ▶ officers’ inability now to know whether or not a bribery offer is an integrity test.

The integrity tests had the following impact so far.

- ▶ Officers believe that it is better to be safe and to report the incident, instead of overlooking it or accepting the bribe offer.
- ▶ About 20% of the officers who were tested on the basis of previous suspicions failed the test, were prosecuted and removed from the force.
- ▶ Only 1% of the officers who are subjected to random tests fail.

5.5.2. Objectives

The objectives of integrity testing are:⁹⁴

- ▶ identifying public officials or agencies prone to corrupt practices;
- ▶ collecting evidence for prosecution;
- ▶ increasing the perceived risk of detection and thus deterring corruption;
- ▶ encouraging officials to follow their obligation of reporting bribe offerings (as any offer could be an integrity test);
- ▶ identifying public officials who are honest and trustworthy, which can be credited for promotions;
- ▶ identifying the training needs of public officials, i.e. patterns of misconduct which could reflect a lack of awareness of ethical challenges;
- ▶ showing the public that government is serious about prosecuting corruption;
- ▶ one objective that is rarely mentioned, if at all: the need to deter citizens from bribing. For example, in some countries, most citizens do not like to buckle their seat-belts, and some are willing to bribe police officers if caught rather than abide by the rules. As the bribe is much smaller than the fine they would pay, those citizens have a keen interest in keeping a corrupt environment.

Overall, integrity testing is an extremely effective and cost-effective deterrent to corruption.

93. This subsection is based on OSCE, *Best practices in combating corruption*, 2004, Chapter 12, pp. 142-4 (“Integrity testing”) and Chapter 6 (“Building an ethical administration”), at www.osce.org.

94. This subsection is based on the *United Nations handbook on practical anti-corruption measures for prosecutors and investigators* (2004), pp. 91-7, at www.unodc.org.

5.5.3. Limitations

The following limitations have to be considered.

- ▶ Scenarios have to be utterly realistic in order to work.
- ▶ The testing unit has to be of the highest integrity and confidentiality, because information about targets and timings is a commodity for which corrupt officials could be willing to pay a high price.
- ▶ The bribe offered should be so modest that no honest official will be turned into a corrupt one.
- ▶ Government should not encourage citizens to commit crimes. Therefore, the criminal codes of most countries have entrapment or *agent provocateur* rules, which mean that suspects cannot be punished if they were pressured by the state into committing the crime.

5.5.4. Further examples

London Police

Integrity testing was introduced to the London Metropolitan Police in 1998. As a targeted measure following specific suspicions, sting operations or “quality assurance”, as integrity tests are also called, are now a standard tool of law enforcement in probably all countries.

Poland: former lawmaker gets prison term for corruption

A Polish court handed a three-year prison term and a fine on Wednesday to a former lawmaker of Poland’s ruling party who was found guilty of corruption.

The court said Beata Sawicka was guilty of accepting more than Złoty 100 000 (\$29 500; Euro 23 000), alcohol and a pen embedded with a diamond in 2007 in return for efforts to help a company acquire a plot of land valued at some Złoty 3 million (\$900 000; Euro 700 000).

The court also handed a two-year suspended prison term to Miroslaw Wądołowski, who was mayor of the northern town of Hel, where the valuable plot of land was located. He was found guilty of requesting bribes for helping the company get the land.

Sawicka and Wądołowski were arrested shortly before the 2007 parliamentary elections in a sting operation by Poland’s new anti-corruption office. Two men offering the bribes were undercover agents and the company was fictitious.⁹⁵

Croatia: prison terms in privatisation scandal

In June 2007, Croatian police carried out a major operation against corrupt high-ranking officials in the former Croatian Privatisation Fund (HFP) – now the Agency for Management of State Owned Property, according to the US Department of State 2011. Police agents infiltrated the fund to identify which officials could be bribed. Since the beginning of the 1990s, the Croatia

95. See www.rai-see.org.

Privatisation Fund sold off former state-owned companies and allegedly favoured those individuals who had paid bribes to the fund's directors in the process.

Several officials of the fund were arrested, while two former Vice-Presidents received prison sentences. Moreover, talks have taken place regarding compensation to the companies that bid unsuccessfully to acquire the state-owned companies. The officials were charged with accepting bribes, selling state-owned companies without competitive bidding, real estate fraud and insider trading.

According to Javno 2009, five officials were sentenced to imprisonment in 2009. Amongst these were the former Vice President of the HFP, who received 11 years in prison and was fined EUR 250 000 and HKR 125 000. This sting operation is regarded as the largest anti-corruption arrest ever undertaken by Croatian police, and the action was praised by the EU as a sign of good police work and active engagement in fighting corruption in the country.⁹⁶

5.6. Literature

Council of Europe, *Opinion on the Draft Law "On Amendment of Certain Laws" and Draft Law "On Professional Integrity Testing" of the Republic of Moldova, 2013* (English), at www.coe.md

OECD, *Asset declarations for public officials: a tool to prevent corruption* (English and Russian) at www.oecd.org

OECD, *Managing conflict of interests in the public service: a toolkit*, 2005 (English) at www.oecd.org

OSCE, *Best practices in combating corruption*, 2004 (English and Russian), Chapter 12, page 141 ("Integrity testing") and Chapter 6 ("Building an ethical administration") at www.osce.org

The *United Nations handbook on practical anti-corruption measures for prosecutors and investigators* (2004), pages 91-7, at www.unodc.org

Howard Whitton, *Beyond the code of conduct: building ethical competence in public officials*, U4-Brief 2009:19 at www.u4.no

96. See www.business-anti-corruption.com.

6. Criminalisation

This unit is not a seminar for criminal lawyers, but it aims to deepen the understanding of corruption by answering two questions:

- ▶ How exactly does criminal law define corruption offences?
- ▶ Where are the fine lines between criminal and legal behaviour?

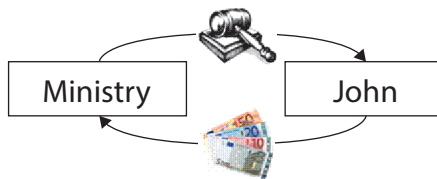
6.1. Elements of crime

Numerous corruption offences can be found in national legislation. The most important ones are bribery of public officials, bribery in private business, trading in influence, fraud, embezzlement, abuse of office, illicit enrichment and money laundering.

6.1.1. Bribery of public officials

Case scenario – Construction business

Mr John owns a construction business in the capital city. The Ministry of Building plans a new highway to the airport and is preparing a corresponding tender. At the Ministry of Building, Mr Mink is in charge of drafting the tender. Who is punishable for which offence in the following variations?



- Mr John renovates the private home of Mr Mink for free, so, in exchange, Mr Mink drafts the tender in a way that will specifically fit the company of Mr John so he has a higher chance of winning the bid.
- Mr John only promises to renovate Mr Mink's private home for free in exchange for a favourable tender. Mr Mink gladly accepts the promise.
- Mr John sends his lawyer to make the promise to Mr Mink.
- Mr John pays money to the mother of Mr Mink, with the knowledge of Mr Mink.

Active bribery

▶ Objective elements of crime:

- promising, offering or giving;
- directly or indirectly;
- any undue advantage;
- to any public official;
- for himself or herself or anyone else;
- to act or refrain from acting in the exercise of his or her functions.

▶ Mental element of crime: intent

Passive bribery

▶ Objective act:

- soliciting or accepting;
- directly or indirectly;
- any undue advantage;
- by any public official;
- for himself or herself or anyone else;
- to act or refrain from acting in the exercise of his or her functions.

▶ Subjective act: intent

Suggested solution

a. Mr John and Mr Mink are guilty of bribery.

b. Problem: Is a promise already a bribe? Under international standards: yes. If not, the act could be still counted as attempted active and passive bribery. However, sometimes national jurisprudence (for example in Russia) tends to not consider a previous promise as the actual “giving of a bribe”.

c. Mr John and Mr Mink are guilty of bribery. Mr John is guilty of “indirectly” giving a bribe through his lawyer.

d. Mr Mink is guilty of passive bribery (soliciting an advantage for someone else). Mr John is guilty of active bribery.

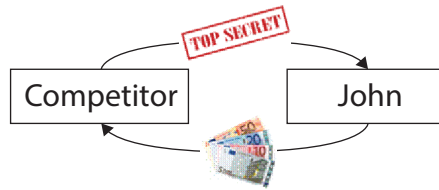
Real case

In an African state, a local priest was found guilty in a criminal court of having committed a criminal offence. He offered to pray for the judge in exchange for a lenient sentence. Is the offer of a prayer an “advantage” in the sense of bribery?

6.1.2. Bribery in private business

Case scenario

Facts as above, but Mr John is paying money to the bidding manager of his main competitor, so the manager will reveal the bidding price. As a consequence, Mr John bids lower and wins the tender.



Active bribery

- ▶ Objective elements of crime:
 - promising, offering or giving;
 - directly or indirectly;
 - any undue advantage;
 - to a managerial employee;
 - for himself or herself or anyone else;
 - to act or refrain from acting in the exercise of his or her functions.
- ▶ Mental element of crime: intent

Passive bribery

- ▶ Objective act:
 - soliciting or accepting;
 - directly or indirectly;
 - any undue advantage;
 - by a managerial employee;
 - for himself or herself or anyone else;
 - to act or refrain from acting in the exercise of his or her functions.
- ▶ Subjective act: intent

Suggested solution

There is no public official involved. Both Mr John and the employee are guilty of commercial bribery.

Real case

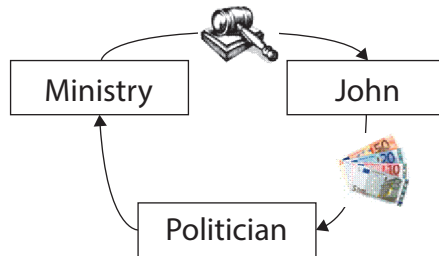
The regional director of Germany for the international consumer electronics chain Media Markt and one more manager allegedly accepted bribes of €5 million. The bribes were paid by an internet company to get contracts with Media Markt worth €65 million, even though other internet companies had submitted better offers to Media Markt. A total of nine defendants are now accused of “organised and commercial-scale bribery”⁹⁷

97. See www.focus.de.

6.1.3. Trading in influence

Case scenario

Mr Full, the lawyer of Mr John, is in the same political party as Mr Mink. In fact, Mr Full is a powerful politician in this party, whereas Mr Mink is a rather small figure in this party. So Mr Full has quite some influence over Mr Mink in this respect. Mr Full also knows personally the minister for whom Mr Mink works. Mr John pays money to Mr Full, so Mr Full will persuade Mr Mink to draft a tender favourable to Mr John.



Suggested solution

None of the actors is guilty of a bribery offence. However, this case would be punishable under the separate offence of “trading in influence” contained in many national legislations and in international conventions. For example, France has criminalised trading in influence for over 100 years.

Article 12 of Council of Europe Criminal Law Convention on Corruption defines trading in influence:⁹⁸

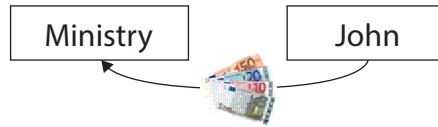
promising, giving or offering, directly or indirectly, of any undue advantage to anyone who asserts or confirms that he or she is able to exert an improper influence over the decision-making of any [public official] ..., whether the undue advantage is for himself or herself or for anyone else, as well as the request, receipt or the acceptance of the offer or the promise of such an advantage, in consideration of that influence, whether or not the influence is exerted or whether or not the supposed influence leads to the intended result.

6.1.4. Fraud

Case scenario

Mr Mink receives money from Mr John. However, Mr Mink only pretends to be in a position to draft the tender, but in fact is neither responsible for this tender nor in any position to influence this tender.

⁹⁸. See conventions.coe.int.



Suggested solution

Mr John is guilty of active bribery. Mr Mink is not guilty of passive bribery, but of fraud.

Passive bribery

- ▶ Objective act:
 - soliciting or accepting (+)
 - directly or indirectly (+)
 - any undue advantage (+)
 - by any public official (+)
 - for himself or herself or anyone else (+)
 - to act or refrain from acting in the exercise of his or her functions (-)
- ▶ Subjective act: intent

Fraud

- ▶ a material false statement (+)
- ▶ made with an intent to deceive (+)
- ▶ a victim's reliance on the statement (+)
- ▶ damages (+)

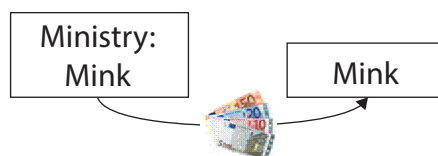
Real case

In Armenia, a ministry official entered a taxi. The taxi driver happened to be a graduate who wanted to apply for a job at the ministry. The official pretended he could help the student by pushing his application within the ministry. The student paid the official the required "fee" of €100. In fact, the official had no influence whatsoever on human resource decisions in the ministry. As he did not act "in the discharge of his functions", he was not tried for bribery, but for fraud.

6.1.5. Embezzlement

Case scenario

Mr Mink secretly owns a consultancy company himself. He has the company invoicing "consultancy services for the highway tender" to the ministry. However, such services never took place in reality. He orders payment of the invoice from the ministry's accounts.



Suggested solution

Mr Mink is guilty of embezzlement.

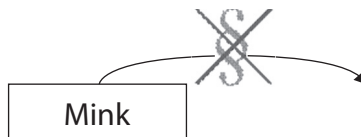
Embezzlement

- ▶ fraudulent misappropriation of an asset (+)
- ▶ by a person to whom it had been entrusted (+)

6.1.6. Abuse of office

Case scenario

Mr Mink personally hates Mr Paul, the owner of another construction company. Therefore, Mr Mink drafts the tender specifically in such a way that Mr Paul will be likely to lose the bid in any case.



Suggested solution

There is no transaction with a third party – Mr Mink acts only by himself. Therefore, bribery is not the relevant offence. Furthermore, Mr Mink does not enrich himself or somebody else, but only bends the law for his non-financial interests. Mr Mink is guilty of abuse of office.

Abuse of office

- ▶ the performance of or failure to perform an act (+)
- ▶ in violation of laws (+)
- ▶ by a public official in the discharge of his or her functions (+)
- ▶ for the purpose of obtaining an undue advantage for himself or herself or for another person or entity (+)

This offence is punishable, for example in Austria, Bosnia or Ukraine.

6.1.7. Illicit enrichment

Case scenario

After the construction of the highway, the project is audited by the Court of Auditors. The audit uncovers the fact that procurement procedures had not been fully in line with the law, and also that €2 million of public funds have vanished during construction of the highway and are unaccounted for. However, no wrongdoing can be linked to Mr Mink. In fact, he is never convicted of any crime. After construction of the highway started, Mr Mink bought a Mercedes and a Porsche. After press reports on the luxury cars owned by Mr Mink, investigations uncover that he has transferred €250 000 in cash to a foreign account. His monthly income is €400. His wife is secretary in a small law firm.



Mink



The crime of illicit enrichment originates from Latin America. More than ten nations have long had a law against illicit enrichment in their penal codes, including Ecuador, El Salvador, Paraguay, Peru and Venezuela. Argentina introduced it as early as 1964 into Article 268 (2) of the Criminal Code:

It shall be punishable with imprisonment of two to six years, a fine of fifty per cent to one hundred per cent of the value of enrichment and perpetual disqualification, if a person, when properly addressed, cannot justify the origin of significant enrichment in assets of himself or an intermediary for reasons to conceal, which occurred after entering a public office or until two years after leaving office.

It is understood that there has been enrichment not only when assets have been increased through money, goods and property, but also when debt has been cancelled or obligations terminated affecting the debt.

The intermediary disguising the enrichment will be punished with the same punishment as the perpetrator.

In further steps, the 1988 United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, and subsequently the 1999 Inter-American Convention against Corruption of the Organization of American States, the 2000 United Nations Convention against Transnational Organized Crime and finally the 2003 United Nations Convention Against Corruption (UNCAC) embraced the idea of such an offence. Article 20 UNCAC reads:

Subject to its constitution and the fundamental principles of its legal system, each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, illicit enrichment, that is, a significant increase in the assets of a public official that he or she cannot reasonably explain in relation to his or her lawful income.

Currently, several countries are considering introducing such a crime.

Advantages of having the crime of illicit enrichment:

- ▶ no evidence is needed on the hard-to-prove crimes behind the enrichment (bribery, embezzlement, etc.);
- ▶ deterrence of corruption, as it makes lavish use of the proceeds at least difficult (after this crime was introduced in Hong Kong in 1971, 295 corrupt police officers resigned in order to evade punishment).

Disadvantages of the crime of illicit enrichment

- ▶ The crime has only two elements:
 - being a public official;
 - and being rich,

which are both completely legal actions in themselves.

- ▶ The crime deviates to some extent from the presumption of innocence.
- ▶ The crime deviates to some extent from the right of the accused to remain silent.
- ▶ The accused might be able to explain the legal reason for his or her wealth (e.g. an inheritance) but, by compelling the suspect to explain this wealth, he or she might be forced at the same time to self-incriminate for tax evasion or other offences.

The European Court of Human Rights has so far not had any case on the compliance of an offence of “illicit enrichment” with human rights. According to its general jurisprudence, the presumption of a crime is compatible with the presumption of innocence as long as (1) the primary responsibility for proving the elements of crime rests with the prosecution, and (2) the presumptions are rebuttable.⁹⁹

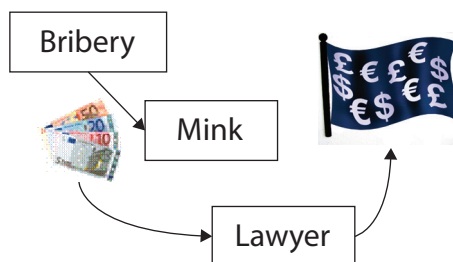
Similarly, national supreme courts have decided in the past that the presumption of innocence ceases to function once there is a prima facie case that assets have been illicitly acquired. As soon as there is clear evidence of inexplicable wealth, the public official in question may explain the disproportionate difference between her/his legal income and her/his actual wealth, but s/he is not obliged to do so. However, should s/he remain silent, the court may draw conclusions from this fact.

6.1.8. Money laundering

What is the use of an offence such as money laundering? What does it have to do with corruption?

Case scenario

Mr Mink has secretly made a huge amount of money in recent years in addition to his modest government salary. The money comes from kick-backs and bribes, or simply from channelling assets into his pockets. As Mr Mink is required as a public official to declare his income and assets, he keeps the money in cash at his home, but he wants to move the money to a more secure place out of the country where it will not raise any suspicion. His lawyer offers to help him. The lawyer has an office abroad, so he can regularly wire money to his foreign branch without raising much suspicion. From there, the money is wired as consultancy fees to a foreign business set up in the ownership of Mr Mink.



99. Maud Perdriel-Vaissiere, The accumulation of unexplained wealth by public officials: Making the offence of illicit enrichment enforceable, U4 Brief 2012:1, available at www.u4.no.

Suggested solution

The deeds by Mr Mink are already history, so his lawyer can probably not be punished any more for aiding and abetting his corruption offences. However, Mr Mink's lawyer is guilty of money laundering.

Money laundering:

- ▶ engaging in a financial transaction (+)
- ▶ with the proceeds of a crime (+)
- ▶ for the purpose of concealing or disguising the illicit origin of the property (+)
- ▶ intent (+)

6.2. Non-liability

In the introductory case, Mr John's business is on the verge of bankruptcy. If he does not succeed with this tender, his business will finally fail and his 30 employees will lose their jobs. During bidding procedures, Mr Mink tells Mr John that he has the best bid, but that Mr Mink will make him lose the bid if he does not pay him a large amount of money. Eventually, Mr John pays Mr Mink a bribe.

Suggested solution

Mr Mink is guilty of passive bribery. The active bribery of Mr John can only be justified by the extortion of Mr Mink, if the threat to Mr John was more existential than mere business interests: Usually only physical threats are accepted as an excuse. Some national laws in addition require co-operation of the briber with the police; see for example the Note to Articles 204 and 291 Criminal Code of Russia:

A person having given a bribe shall be released from criminal liability, if s/he was actively facilitating the detection and/or investigation of a crime and if the bribe has been extorted by the official or the person gave voluntary notification of bribery, after committing the crime, to a body authorised to instigate criminal proceedings.

6.3. Immunities as an obstacle to prosecution

Immunity against criminal proceedings often poses a problem for prosecuting public officials. In most cases, immunity can be lifted by decision of parliament, the president, a judicial council or other bodies. However, such a procedure means that investigative measures (house search, arrest etc.) are delayed or are not confidential any more. In some cases, the immunity will not be lifted at all, and thus criminal cases will never get before a court. One prominent example is the former Ukrainian Prime Minister Lazarenko, who, in 1996-97, embezzled more than US\$100 million. Two days before his immunity was about to be lifted by parliament, he fled abroad.

Therefore, there is a consensus among international organisations that immunities have to be limited to allow effective prosecution of corruption offences. Almost all of the 47 Council of Europe and 27 European Union member states grant their

parliamentarians criminal inviolability, but only some grant this to their executive or judicial officials. A wide range of officials covered by immunities, especially in the judicial sector, is a phenomenon of eastern member states of the Council of Europe and the European Union:¹⁰⁰

Table 6.1: Criminal inviolability of office-holders in Europe

criminal inviolability in member states	Council of Europe 2007	European Union (EU) 2007	European Union (EU) 1995
	(47)	(27)	(15)
parliamentarians	43	25	13
head of state	40	22	11
prime minister	19	11	6
ministers	16	10	5
ombudsperson etc.	10	3	2
High Court judges	20	8	1
judges	16	4	0
chief prosecutor	5	0	0
prosecutors	4	0	0
Judicial Council	3	0	0

6.4. Sponsorship and criminal law

Sponsorship is an area that in many countries is separated by a fine line from corruption. Leaving criminal law aside, it also raises ethical questions about the independence of the state from private influence.

6.4.1. School computers

Case scenario

Two friends run the Company for School Photography (CSP), one of several such businesses in the capital city. CSP sends photographers to schools on dates agreed with the school administration, to take pictures of each class in an assigned area of the school. With the help of teachers, the pictures are distributed to the students and their parents and offered for sale. There is no obligation to purchase any of the pictures. The teachers collect the fee for any picture bought, or else collect the returned pictures. Money and images are then handed over to the school photographer. According to the school law, it is in the discretion of the school head to permit

100. Tilman Hoppe, "Public corruption: limiting criminal immunity of legislative, executive and judicial officials in Europe", *Vienna Journal on International Constitutional Law*, 5 (2011), 538, at tilman-hoppe.de.

business activities on the school's grounds. In order to compensate the school for its work with the annual photo-shoots, CSP donates a computer and printer each year to the school's computer lab. Are the owners of CSP or the school head guilty?

Suggested solution

- ▶ Objective elements of active and passive bribery:
 - giving/ (+)
 - directly (+)
 - to any public official (+)
 - to act or refrain from acting in the exercise of his or her functions (+)
 - any advantage?
 - argument contra “advantage”: school did work in exchange for the computer;
 - argument pro “advantage”: there is no market value of the school's work and other schools might do the work for free (with the most competitive photographer) just to benefit their students;
 - undue?
 - arguments contra “undue”: computers do not benefit any individual but the public good;
 - arguments pro “undue”: CSP gets advantage over competitors not necessarily based on merit but in exchange for money/asset; schools are in need of funding and can thus be easily manipulated by financial offers;
 - for himself or herself or for anyone else (?)
 - arguments contra: computers do not benefit any individual or people close to the headmaster but the public good;
 - arguments pro: computers do benefit the headmaster and his colleagues professionally, and the students and their parents;
- ▶ Subjective act: intent (+).

The German Supreme Court has decided in favour of bribery in a similar case.

6.4.2. Medical appliances

Case scenario

The pharmaceutical company Pharmacon runs a bonus system for the prescription of its drugs. Doctors at municipal medical centres receive a DOC expert computer system for free. It enables doctors to find each suitable Pharmacon drug quickly. It also allows doctor to calculate how many Pharmacon drugs they have prescribed each year. In exchange for prescribing Pharmacon drugs, the medical centres receive urgently needed medical appliances to the value of 5% of the prescribed drugs. Is anybody in this case guilty?

Suggested solution

- ▶ Objective elements of active and passive bribery:
 - giving/ (+)
 - directly (+)
 - to act or refrain from acting in the exercise of his or her functions (+)
 - to any public official (?)
 - argument contra “public official”: doctors do not have public power over people, such as policemen;
 - argument pro “public official”: doctors (at least at public medical centres) have power over public funds and how to use them;
 - any advantage?
 - argument contra “advantage”: doctors do work in exchange for the appliance;
 - argument pro “advantage”: there is no market value of the doctor’s work and other doctors prescribe Pharmacon drugs for free (if the most suitable drug) just to benefit their patients;
 - undue?
 - arguments contra “undue”: medical appliances do not benefit any individual but the public good;
 - arguments pro “undue”: Pharmacon gets advantage over competitors not necessarily based on merits but in exchange for money/asset; medical centres are in need of funding and can thus be easily manipulated by financial offers;
 - for himself or herself or for anyone else (?)
 - arguments contra: medical appliances do not benefit any individual or people at the centre but the public good;
 - arguments pro: computers do benefit the doctors and the centre professionally;
- ▶ Subjective act: intent (+).

German Supreme Court has decided in favour of bribery in a similar case.

6.5. Literature

OSCE, *Best practices in combating corruption*, 2004 (English, Russian), Chapter 12, “Criminal Law”, at www.osce.org

UNODC, *Legislative Guide for the Implementation of the UNCAC* (English, Russian) at www.unodc.org

7. Political financing

This unit aims to answer the following questions.

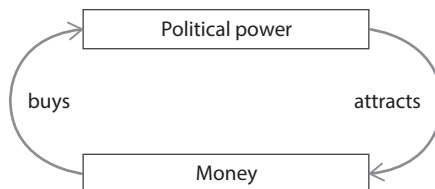
- ▶ When does money start to corrupt politics?
- ▶ What framework does politics need, so that politics can rule money, and not the other way around?

7.1. Background

Case scenario – Seat for sale

In 2003, the President of the Democratic Centre Party in Croatia and its party secretary made a written contract with a businessman. In exchange for a donation of €250 000 to the party the businessman was promised a seat in parliament after election. The party did not keep its promise, but after the election the money had vanished.¹⁰¹

The need for money in politics is obvious: No money, no political parties, no elections, no (representative) democracy. But money in politics can also mean that political influence will be “auctioned” to those with money; and that those in power will stay there, because they can raise more money.



Money influences politics from two angles, elections and parties.

- ▶ Elections: which parties and candidates have the most money to fight for power?
- ▶ Political parties: which parties have the most money to influence politics (and the next election)?

Money for political parties and elections comes mainly from the following sources:

- ▶ membership fees (incl. taxation of salaries);
- ▶ private donations (incl. fund-raising activities);
- ▶ income from business activities;
- ▶ state funds (direct financial support from the budget).

101. D. M. Smilov et al., *Political finance and corruption in eastern Europe: the transition period*, 2007, p. 61.

Money means more than cash. It means:

- ▶ free media time;
- ▶ use of administrative resources (offices, staff, transport, communication, energy, etc.);
- ▶ use of private resources (offices, staff, energy, transport, communication, etc.);
- ▶ indirect state support (tax exemption for parties, tax deductibility of donations, free airtime on radio and TV, free public services – postal, energy, telephone, transport – and free use of public facilities).

7.2. State and private funding

Case scenario – “The winner takes it all”

The political finance law in Russia permits private donations and state funds for the financing of political parties. Article 38 of the Law on Political Parties states that political parties are entitled to state aid based on election results in order to compensate them for their financial costs incurred during elections, to a total annual amount of at least RUB20 (about €0.50) multiplied by the number of voters included in voter lists at the preceding elections to the State Duma or presidential elections – if the party received at least 3% of the votes.

Does this adequately support democratic competition? What could be alternative solutions?

Consider the following options:

- ▶ interest-free loans to parties during election campaigns, with the state reimbursing the loans according to this formula: the more votes the party receives, the more the state pays off;
 - downside: small parties are generally at disadvantage, as they do not win seats in parliament, and thus normally do not receive any further funding to repay the loans;
- ▶ lump-sum subsidy to every party that is registered for an election according to their number of members;
 - downside: parties with a similar number of members can succeed quite differently in elections, for example, if one governing party has been involved in a scandal preceding elections;
- ▶ half of the subsidy is allocated according to mandates (seats) held, but the other half is allocated according to the actual number of votes secured either in national or local elections;
 - downside: upcoming, promising parties without parliamentary seats yet have no access to one half of the subsidy;
- ▶ “matching subsidy” mechanism. Under this system, private donations raised by parties would be matched by subsidies from the state up to (a) a certain size of donation and (b) a certain maximum total subsidy per party;
 - advantage: this could encourage more small donations and by implication broader participation in political parties by ordinary citizens;
 - downside: parties which typically attract big corporate money are favoured over parties that do not.

Two models for political financing exist: Under the public model (for example: France, Spain) political parties are financed by state funds. Under the private model (for example: the United States, the United Kingdom), political parties depend on donations by private parties. Most countries have elements of both, private and public financing. Table 7.1 shows some of the arguments for each.

Table 7.1: Possible arguments pro and contra public and private funding of political parties

	Public	Private
Pro	<ul style="list-style-type: none"> Less risk of individuals unduly influencing the political process Parties do not have to spend their time on fund-raising Funding can be linked to more objective criteria such as voting results 	<ul style="list-style-type: none"> Supporting political freedom of citizens Saving government the expense of funding campaigns Fostering civic involvement Ensuring diversity of views Preventing government from having political influence
Contra	<ul style="list-style-type: none"> Impact on budget State mixes with politics Risk of government funding parties with extremist positions Lack of fully just allocation system 	<ul style="list-style-type: none"> Candidates have to spend a significant amount of time on fund-raising Rich candidates can influence politics in their favour Possibility of large funding gaps between parties

The state cannot and probably should not allocate the same amount of money to very small and very big ones, to ones represented in parliament and to those that have not yet won any seat. In any case, neither with private nor with public funding systems or a combination of both is there a system that will be ideal and “just” for all stakeholders.

7.3. Integrity in political finance

Table 7.2: Types of corruption in political finance¹⁰²

Sector	Election	Party
Quid pro quo	Parties or candidates receive campaign resources in return for favourable treatment	Party receives donations in return for favourable treatment
Misuse of public funds	Candidates’ or parties’ misuse of state and public administrative resources for electoral purposes	Parties’ misuse of state and public administrative resources for their purposes
Bribery	Bribery of voters and election officials	Bribery of party representatives

102. Based on: Quentin Reed, *Monitoring election campaign finance: a handbook for NGOs*, Open Society Institute 2005, at www.afrimap.org.

Corruption in political finance occurs essentially in three forms, as shown in Table 7.2. All three forms harm the public interest directly or indirectly, by influencing election outcomes undemocratically or by leading to political decisions that primarily suit sectoral or private interests.

Corruption is prevented essentially by a system that takes into account the principles and measures shown in Table 7.3.

Table 7.3: Preventing corruption in political finance

Principle	Possible measures
Transparency	Book keeping (income and expenditure) Reporting to supervisory authority and the public Publicity of donations above certain threshold
Limitations on	State funds Donations by legal and/or physical person Donations by foreign entities Membership fees Expenditures
Prohibitions	Abuse of administrative resources Abuse of election funding for party purposes and vice versa
Supervision	Auditing Enforcement
Penalties for	Failure of book keeping, reporting, keeping limits, violating prohibitions

Each measure needs careful balance, for example:

- ▶ Should information about donations be made public, despite the privacy of the donor being infringed?
- ▶ Should public servants be required to disclose the fact that they are donating funds to an opposition party?
- ▶ Is it reasonable for a state to determine a maximum spending limit for parties in elections in order to secure equality between candidates?
- ▶ Are spending limits imposed on candidates an infringement of their right to free speech?
- ▶ Should foreign individuals and corporations be allowed to donate money to parties and candidates (allowed for example in Germany, forbidden in Poland)?
- ▶ Should political parties be allowed to generate income from economic activities that may very well profit from favourable political decisions (such as house construction or banking for example)?

7.4. Misuse of public resources

Case scenario – The Lincoln bedroom

President Clinton was accused, in 1997, of having converted the White House into a roadhouse for campaign contributors. According to a list released by the White House, 938 guests stayed overnight. Between them, they had contributed \$10 176 840, an average of \$10 849, though many gave nothing.

Guests reported that the mattress was lumpy, but the ambience was thought to be great. The White House argued all along that the rich donors who stayed the night were there as Clinton friends, not contributors.¹⁰³

Do you think the above practice should be legal?

In 2010, the Council of Europe's Venice Commission and the OSCE/ODIHR adopted their *Guidelines on political party regulation*,¹⁰⁴ which contain in Chapter XII detailed recommendations on the funding of political parties. Several paragraphs are dedicated to considering the abuse of state resources:

207. The abuse of state resources is universally condemned by international norms. While there is a natural and unavoidable incumbency advantage, legislation must be careful to not perpetuate or enhance such advantages. Incumbent candidates and parties must not use state funds or resources (i.e., materials, work contracts, transportation, employees, etc.) to their own advantage. Paragraph 5.4 of the OSCE Copenhagen Document provides, in this regard, that participating States will maintain "a clear separation between the State and political parties; in particular, political parties will not be merged with the State".

208. To allow for the effective regulation of the use of state resources, legislation should clearly define what is considered an abuse. For instance, while incumbents are often given free use of postal systems (seen as necessary to communicate their acts of governance with the public), mailings including party propaganda or candidate platforms are a misuse of this free resource. Legislation must address such abuses.

209. The abuse of state resources may include the manipulation or intimidation of public employees. It is not unheard of for a government to require its workers to attend a pro-government rally. Such practices should be expressly and universally banned by law.

210. Public employees (civil servants) should not be required by a political party to make payments to the party. This is a practice the law should prohibit as an abuse of state resources.

7.5. Transparency in political finance

Case scenario – Corporate money in Germany

A scandal began 1999 in Germany with the emergence of a series of undeclared contributions given to Helmut Kohl's Christian Democrat party, the CDU, by arms

103. Lincoln Bedroom, Still Open, *New York Times* (19 July 1998), at www.nytimes.com.

104. *Guidelines on political party regulation*, OSCE/ODIHR and Venice Commission, Strasbourg, 25 October 2010, Study no. 595/2010, CDL-AD(2010)024, Chapter XII, at www.venice.coe.int.

dealer Karlheinz Schreiber when Mr Kohl was German chancellor.¹⁰⁵ Mr Kohl also admitted that he ran a network of secret CDU accounts containing anonymous donations, controlled by a former party official nicknamed “the Postman”.

According to German law, political donations of more €10 000 must be declared, whereas this funding scandal involved millions of dollars’ worth of secretly donated funds. Mr Kohl repeatedly refused to name any of the secret donors, saying he could not break the promises he made to them. The most serious allegation was that the donations were kept secret because they influenced key government decisions. In January 2000, auditors investigating the finances of the CDU said that they had failed to trace the origin of nearly \$6 million paid to the party in secret campaign donations. German company law does not require donations to be published in companies’ annual reports to shareholders.

Parliament ordered the party to pay back about \$21 million in state financing as punishment for flouting the country’s strict political funding rules. The CDU was also fined about \$3m. German television also reported that former French President Francois Mitterrand arranged payments of about DM30m (\$15.7 million) to the CDU, through a French oil company. Mr Kohl admitted receiving about \$1m in secret donations, but denied corruption. However, he did not reveal the identity of any of the secret donors who are unknown until today. Party officials could not be punished for the fraudulent accounting as there were no relevant penal provisions. As a consequence, these were introduced into German political finance laws.

Which of the Council of Europe’s rules on political finance was violated?

The above case is relevant to several principles of the Council of Europe’s “Common Rules against Corruption in the Funding of Political Parties and Electoral Campaigns” in Articles 3, 5, 7, 10, 11, 12 and 16.

► Article 3 – General principles on donations

a. Measures taken by states governing donations to political parties should provide specific rules to:

...

– ensure transparency of donations and avoid secret donations;

...

– ensure the independence of political parties.

b. States should:

i. provide that donations to political parties are made public, in particular, donations exceeding a fixed ceiling;

► Article 5 – Donations by legal entities

a. In addition to the general principles on donations, states should provide:

i. that donations from legal entities to political parties are registered in the books and accounts of the legal entities; and

ii. that shareholders or any other individual member of the legal entity be informed of donations.

105. See news.bbc.co.uk.

► Article 7 – Donations from foreign donors

States should specifically limit, prohibit or otherwise regulate donations from foreign donors.

► Article 10 – Records of expenditure

States should require particular records to be kept of all expenditure, direct and indirect, on electoral campaigns in respect of each political party, each list of candidates and each candidate.

► Article 11 – Accounts

States should require political parties and the entities connected with political parties mentioned in Article 6 to keep proper books and accounts. The accounts of political parties should be consolidated to include, as appropriate, the accounts of the entities mentioned in Article 6.

► Article 12 – Records of donations

a. States should require the accounts of a political party to specify all donations received by the party, including the nature and value of each donation.

b. In case of donations over a certain value, donors should be identified in the records.

► Article 16 – Sanctions

States should require the infringement of rules concerning the funding of political parties and electoral campaigns to be subject to effective, proportionate and dissuasive sanctions.

7.6. Literature

Ingrid van Biezen, *Financing political parties and election campaigns: guidelines*, Council of Europe 2003, at www.coe.int

OSCE, *Best practices in combating corruption*, OSCE 2004 (English, Russian), Chapter 2, "Political finance", at www.osce.org

Quentin Reed, *Monitoring election campaign finance: a handbook for NGOs*, Open Society Institute 2005, at www.afrimap.org

Council of Europe, *Detecting Irregular Political Financing - Training Manual* (English, Russian), 2014, at www.coe.int/eap-corruption

8. International standards

This unit aims to answer the following questions.

- ▶ Why did international conventions on corruption suddenly appear in the 1990s?
- ▶ What are the most important international conventions and standards?
- ▶ How do they translate into national law and practice?

8.1. Background to international standards

Until relatively recently, anywhere in the world was a place where the law would take it easy with businesses paying bribes. Under most jurisdictions there was no penalty for bribing public officials of foreign countries, and often such bribes would be deductible from tax dues. This world changed considerably after a series of corruption scandals.

8.1.1. The Lockheed scandal in 1972

Back in 1972, in the US business world, corruption was treated quite differently than today:

- ▶ Bribes to foreign officials were not punishable under US law;
- ▶ Bribes could be easily hidden from regulators and stockholders by appearing in the books as fees to some consultant;
- ▶ In some countries, you could even deduct the bribe from your company's tax dues.

So it comes as no surprise that countless international corporations were paying bribes all over the world in order to secure business. One of these was the US aerospace company Lockheed. In October 1972, an executive of Lockheed paid a bribe of US\$12.6 million to Japanese businessmen and government officials, including the then Japanese premier Kakuei Tanaka. The bribe secured a US\$133 million contract to sell jetliners to All Nippon Airways and an US\$650 million agreement to sell anti-submarine aircraft to Japan.

A. Carl Kotchian, later president and vice chairman of Lockheed, commented on this practice:

Some call it gratuities. Some call them questionable payments. Some call it extortion. Some call it grease. Some call it bribery. I looked at these payments as necessary to sell a product. I never felt I was doing anything wrong. I considered them a commission – it was the standard thing – if you were operating in the Far East, you knew you'd have to pay 2-5% on the sales... I didn't resent it. I did what I thought was necessary.¹⁰⁶

106. Robert Lindsey, "Kotchian Calls Himself The Scapegoat", *New York Times* (3 July 1977), at select.nytimes.com.

The bribes were paid through several sophisticated channels: via a law firm in Paris, using trust accounts and shipping large amounts of cash to Yoshio Kodama, a member of the Japanese Mafia, the Yakuza. This way, the bribe did not leave an obvious trail from Lockheed in the US to Japan.

However, chance intervened in the uncovering of this bribe. In the very same year in which Lockheed paid the bribe to Japanese officials, the Watergate scandal unfolded in Washington, leading to the eventual resignation of President Nixon in 1974. In the course of the investigations, it was discovered that American corporations had channelled huge amounts of money to illegal slush funds of the Republican Party. A Senate Subcommittee on Multi-National Corporations began analysing American corporations' foreign activities and quickly uncovered an extensive pattern of overseas bribery.

The US\$12.6 million bribe by Lockheed was of special political delicacy: Lockheed's agent in Japan, the Yakuza member, apparently was a prominent leader of the ultra-right-wing militarist faction in Japan. On 6 February 1976, Kotchian, then Lockheed's president and vice chairman, testified before the Senate subcommittee and had to acknowledge the improper payments. He and the Lockheed chairman, Daniel Haughton, resigned from their posts on 13 February 1976. According to Ben Rich, a director of Lockheed:

Lockheed executives admitted paying millions in bribes over more than a decade to the Dutch (Prince Bernhard, husband of Queen Juliana, in particular), to key Japanese and West German politicians, to Italian officials and generals, and to other highly placed figures from Hong Kong to Saudi Arabia, in order to get them to buy our airplanes.¹⁰⁷

Eventually, Lockheed admitted to paying over \$38 million in bribes from the 1960s through the mid-1970s to officials in Japan, the Netherlands, Italy, Germany, Saudi Arabia, Iran, and other countries.

Kodama said on his deathbed in 1984: "I always thought I would be punished for the Lockheed business. I made the mistake of my life in acting as agent for a corporation from the enemy that killed our soldiers in the Great East Asian War."¹⁰⁸

8.1.2. Bananagate in 1974

In 1975, the chairman and president of United Brands Company ("Chiquita") jumped to his death from the 44th floor of the Pan Am Building in Manhattan. During the investigation of his suicide, a bribery scandal – later called "Bananagate" – was uncovered:

In 1974, Honduras had supplied more than 22% of Chiquita's products. The same year, Honduras had passed a law to raise the tax on banana exports from 25¢ to 50¢ per 40-pound box. Chiquita paid a US\$1.25 million bribe to the Honduran President, followed by another US\$1.25 million the next year. The money was to be put in a Swiss bank account. After the bribe, the Honduran tax was reduced from 50¢ (back) to 25¢ per box. This reduction saved Chiquita about US\$7.5 million in tax payments.

107. Ben R. Rich and Leo Janos, *Skunk works: a personal memoir of my years at Lockheed*, New York: Little Brown & Co., 1994, p. 10.

108. Khoon Choy Lee, *Japan: between myth and reality*, p. 188.

At this time, bribes to foreign public officials were not unlawful. Nonetheless, Chiquita tried to hide the Honduran bribe from the public, arguing that news of it could harm US relations with that country. The bribe was revealed, though, and provoked the overthrow of the military government in Honduras.

8.1.3. The Foreign Corrupt Practices Act

During investigations in the mid-1970s, over 400 US companies admitted having paid bribes and “grease money” in excess of \$300 million to foreign government officials, politicians and political parties. As a consequence, the US Congress enacted the strictest and most comprehensive anti-corruption statute that the world had seen until then – the Foreign Corrupt Practices Act (FCPA). It passed Congress in 1977 and drew a line in the sand. For the first time,¹⁰⁹ a Western nation criminalised bribery of a foreign official. The FCPA provided criminal penalties for any American business if the following five elements were in evidence:

- ▶ an offer or payment of money or anything of value;
- ▶ to a “foreign official” or to a political party, party official or candidate for foreign political office;
- ▶ with a corrupt motive;
- ▶ in order to influence the person in his decision-making or to use his influence to assist the firm;
- ▶ in obtaining or retaining business.

8.1.4. International agreements

Between 1977 and 1995, the FCPA resulted in less than one prosecution per year. This still placed the US well ahead of other countries, as only the US had an international prohibition against bribery.

European companies could still pay a bribe to foreign officials without fear of being punished in their own country. In Germany and France, for example, companies could even deduct bribes paid abroad from their tax obligations. As a result, American companies lost contracts estimated US\$45 billion in 1995 alone, because the FCPA forbid them to bribe abroad. The competitive disadvantage for US companies was obvious.

Therefore, the US Government became a leading advocate of the creation of international standards to limit cross-border bribery. The Organisation of Economic Co-operation and Development (OECD), based in Paris, proved to be the ideal platform. The OECD had been founded in 1960 by 20 countries committed to democracy and the market economy. As of 1997, its 29 member countries were home to the largest multinational companies and produced two-thirds of the world’s goods and services.

During that time, corruption and bribery resulted in the fall of governments in Brazil, Italy, Pakistan and Zaire, and hampered economies from Indonesia to Russia. Finally, the OECD proposed an anti-corruption agreement among member states. About the same time, in 1996, the President of the World Bank and International Monetary

¹⁰⁹. See www.mondaq.com.

Fund (IMF), James Wolfensohn, broke a longstanding taboo on discussing corruption in the development sphere, openly bringing the issue to the top of the international development agenda in his “cancer of corruption” speech. The time of denial and cynicism about corruption was over.

Several other factors contributed to the emergence of international anti-corruption conventions.

- ▶ After the end of the Cold War, it was not necessary any more to support corrupt regimes around the world to form political blocs.
- ▶ The post-Cold War agenda of democratisation and transparency shifted attention to the problem of corruption.
- ▶ The worldwide trend for privatisation of state companies created vast opportunities for corruption.
- ▶ Free international markets increased competition among multinational companies, and possibly the “need” for corruption increased in order to gain some competitive advantage.

8.2. Conventions

8.2.1. OECD convention

On 21 November 1997, 29 OECD member countries and five non-member countries adopted the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. The convention was signed in Paris on 17 December 1997, and came into force on 15 February 1999, after the requisite number of signatory countries had ratified it. The OECD convention has a very specific scope, covering:

- ▶ only the bribery of foreign public officials in international business transactions,
- ▶ and only the liability of the bribers (active bribery), but not of the foreign officials who solicit or receive a bribe (passive bribery).

To ensure universal application, it contains a very specific definition of “foreign public official”:

‘foreign public official’ means any person holding a legislative, administrative or judicial office of a foreign country, whether appointed or elected; any person exercising a public function for a foreign country, including for a public agency or public enterprise; and any official or agent of a public international organisation.

The bribery provision of the convention is completed by additional penalties for three offences.

- ▶ Money laundering in connection with bribery of a foreign public official (criminal penalty).
- ▶ Accounting offences for the purpose of bribing foreign public officials or of hiding such bribery (criminal penalty).
- ▶ Liability of legal persons for active bribery of a foreign and international public official (criminal, administrative or civil liability).

As of January 2013, 40 countries had acceded to the convention (all 34 OECD members and 6 non-members: Argentina, Brazil, Bulgaria, Colombia, Russia and South Africa) had ratified the OECD Convention.

8.2.2. Council of Europe Criminal Law Convention

In September 1994, the Committee of Ministers of the Council of Europe assigned a Multidisciplinary Group on Corruption (GMC) to examine among others the possibility of drafting international conventions. By November 1997, the GMC had elaborated a first draft, which was adopted by the Committee of Ministers in November 1998. After signature by the minimum number of parties required, it came into force on 1 July 2002.

Like the OECD convention, the Council of Europe convention covers active bribery of a foreign and international public official (mandatory). However, it goes much further by criminalising the following corruption offences:

- ▶ passive bribery of foreign and international public officials (reservation is possible);
- ▶ active and passive bribery of national public officials (mandatory);
- ▶ active and passive bribery of judges and officials of international courts (mandatory);
- ▶ active and passive bribery in the private sector (reservation is possible for passive bribery);
- ▶ trading in influence (reservation is possible).

The Council of Europe convention was amended by a protocol, adopted on 15 May 2003, which came into force on 1 February 2005. In addition to the convention, it covers two extra categories of offence involving functionaries who are not regarded as public officials and hence do not fall under the corresponding bribery provision:

- ▶ active and passive bribery of national and foreign jurors;
- ▶ active and passive bribery of national and foreign arbitrators.

As with the OECD convention, the corruption provisions of the Council of Europe Convention are rounded up by additional penalties for the following offences:

- ▶ money laundering (mandatory).
- ▶ accounting offences (reservation is possible).

Furthermore, the Council of Europe convention also addresses the issue of international co-operation. Previous practical experience had shown that the prosecution of transnational corruption cases met two kinds of difficulty: definitions and discretionary powers.

First, the definition of corruption offences often diverged because of the meaning of “public official” in domestic laws. However, cross-border legal assistance often depends on the offence in question being equally punishable in the state requesting assistance and the state being requested (“dual criminality”). By harmonising the definition of corruption offences, the requirement of dual criminality is met by the parties to the Council of Europe convention. At the same time, this harmonisation is done in the broadest possible sense, explicitly including any public functionary such as judges, ministers, parliamentarians, jurors and arbitrators.

Second, providing cross-border legal assistance remains discretionary as long as there is no bi- or multilateral agreement between the states in question. The Council of Europe convention's provisions on international co-operation are designed to facilitate direct and swift communication between the relevant national authorities.

8.2.3. Council of Europe Civil Law Convention

In February 1996, the Committee of Ministers asked the Multidisciplinary Group on Corruption (GMC) to review the feasibility of a convention on civil remedies for compensation for damage resulting from acts of corruption. In June 1999, the draft Civil Law Convention on Corruption was transmitted to the Committee of Ministers and subsequently adopted. After signature by the minimum number of parties required, it came into force on 1 November 2003.

The Council of Europe convention is the first international convention to deal with civil law and corruption. Furthermore, it is the only international convention providing a definition of corruption. It covers the following issues:

- ▶ compensation for damage;
- ▶ state liability;
- ▶ limitation periods;
- ▶ validity of contracts;
- ▶ protection of employees (whistleblowers);
- ▶ accounts and audits;
- ▶ acquisition of evidence;
- ▶ international co-operation.

8.2.4. UN Convention Against Corruption (UNCAC)

In December 2000, the General Assembly of the United Nations decided to establish an ad hoc committee for the negotiation of an effective international legal instrument against corruption, at the headquarters of the United Nations Office on Drugs and Crime in Vienna (UNODC).

Starting in January 2002, the UNCAC was negotiated over a two-year period at the UN office in Vienna by representatives of more than a hundred countries from all parts of the world. The secretariat for the negotiations was UNODC. Representatives of civil society organisations also took part in this process.

After the conclusion of negotiations in October 2003, the text of the convention was put up for approval by the General Assembly in October 2003. Once approved, it was open for states to sign, starting with a signing conference in Merida, Mexico on 9-10 December 2003.

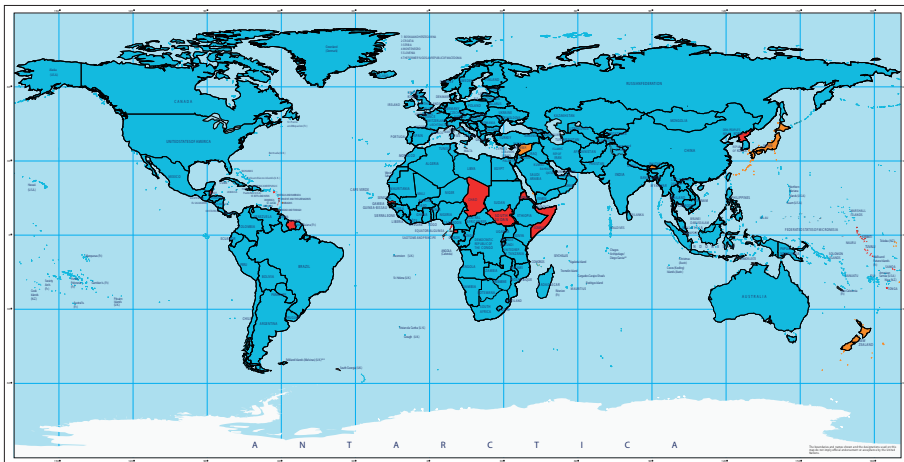
The UNCAC was initially signed by 111 states. The 30 ratifications required for entry into force of the convention were reached on 15 September 2005, meaning that it actually came into force on 14 December 2005.

The obligations of the parties fall into five categories.¹¹⁰

- ▶ Preventive measures: the UNCAC has the most comprehensive provisions on preventive measures in the public and private sector, except for the area of political finance.
- ▶ Criminalisation: apart from bribery, UNCAC calls for criminalisation of a wide range of offences covering embezzlement, misappropriation or other diversion of property by a public official (mandatory), obstruction of justice (mandatory), trading in influence (optional), abuse of functions (optional), illicit enrichment (optional), embezzlement of property in the private sector (optional) and concealment (optional).
- ▶ International co-operation: this chapter covers mutual legal assistance, particularly with regard to extradition and investigations.
- ▶ Asset recovery: for the first time, a convention creates a framework for recovering the proceeds of corruption that have been transferred to foreign countries.
- ▶ Technical co-operation and information exchange.

For many countries, the section on asset recovery was a major incentive to sign the convention. In particular, African, South American and East Asian states that had suffered high illegal transfers of money abroad by former political elites saw the asset-recovery mechanism as a way of recovering some of the lost money.

Figure 8.1: United Nations Convention against Corruption, signatures and ratifications, status as of 12 November 2014



- States Parties
- Signatories
- Countries that have not signed or ratified the UNCAC

Signatories: 140
Parties: 173

110. See www.unodc.org.

8.2.5. European Union conventions

Convention on the protection of the European Communities' financial interests (1995)

The EU has drawn up a convention to tackle fraud affecting the financial interests of the European Communities.¹¹¹ Under the convention, fraud affecting expenditure or revenue must be punishable by effective, proportionate and dissuasive criminal penalties in every European Union country.

The convention requires each EU country to take the necessary measures to ensure that the conduct referred to above, as well as participating in, instigating or attempting such conduct, is punishable by effective, proportionate and dissuasive criminal penalties. In cases of serious fraud, these penalties must include custodial sentences that can give rise to extradition.

Each EU country must also take the necessary measures to allow heads of businesses or any persons having power to take decisions or exercise control within a business to be declared criminally liable, in accordance with the principles defined by its national law, in cases of fraud affecting the European Communities' financial interests. Each EU country must take the necessary measures to establish its jurisdiction over the offences it has established in accordance with its obligations under the convention.

If a fraud constitutes a criminal offence and concerns at least two EU countries, those countries must co-operate effectively in the investigation, the prosecution and the enforcement of the penalties imposed by means, for example, of mutual legal assistance, extradition, transfer of proceedings or enforcement of sentences passed in another EU country.

Convention against corruption involving officials of the European Communities or officials of Member States of the European Union (1997)

Under this convention, each member state must take the necessary measures to ensure that conduct constituting an act of passive or active corruption by officials is a punishable criminal offence.¹¹²

The convention also provides that member states must ensure that conduct constituting an act of passive or active corruption, as well as participating in and instigating these acts, is punishable by criminal penalties. In serious cases, these could include penalties involving deprivation of liberty which can give rise to extradition. In addition, member states must take the necessary measures to allow heads of businesses or any persons having power to take decisions or exercise control within a business to be declared criminally liable in cases of active corruption by a person under their authority acting on behalf of the business.

111. See <http://europa.eu/>.

112. See <http://europa.eu/>.

8.2.6. American convention (OAS)

The Inter-American Convention against Corruption of the Organization of American States (OAS) was the first international judicial instrument dedicated to fighting corruption. It was adopted on 29 March 1996 and came into force on 3 June 1997, at a time when the OECD Convention was not even adopted (21 November 1997), let alone in force (15 February 1999).

Its structure consists of two parts: one dedicated to preventing corruption and the other to repressing certain corrupt practices. In addition, the IACAC addresses mutual legal assistance and co-operation, extradition, banking secrecy, measures for tracing and confiscating property and assets, and the establishment of central authorities for mutual legal assistance and co-operation on legal matters.

8.2.7. African Union convention (AU)

The African Union (AU), founded in July 2002, is the successor to the Organisation of African Unity (OAU). Modelled on the European Union, its aims are to help promote democracy, human rights and development across Africa, especially by increasing foreign investment. The AU covers the entire continent except for Morocco.

The AU Convention on Preventing and Combating Corruption¹¹³ was adopted by the heads of state at the African Union Summit on 11 July 2003, and came into force on 5 August 2006. The AU Convention covers a range of criminal offences including – besides bribery – trading in influence, illicit enrichment, money laundering and concealment of property.

It is unique in its mandatory provisions relating to private-to-private corruption, to transparency in party funding, to declaration of assets by public officials and to restrictions on immunity for public officials. So far, 45 states (out of 53 AU members) have signed the convention, though not all have ratified it.

8.2.8. Arab convention (LAS)

In 2010, the League of Arab States issued the first official pan-Arab anti-corruption instrument – the Arab Convention to Fight Corruption – signed on 21 December 2010.¹¹⁴ The Arab Convention comprises of 35 articles and covers preventive measures, criminalisation (bribery of national and international public officials, corruption in public and private sectors, money laundering, illicit enrichment, abuse of functions, embezzlement of property in the private and public sectors, trading in influence and obstruction of justice) and international co-operation (mutual legal assistance, asset recovery, etc.). It also emphasises the role of individuals and civil society to achieve these goals.

113. See www.auinticorruption.org.

114. See star.worldbank.org.

8.2.9. Literature

Council of Europe, Explanatory Reports to the Criminal Law¹¹⁵ and Civil Law¹¹⁶ Conventions on Corruption (English, French).

Commentaries on the 1997 OECD Convention¹¹⁷ (Arabic, English, French).

UNODC, Legislative Guide for the Implementation of the UNCAC (Arabic, English, French, Russian, Spanish).¹¹⁸

Council of Europe, Training manual on “Liability of Legal Persons for Corruption Offences” (English, Russian), 2014.¹¹⁹

8.3. Comparison of international agreements

8.3.1. Overview

Table 8.1: Landmark legislation and treaties

Adopted	In force	Name	Abbreviation	Signed ¹²⁰
1 Nov 1977	19 Dec 1977	Foreign Corrupt Practices Act (USA)	FCPA	1
29 Mar 1996	3 Jun 1997	Inter-American Convention Against Corruption	OAS Convention	34
17 Dec 1997	15 Feb 1999	OECD Convention on Bribery of Foreign Public Officials	OECD Convention	40
27 Jan 1999	1 Jul 2002	Council of Europe Criminal Law Convention on Corruption	Council of Europe Criminal Law Convention	50
4 Nov 1999	1 Nov 2003	Council of Europe Civil Law Convention on Corruption	Council of Europe Civil Law Convention	42
11 Jul 2003	5 Aug 2006	African Union Convention on Preventing and Combating Corruption	AU Convention	45
31 Oct 2003	14 Dec 2005	United Nations Convention Against Corruption	UNCAC/UN Convention	170
21 Dec 2010	not yet	League of Arab States Convention to Fight Corruption	LAS Convention	21

115. See conventions.coe.int.

116. See conventions.coe.int.

117. See www.oecd.org.

118. See www.unodc.org.

119. See www.coe.int/eap-corruption.

120. Signatories as of January 2013; the number of parties is in most cases lower, as not all states have ratified.

8.3.2. Added value of international agreements

Case scenario – Hewlett-Packard

In April 2010, the *Wall Street Journal* reported that German prosecutors were investigating a bribery case in Russia.¹²¹ Executives of the US computer firm Hewlett-Packard (HP) were suspected of having paid nearly €8 million in bribes to secure a €35 million contract to sell computer equipment through a German subsidiary to the Russian Federation's office of the prosecutor general. This office handles criminal prosecutions in Russia, including corruption cases. In December three HP executives were arrested in Germany and Switzerland. On 14 April 2011, Russian authorities searched HP's Moscow office as part of the probe. It was reported that US law-enforcement authorities had joined the investigation.

Questions:

1. which of the legal instruments shown in Table 8.1 are relevant for this case?
2. which of the following legal and investigative actions would not be possible if one specific legal instrument from those shown in Table 8.1 had not been implemented in the national legislation of the relevant country?
 - a. punishment of HP executives in US courts;
 - b. punishment of German HP employees in German courts;
 - c. punishment of possible offenders in Russian courts;
 - d. annulment of purchase contract between Russia and HP;
 - e. Tracing, freezing, confiscating and repatriating the bribes paid to Russian officials.

Suggested solutions

Question 1: FCPA, OECD Convention, Council of Europe Criminal Law Convention, Council of Europe Civil Law Convention, UNCAC.

Question 2:

- a. FCPA
- b. OECD Convention
- c. Council of Europe Criminal Law Convention
- d. Council of Europe Civil Law Convention
- e. UNCAC

8.3.3. Differences in treatment of bribery

The international conventions have not only slightly different wording concerning the offence of bribery, but actually differ on some details. One example is so-called facilitation payments.

¹²¹. *Wall Street Journal* (13 April 2010), available at <http://online.wsj.com>.

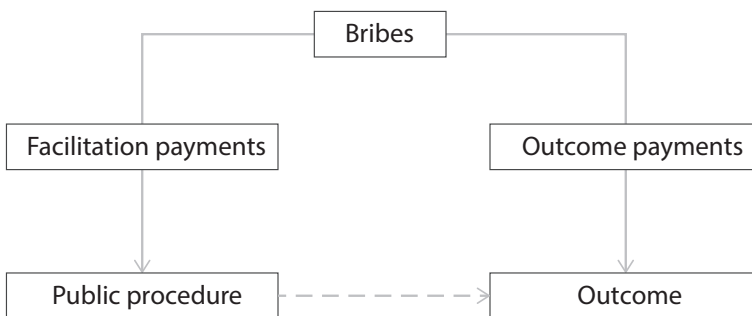
Facilitation and outcome payments

Case scenario – Import-Export

Imagine your company badly needs some imported computers that are stuck in customs. An official explains that it will take several weeks to clear if he follows normal procedures. However, there may be another way. He hints that an extra payment of €100 would solve the problem.

This payment would be called a “facilitating payment”. Facilitating payments are one kind of bribe, and Figure 8.2 distinguishes them from outcome payments.

Figure 8.2: Types of bribe



Bribes can aim either at speeding up the administrative procedure or at influencing the outcome of the procedure (for example, granting a building permit). Facilitation payments concern only the procedure, but never its outcome. Examples are:

- ▶ the handling of a visa would normally take three weeks. A facilitation payment could reduce this time to one day;
- ▶ the opening of a business requires a technical inspection. There is – allegedly – no date available for two months. A facilitation payment could lead to the immediate scheduling of a short notice inspection;
- ▶ a new business needs phone services, which normally take weeks to install. A facilitation payment could allow for providing services within days.

As facilitation payments are always about speeding up procedures, they are also called “speed money” or “grease payments” (greasing the administrative mechanism).

In a similar group of cases, officials may pretend they cannot grant the petitioner a favourable decision (building permit) even though, legally, the citizen has a clear right to a favourable decision. The petitioner would have to take the case to court with the expectation of obtaining a favourable judgment only after a lengthy court procedure. Here again, facilitation payments can (substantially) speed up the procedure by securing a timely decision to which the petitioner is entitled.

If, however, the briber is not clearly entitled to a favourable decision, but the official could legally choose among several options, any payment would not be a facilitation payment but an outcome payment.

Definitions:

- ▶ Facilitating payments are bribes paid to public officials to obtain regular, non-discretionary service from that official.
- ▶ Outcome payments are bribes paid to public officials to obtain irregular, discretionary service from that official.

The harm done to the public by both forms of bribe differs:

Table 8.2: Effects of outcome and facilitation payments

Outcome payments	Facilitation payments
Aim at illegal outcomes (for example, a public contract to which the briber would normally not be entitled to, or unsafe products entering the market)	Aim at legal outcomes, because they are only about the speed of the (legal) outcome (the bidding process finished quickly or safe products entering the market more quickly)
Distort competition in terms of quality (it is not the best bidder that gets a contract, but the bribing one)	Distort competition only in terms of speed (the bribing business-person will be able to do business more quickly; the others will be pushed to the end of the queue)
Harm the integrity of public procedures (because officials provide illegal service , take bribes and treat citizens unequally)	Harm the integrity of public procedures (because officials take bribes and treat citizens unequally)

On the other hand, if business owners refuse requests for facilitation payments, it can cause them serious harm.

- ▶ Customs officials hold up a truck with frozen meat at the border for days, despite the goods having full clearance to enter the market.
- ▶ A newly constructed hotel cannot open because a routine stamp on the permit is missing, causing the owner a daily loss of income.

Therefore, business people tend to justify their facilitation payments – morally – by the extortive dilemma they face. However, extortion in a criminal sense requires substantial harm, which often is not at stake: criminal law often recognises business dilemmas only as extortion if they cause a threat to the existence of the business.

Furthermore, it must be kept in mind that facilitation payments are not only requested by officials who threaten to hold up proceedings; often, citizens offer facilitation payments to speed up procedures, which in the normal course of events would simply take longer.

Table 8.3: Legal status of facilitation payments under international conventions

OECD	Council of Europe	UNCAC
Legal, if small	Illegal	Illegal

The OECD convention is accompanied by official commentaries,¹²² which exclude facilitation payments from the bribery offence. The Council of Europe Criminal Law Convention and the UN convention do not recognise such an exception.

According to the OECD convention the following constellation is legal: US law allows for facilitation payments to be paid, for example, to Russian officials. At the same time, these payments are illegal under the Russian criminal code. They would also not be legal, if paid to US-officials.

The Commentary 9 to the OECD convention reads as follows:

“Small ‘facilitation’ payments ... are ... not an offence. Such payments ... are generally illegal in the foreign country concerned. ... [C]riminalisation by other countries does not seem a practical or effective complementary action.”

Do you agree with the above perspective, or do you prefer the stance of the Council of Europe- and the UN convention? Consider the (relative) harm facilitation payments can do, as shown in the previous Chapter 1.

8.4. Implementation and monitoring

The conventions described in section 8.2 are not self-executing: all require an enforcing national law. This is already obvious from the fact that the criminal offences in the conventions do not prescribe a certain penalty, but only require national states to define an appropriate penalty. This means each country transposes the agreed standards in line with its own legal tradition. In order to ensure proper implementation, each convention provides for a monitoring mechanism.

8.4.1. Council of Europe: GRECO

The Group of States against Corruption (GRECO) was established in 1999 by the Council of Europe to monitor states’ compliance with the organisation’s anti-corruption standards.¹²³

Background to GRECO

GRECO’s objective is to improve the capacity of its members to fight corruption by monitoring their compliance with Council of Europe anti-corruption standards through a dynamic process of mutual evaluation and peer pressure. It helps to identify deficiencies in national anti-corruption policies, prompting the necessary legislative, institutional and practical reforms. GRECO also provides a platform for the sharing of best practice in the prevention and detection of corruption.

Membership of GRECO, which is an enlarged agreement, is not limited to Council of Europe member states. Any state which took part in the elaboration of the enlarged partial agreement may join by notifying the Secretary General of the Council of Europe. Moreover, any state which becomes party to the Criminal or Civil Law

122. Commentaries on the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions Adopted by the Negotiating Conference on 21 November 1997.

123. See www.coe.int.

Conventions on Corruption automatically accedes to GRECO and its evaluation procedures. Currently, GRECO comprises 49 member states (48 European states and the United States of America).

The functioning of GRECO is governed by its statute and rules of procedure. Each member state appoints up to two representatives who participate in GRECO plenary meetings with a right to vote; each member also provides GRECO with a list of experts available for taking part in GRECO's evaluations. Other Council of Europe bodies may also appoint representatives (e.g. the Parliamentary Assembly of the Council of Europe). GRECO has granted observer status to the Organisation for Economic Co-operation and Development (OECD) and the United Nations – represented by the United Nations Office on Drugs and Crime (UNODC). GRECO elects its president, vice-president and members of its bureau who play an important role in designing GRECO's work programme and supervising the evaluation procedures.

GRECO's statutory committee is composed of representatives on the Committee of Ministers of member states which have joined GRECO and of representatives specifically designated by other members of GRECO. Its competence includes adoption of GRECO's budget. It is also empowered to issue a public statement if it considers that a member takes insufficient action in respect of the recommendations addressed to it.

GRECO's statute defines a master-type procedure, which can be adapted to the different legal instruments under review.

GRECO, which has its seat in Strasbourg, is assisted by a secretariat, headed by an executive secretary, provided by the Secretary General of the Council of Europe.

How does GRECO work?

GRECO monitors all its members on an equal basis, through a dynamic process of mutual evaluation and peer pressure. The GRECO mechanism ensures the scrupulous observance of the principle of equality of rights and obligations among its members. All members participate in, and submit themselves without restriction to, the mutual evaluation and compliance procedures.

GRECO monitoring comprises:

- ▶ “horizontal” evaluation procedure (all members are evaluated within an evaluation round) leading to recommendations aimed at furthering the necessary legislative, institutional and practical reforms;
- ▶ a compliance procedure designed to assess the measures taken by its members to implement the recommendations.

GRECO works in cycles: evaluation rounds, each covering specific themes. GRECO's first evaluation round (2000-02) dealt with the independence, specialisation and means of national bodies engaged in the prevention of and fight against corruption. It also dealt with the extent and scope of immunities of public officials from arrest and prosecution. The second evaluation round (2003-06) focused on the identification, seizure and confiscation of corruption proceeds, the prevention and detection of corruption in public administration and the prevention of legal persons (such as corporations) from being used as shields for corruption. The third evaluation round (launched in January 2007) addresses (a) the criminal offences

provided for in the Criminal Law Convention on Corruption and (b) the transparency of party funding.

The evaluation process follows a well-defined procedure, where a team of experts is appointed by GRECO for the evaluation of a particular member. The analysis of the situation in each country is carried out on the basis of written replies to a questionnaire and information gathered in meetings with public officials and representatives of civil society during an on-site visit to the country. Following the on-site visit, the team of experts drafts a report which is communicated to the country under scrutiny for comments before it is finally submitted to GRECO for examination and adoption. The conclusions of evaluation reports may state that legislation and practice comply – or do not comply – with the provisions under scrutiny. The conclusions may lead to recommendations which require action within 18 months or to observations which members are supposed to take into account but are not formally required to report on in the subsequent compliance procedure.

One of the strengths of GRECO's monitoring is that the implementation of recommendations is examined in the compliance procedure. The assessment of whether a recommendation has been implemented satisfactorily or partly, or has not been implemented, is based on a situation report, accompanied by supporting documents submitted by the member under scrutiny 18 months after the adoption of the evaluation report. In cases where not all recommendations have been complied with, GRECO will re-examine outstanding recommendations within another 18 months. Compliance reports and the addenda thereto adopted by GRECO also contain an overall conclusion on the implementation of all the recommendations, the purpose of which is to decide whether to terminate the compliance procedure in respect of a particular member. Finally, the rules of procedure of GRECO prescribe a special procedure, based on a graduated approach, for dealing with members whose response to GRECO's recommendations has been found to be totally unsatisfactory.

8.4.2. OECD

The OECD Convention is not self-executing but requires signatory nations to adopt their own legislation to make bribery illegal. In order to ensure that this happened, the convention implemented a surveillance process beginning in 1997.

Phase 1 involved a review of country-specific legislation to determine whether the standards of the convention had been met.

Phase 2 began in 2001 with the objective of assessing enforcement processes and the degree to which they are effective. It also expanded its focus to consider non-criminal accounting and auditing requirements and the issue of non-tax-deductibility of bribery payments.

Phase 3 (years 2009 to 2014) concentrates on the following three pillars:

- ▶ progress made by parties to the convention on weaknesses identified in Phase 2;
- ▶ issues raised by changes in the domestic legislation or institutional framework of the parties;
- ▶ enforcement efforts and results, and other key group-wide cross-cutting issues.

Elements of the evaluation:

- ▶ preparation of the evaluation in the working group on bribery;
- ▶ appointment of two countries to act as lead examiners;
- ▶ replies to an evaluation questionnaire;
- ▶ on-site visit to the country examined (phase 2 and 3);
- ▶ preparation of a preliminary report on country performance;
- ▶ evaluation by the Working Group on Bribery;
- ▶ adoption by the Working Group of a report, including recommendations, on country performance.

Evaluation reports on all OECD-countries are available online.¹²⁴

8.4.3. UNCAC

In November 2009, the Conference of the States Parties to the United Nations Convention against Corruption adopted a review mechanism. The mechanism follows the following process:

- ▶ two cycles of five years each – 1/4 of states parties per year;
- ▶ 1st cycle: review of UNCAC chapters III and IV;
- ▶ 2nd cycle: review of UNCAC chapters II and V;
- ▶ drawing of lots (28 June-2 July 2010) to identify reviewers and reviewed;
- ▶ desk review of self-assessment reports;
- ▶ country-review reports.

The member state under review gives responses to a comprehensive self-assessment checklist based on consultations at the national level with all relevant stakeholders, including the private sector. The desk review should be complemented by a country visit or a joint meeting at the United Nations Office at Vienna, and any further means of direct dialogue, if agreed by the member state under review.

8.4.4. Other conventions

The AU Convention provides for a follow-up mechanism. Member states annually report on states parties' progress in implementing the convention to the African Union's Advisory Board on Corruption, which regularly reports to the Executive Council.¹²⁵

The Mechanism for Follow-Up on the Implementation of the Inter-American Convention against Corruption (MESICIC) is an inter-governmental body established within the OAS. It supports the states parties in the implementation of the provisions of the convention through a process of reciprocal evaluation, based on conditions of equality among the states. In this mechanism, recommendations are formulated with respect to those areas in which there are legal gaps or in which further progress is necessary.¹²⁶

124. See www.oecd.org.

125. See auanticorruption.org.

126. See www.oas.org.

The Arab Convention is implemented by the Conference of the States Parties to the Convention and the secretariat. Article 33 creates a conference of states parties to this convention to ensure its implementation and its monitoring.

8.4.5. Weak points in implementation

States are typically hesitant to fully implement international standards in some areas:

- ▶ transparency in political finance;
- ▶ asset declaration of high public officials;
- ▶ reducing immunities of officials.

Reforms in these areas will in general be supported by political will in society at large, but not by a corresponding political leadership. This is due to the fact that those issues directly affect the lawmakers themselves, who are thus in a conflict of interest between limiting their own privileges and enhancing the integrity of the political system.

A possible way of solving this dilemma is for constitutions to allow for legislative drafts (including those submitted by civil interest groups) to be adopted by referendum. Several countries allow for such an option in their constitutions.¹²⁷

8.4.6. Country reports

The results of country monitoring are published online and often contain very valuable information about one's own country's status, or the status of other countries.

GRECO:

See www.coe.int

OECD:

See www.oecd.org

UNCAC:

See www.unodc.org

OAS:

See www.oas.org

AU:

See auanticorruption.org

For an overview of and information on monitoring mechanisms in general:

See www.transparency.org

8.5. Non-binding standards

Some international standards are non-binding, but nonetheless enforced through monitoring mechanisms: Those are the standards referred to when countries accept monitoring, on accession to the Council of Europe, EU, OECD and so on.

127. See for example www.democracy-international.org.

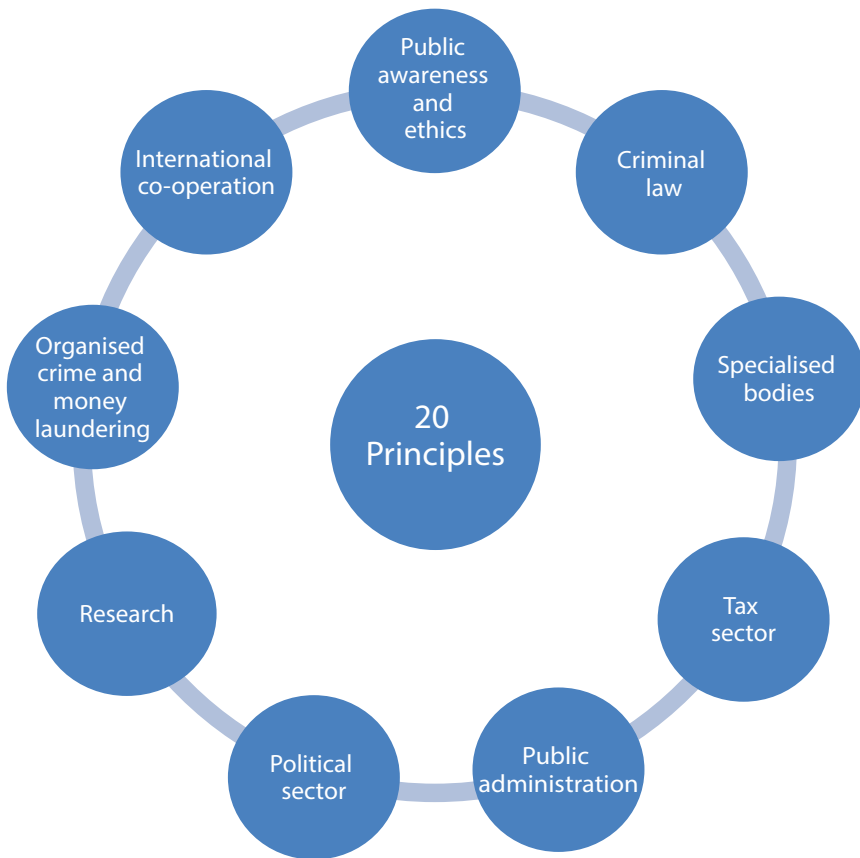
8.5.1. Twenty guiding principles from the Council of Europe

What are the essential building blocks in setting up a comprehensive system against corruption?

This question is answered by the “Twenty Guiding Principles for the Fight against Corruption”.¹²⁸ They were adopted by the Committee of Ministers of the Council of Europe in Resolution (97) 24 in November 1997, about two years before the two Council of Europe Corruption Conventions of 1999.

The principles are not binding in a legal sense. However, all member states of GRECO have decided to monitor their implementation and thus, in fact, have committed themselves to those principles. The principles are formulated rather broadly. They comprise only about 500 words, whereas the Council of Europe Criminal Law Convention alone has 3 300, and the UNCAC 17 000 words. However, the principles mention all the essential building blocks of a system for preventing corruption.

Figure 8.3: Implementing the Council of Europe’s Twenty Guiding Principles for the Fight against Corruption



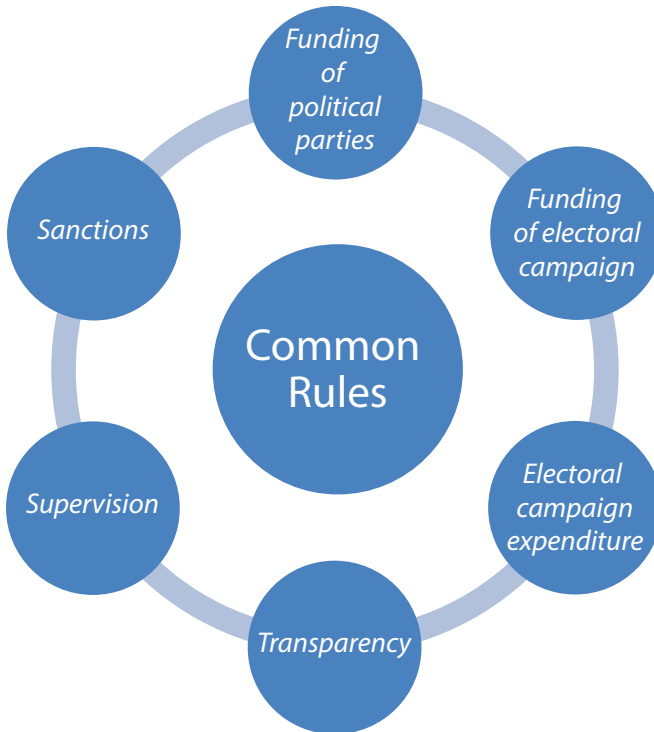
128. See wcd.coe.int.

8.5.2. Political finance

Council of Europe Common Rules

A number of scandals linked to the financing of political parties in several Council of Europe member states in all parts of Europe led to the adoption of “Common Rules against Corruption in the Funding of Political Parties and Electoral Campaigns” on 8 April 2003 (Committee of Ministers Recommendation Rec(2003)4). The Common Rules are legally non-binding, but their implementation is monitored by the GRECO (see above, 8.4.1), thus giving the Common Rules *de facto* influence on a country’s legislation.

Figure 8.4: Implementing the Council of Europe’s Common Rules against Corruption in the Funding of Political Parties and Electoral Campaigns



Council of Europe’s Venice Commission and the OSCE/ODIHR

In 2010, the Council of Europe’s Venice Commission and the OSCE/ODIHR adopted Guidelines on Political Party Regulation,¹²⁹ which contain detailed recommendations on funding of political parties.

129. Guidelines on Political Party Regulation, OSCE/ODIHR and Venice Commission, Strasbourg, 25 October 2010, Study no. 595/2010, CDL-AD(2010)024, Chapter XII, at www.venice.coe.

Other standards on political finance

Political finance is probably the field where reforms aiming towards more integrity will receive most resistance: The lawmakers deciding on political finance regulation are always at the same time members of political parties. They are hence in a conflict of interest between providing their parties with free access to unlimited funds on the one hand, and limiting a party's freedom in generating income, managing it and expending it.

So it comes as no surprise that the respective regulation in the UNCAC is short and general. Article 7 paragraph 3 UNCAC reads as follows:

Each State Party shall also consider taking appropriate legislative and administrative measures, consistent with the objectives of this Convention and in accordance with the fundamental principles of its domestic law, to enhance transparency in the funding of candidatures for elected public office and, where applicable, the funding of political parties.

This article leaves out the questions of expenditure, oversight and penalties. Besides, there is no indication whatsoever of what "transparency" should mean in detail. In fact, it is virtually impossible to monitor the implementation of this article as its meaning is vague at best. Austria, France and the Netherlands had submitted a proposal for detailed regulations during negotiation of the UNCAC. It was never adopted, though. So it comes as no surprise that, in a worldwide survey, political parties remain the institution in society that is regarded as the most corrupt.¹³⁰

The only other international convention mentioning political finance is Article 10 "Funding of Political Parties" of the African Union Convention. Its wording could not be shorter:

Each State Party shall adopt legislative and other measures to:

- (a) Proscribe the use of funds acquired through illegal and corrupt practices to finance political parties; and
- (b) Incorporate the principle of transparency into funding of political parties.

8.5.3. Model Code of Conduct

Drafting a code of conduct from scratch can be quite a challenge. One would need to elaborate whether and how principles such as the following should be applied: fairness, impartiality, non-discrimination, independence, honesty, integrity, loyalty, diligence, propriety of personal conduct, transparency, accountability, responsible use of resources, propriety of conduct towards the public.

To facilitate this process for its member states and in order to set an international standard, the Council of Europe adopted in May 2000 a Model Code of Conduct for Public Officials. The code is a useful resource and covers all the general issues for which codes of conduct are normally thought to be necessary, including general principles, conflicts of interest and reporting requirements, political activity, gifts, reaction to improper offers and duties on leaving public service.

130. Transparency International, Global Corruption Barometer 2010, p. 8, at www.transparency.org.

Other sources of model codes of conduct

- ▶ International Code of Conduct for Public Officials contained in the annex to General Assembly resolution 51/59 of 12 December 1996.
- ▶ OECD's Recommendation of the Council on Improving Ethical Conduct in the Public Service Including Principles for Managing Ethics in the Public Service (1998-C(98)70/FINAL).
- ▶ The Bangalore Principles of Judicial Conduct (2002) as adopted by the Judicial Group on Strengthening Judicial Integrity, as revised at the Round Table Meeting of Chief Justices, The Hague, 25-26 November 2002.¹³¹
- ▶ UN Code of Conduct for Law Enforcement Officials, adopted by General Assembly resolution 34/169 of 17 December 1979.¹³²

8.5.4. OECD and EU standards

There are numerous non-binding standards by international organisations. Some of the more important standards by the OECD and the EU are listed here.

- ▶ Lobbying: Recommendation of the Council on Principles for Transparency and Integrity in Lobbying¹³³ (OECD).
- ▶ Conflict of Interest: Guidelines for Managing Conflict of Interest in the Public Service (OECD).¹³⁴
- ▶ Public Procurement: 2008 Recommendation on Enhancing Integrity in Public Procurement (OECD).¹³⁵
- ▶ Anti-Corruption Principles: Ten Principles for Improving the Fight against Corruption in Acceding, Candidate and other Third Countries (EU).¹³⁶

131. See www.unodc.org.

132. See www.ohchr.org.

133. Dated 18 February 2010 – C(2010)16, available at acts.oecd.org.

134. See www.oecd.org.

135. See www.oecd.org.

136. Annex to the Communication from the [European] Commission to the Council, the European Parliament and the European Economic and Social Committee – On a comprehensive EU policy against corruption (COM/2003/0317 final), at eur-lex.europa.eu.

9. Appendices

9.1. General literature

For literature on more specific topics see the “Literature”-section at the end of each chapter above.

OSCE, *Best practices in combating corruption*, 2004 (English, Russian).¹³⁷

UNODC, *Technical guide to the UNCAC 2009* (Arabic, English, French, Russian, Spanish).¹³⁸

UNODC, *Legislative guide for the implementation of the UNCAC* (Arabic, English, French, Russian, Spanish).¹³⁹

UNODC, *Resource guide on strengthening judicial integrity and capacity* (Arabic, English).¹⁴⁰

UNODC, *UN anti-corruption toolkit*, 3rd edition, 2004 (English).¹⁴¹

Transparency International, *Confronting corruption: the elements of a national integrity system*, TI Source Book 2000 (Arabic, English).¹⁴²

9.2. Internet sources

Council of Europe anti-corruption webpage

See www.coe.int/corruption

Council of Europe’s GRECO

See www.coe.int/greco

Consultative Council of European Judges (CCJE)

See www.coe.int/ccje

U4 Anti-Corruption Resource Centre

See www.u4.no

OECD and anti-corruption

See www.oecd.org

137. See www.osce.org.

138. See www.unodc.org/technical-guide.

139. See www.unodc.org/legislative-guide.

140. See www.unodc.org/judicial-integrity-guide.

141. See www.unodc.org/anti-corruption-toolkit.

142. See www.transparency.org/publications/sourcebook.

UNODC and anti-corruption
See www.unodc.org.

UNDP and anti-corruption
See web.undp.org.

The World Bank and anti-corruption
See www.worldbank.org/anticorruption

Arab Anti-Corruption Organization
See www.arabanticorruption.org.

Arab Region Parliamentarians Against Corruption (ARPAC)
See www.arpacnetwork.org.

UNDP's Programme on Governance in the Arab Region (POGAR)
See www.pogar.org.

Regional Anti-corruption Initiative (RAI)
See www.rai-see.org.

Anti-Corruption Authorities (Acas) Portal
See www.acauthorities.org.

The International Anti-Corruption Academy (IACA)
See www.iaca.int.

Global Integrity
See www.globalintegrity.org.

Transparency International
See www.transparency.org.

9.3. International standards: Council of Europe

9.3.1. Criminal Law Convention on Corruption (ETS 173)¹⁴³

Chapter I – Use of terms

Article 1 – Use of terms

For the purposes of this Convention:

- a “public official” shall be understood by reference to the definition of “official”, “public officer”, “mayor”, “minister” or “judge” in the national law of the State in which the person in question performs that function and as applied in its criminal law;
- b the term “judge” referred to in sub-paragraph a above shall include prosecutors and holders of judicial offices;

¹⁴³. See www.coe.int/corruption.

c in the case of proceedings involving a public official of another State, the prosecuting State may apply the definition of public official only insofar as that definition is compatible with its national law;

d “legal person” shall mean any entity having such status under the applicable national law, except for States or other public bodies in the exercise of State authority and for public international organisations.

Chapter II – Measures to be taken at national level

Article 2 – Active bribery of domestic public officials

Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the promising, offering or giving by any person, directly or indirectly, of any undue advantage to any of its public officials, for himself or herself or for anyone else, for him or her to act or refrain from acting in the exercise of his or her functions.

Article 3 – Passive bribery of domestic public officials

Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the request or receipt by any of its public officials, directly or indirectly, of any undue advantage, for himself or herself or for anyone else, or the acceptance of an offer or a promise of such an advantage, to act or refrain from acting in the exercise of his or her functions.

Article 4 – Bribery of members of domestic public assemblies

Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law the conduct referred to in Articles 2 and 3, when involving any person who is a member of any domestic public assembly exercising legislative or administrative powers.

Article 5 – Bribery of foreign public officials

Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law the conduct referred to in Articles 2 and 3, when involving a public official of any other State.

Article 6 – Bribery of members of foreign public assemblies

Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law the conduct referred to in Articles 2 and 3, when involving any person who is a member of any public assembly exercising legislative or administrative powers in any other State.

Article 7 – Active bribery in the private sector

Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally in the course of business activity, the promising, offering or giving, directly or indirectly, of any undue advantage to any persons who direct or work for, in any capacity, private sector entities, for themselves or for anyone else, for them to act, or refrain from acting, in breach of their duties.

Article 8 – Passive bribery in the private sector

Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, in the course of business activity, the request or receipt, directly or indirectly, by any persons who direct or work for, in any capacity, private sector entities, of any undue advantage or the promise thereof for themselves or for anyone else, or the acceptance of an offer or a promise of such an advantage, to act or refrain from acting in breach of their duties.

Article 9 – Bribery of officials of international organisations

Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law the conduct referred to in Articles 2 and 3, when involving any official or other contracted employee, within the meaning of the staff regulations, of any public international or supranational organisation or body of which the Party is a member, and any person, whether seconded or not, carrying out functions corresponding to those performed by such officials or agents.

Article 10 – Bribery of members of international parliamentary assemblies

Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law the conduct referred to in Article 4 when involving any members of parliamentary assemblies of international or supranational organisations of which the Party is a member.

Article 11 – Bribery of judges and officials of international courts

Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law the conduct referred to in Articles 2 and 3 involving any holders of judicial office or officials of any international court whose jurisdiction is accepted by the Party.

Article 12 – Trading in influence

Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the promising, giving or offering, directly or indirectly, of any undue advantage to anyone who asserts or confirms that he or she is able to exert an improper influence over the decision-making of any person referred to in Articles 2, 4 to 6 and 9 to 11 in consideration thereof, whether the undue advantage is for himself or herself or for anyone else, as well as the request, receipt or the acceptance of the offer or the promise of such an advantage, in consideration of that influence, whether or not the influence is exerted or whether or not the supposed influence leads to the intended result.

Article 13 – Money laundering of proceeds from corruption offences

Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law the conduct referred to in the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Products from Crime (ETS No. 141), Article 6, paragraphs 1 and 2, under the conditions referred to therein, when the predicate offence consists of any of the

criminal offences established in accordance with Articles 2 to 12 of this Convention, to the extent that the Party has not made a reservation or a declaration with respect to these offences or does not consider such offences as serious ones for the purpose of their money laundering legislation.

Article 14 – Account offences

Each Party shall adopt such legislative and other measures as may be necessary to establish as offences liable to criminal or other sanctions under its domestic law the following acts or omissions, when committed intentionally, in order to commit, conceal or disguise the offences referred to in Articles 2 to 12, to the extent the Party has not made a reservation or a declaration:

- a creating or using an invoice or any other accounting document or record containing false or incomplete information;
- b unlawfully omitting to make a record of a payment.

Article 15 – Participatory acts

Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law aiding or abetting the commission of any of the criminal offences established in accordance with this Convention.

Article 16 – Immunity

The provisions of this Convention shall be without prejudice to the provisions of any Treaty, Protocol or Statute, as well as their implementing texts, as regards the withdrawal of immunity.

Article 17 – Jurisdiction

1 Each Party shall adopt such legislative and other measures as may be necessary to establish jurisdiction over a criminal offence established in accordance with Articles 2 to 14 of this Convention where:

- a the offence is committed in whole or in part in its territory;
- b the offender is one of its nationals, one of its public officials, or a member of one of its domestic public assemblies;
- c the offence involves one of its public officials or members of its domestic public assemblies or any person referred to in Articles 9 to 11 who is at the same time one of its nationals.

2 Each State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, by a declaration addressed to the Secretary General of the Council of Europe, declare that it reserves the right not to apply or to apply only in specific cases or conditions the jurisdiction rules laid down in paragraphs 1 b and c of this article or any part thereof.

3 If a Party has made use of the reservation possibility provided for in paragraph 2 of this article, it shall adopt such measures as may be necessary to establish jurisdiction over a criminal offence established in accordance with this Convention, in cases where an alleged offender is present in its territory and it does not extradite him to another Party, solely on the basis of his nationality, after a request for extradition.

4 This Convention does not exclude any criminal jurisdiction exercised by a Party in accordance with national law.

Article 18 – Corporate liability

1 Each Party shall adopt such legislative and other measures as may be necessary to ensure that legal persons can be held liable for the criminal offences of active bribery, trading in influence and money laundering established in accordance with this Convention, committed for their benefit by any natural person, acting either individually or as part of an organ of the legal person, who has a leading position within the legal person, based on:

- ▶ a power of representation of the legal person; or
- ▶ an authority to take decisions on behalf of the legal person; or
- ▶ an authority to exercise control within the legal person;

as well as for involvement of such a natural person as accessory or instigator in the above-mentioned offences.

2 Apart from the cases already provided for in paragraph 1, each Party shall take the necessary measures to ensure that a legal person can be held liable where the lack of supervision or control by a natural person referred to in paragraph 1 has made possible the commission of the criminal offences mentioned in paragraph 1 for the benefit of that legal person by a natural person under its authority.

3 Liability of a legal person under paragraphs 1 and 2 shall not exclude criminal proceedings against natural persons who are perpetrators, instigators of, or accessories to, the criminal offences mentioned in paragraph 1.

Article 19 – Sanctions and measures

1 Having regard to the serious nature of the criminal offences established in accordance with this Convention, each Party shall provide, in respect of those criminal offences established in accordance with Articles 2 to 14, effective, proportionate and dissuasive sanctions and measures, including, when committed by natural persons, penalties involving deprivation of liberty which can give rise to extradition.

2 Each Party shall ensure that legal persons held liable in accordance with Article 18, paragraphs 1 and 2, shall be subject to effective, proportionate and dissuasive criminal or non-criminal sanctions, including monetary sanctions.

3 Each Party shall adopt such legislative and other measures as may be necessary to enable it to confiscate or otherwise deprive the instrumentalities and proceeds of criminal offences established in accordance with this Convention, or property the value of which corresponds to such proceeds.

Article 20 – Specialised authorities

Each Party shall adopt such measures as may be necessary to ensure that persons or entities are specialised in the fight against corruption. They shall have the necessary independence in accordance with the fundamental principles of the legal system of the Party, in order for them to be able to carry out their functions effectively and free from any undue pressure. The Party shall ensure that the staff of such entities has adequate training and financial resources for their tasks.

Article 21 – Co-operation with and between national authorities

Each Party shall adopt such measures as may be necessary to ensure that public authorities, as well as any public official, co-operate, in accordance with national law, with those of its authorities responsible for investigating and prosecuting criminal offences:

- a by informing the latter authorities, on their own initiative, where there are reasonable grounds to believe that any of the criminal offences established in accordance with Articles 2 to 14 has been committed, or
- b by providing, upon request, to the latter authorities all necessary information.

Article 22 – Protection of collaborators of justice and witnesses

Each Party shall adopt such measures as may be necessary to provide effective and appropriate protection for:

- a those who report the criminal offences established in accordance with Articles 2 to 14 or otherwise co-operate with the investigating or prosecuting authorities;
- b witnesses who give testimony concerning these offences.

Article 23 – Measures to facilitate the gathering of evidence and the confiscation of proceeds

1 Each Party shall adopt such legislative and other measures as may be necessary, including those permitting the use of special investigative techniques, in accordance with national law, to enable it to facilitate the gathering of evidence related to criminal offences established in accordance with Articles 2 to 14 of this Convention and to identify, trace, freeze and seize instrumentalities and proceeds of corruption, or property the value of which corresponds to such proceeds, liable to measures set out in accordance with paragraph 3 of Article 19 of this Convention.

2 Each Party shall adopt such legislative and other measures as may be necessary to empower its courts or other competent authorities to order that bank, financial or commercial records be made available or be seized in order to carry out the actions referred to in paragraph 1 of this article.

3 Bank secrecy shall not be an obstacle to measures provided for in paragraphs 1 and 2 of this article.

Chapter III – Monitoring of implementation

Article 24 – Monitoring

The Group of States against Corruption (GRECO) shall monitor the implementation of this Convention by the Parties.

Chapter IV – International co-operation

Article 25 – General principles and measures for international co-operation

1 The Parties shall co-operate with each other, in accordance with the provisions of relevant international instruments on international co-operation in criminal

matters, or arrangements agreed on the basis of uniform or reciprocal legislation, and in accordance with their national law, to the widest extent possible for the purposes of investigations and proceedings concerning criminal offences established in accordance with this Convention.

2 Where no international instrument or arrangement referred to in paragraph 1 is in force between Parties, Articles 26 to 31 of this chapter shall apply.

3 Articles 26 to 31 of this chapter shall also apply where they are more favourable than those of the international instruments or arrangements referred to in paragraph 1.

Article 26 – Mutual assistance

1 The Parties shall afford one another the widest measure of mutual assistance by promptly processing requests from authorities that, in conformity with their domestic laws, have the power to investigate or prosecute criminal offences established in accordance with this Convention.

2 Mutual legal assistance under paragraph 1 of this article may be refused if the requested Party believes that compliance with the request would undermine its fundamental interests, national sovereignty, national security or *ordre public*.

3 Parties shall not invoke bank secrecy as a ground to refuse any co-operation under this chapter. Where its domestic law so requires, a Party may require that a request for co-operation which would involve the lifting of bank secrecy be authorised by either a judge or another judicial authority, including public prosecutors, any of these authorities acting in relation to criminal offences.

Article 27 – Extradition

1 The criminal offences established in accordance with this Convention shall be deemed to be included as extraditable offences in any extradition treaty existing between or among the Parties. The Parties undertake to include such offences as extraditable offences in any extradition treaty to be concluded between or among them.

2 If a Party that makes extradition conditional on the existence of a treaty receives a request for extradition from another Party with which it does not have an extradition treaty, it may consider this Convention as the legal basis for extradition with respect to any criminal offence established in accordance with this Convention.

3 Parties that do not make extradition conditional on the existence of a treaty shall recognise criminal offences established in accordance with this Convention as extraditable offences between themselves.

4 Extradition shall be subject to the conditions provided for by the law of the requested Party or by applicable extradition treaties, including the grounds on which the requested Party may refuse extradition.

5 If extradition for a criminal offence established in accordance with this Convention is refused solely on the basis of the nationality of the person sought, or because the requested Party deems that it has jurisdiction over the offence, the requested Party shall submit the case to its competent authorities for the purpose of prosecution unless otherwise agreed with the requesting Party, and shall report the final outcome to the requesting Party in due course.

Article 28 – Spontaneous information

Without prejudice to its own investigations or proceedings, a Party may without prior request forward to another Party information on facts when it considers that the disclosure of such information might assist the receiving Party in initiating or carrying out investigations or proceedings concerning criminal offences established in accordance with this Convention or might lead to a request by that Party under this chapter.

Article 29 – Central authority

1 The Parties shall designate a central authority or, if appropriate, several central authorities, which shall be responsible for sending and answering requests made under this chapter, the execution of such requests or the transmission of them to the authorities competent for their execution.

2 Each Party shall, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, communicate to the Secretary General of the Council of Europe the names and addresses of the authorities designated in pursuance of paragraph 1 of this article.

Article 30 – Direct communication

1 The central authorities shall communicate directly with one another.

2 In the event of urgency, requests for mutual assistance or communications related thereto may be sent directly by the judicial authorities, including public prosecutors, of the requesting Party to such authorities of the requested Party. In such cases a copy shall be sent at the same time to the central authority of the requested Party through the central authority of the requesting Party.

3 Any request or communication under paragraphs 1 and 2 of this article may be made through the International Criminal Police Organisation (Interpol).

4 Where a request is made pursuant to paragraph 2 of this article and the authority is not competent to deal with the request, it shall refer the request to the competent national authority and inform directly the requesting Party that it has done so.

5 Requests or communications under paragraph 2 of this article, which do not involve coercive action, may be directly transmitted by the competent authorities of the requesting Party to the competent authorities of the requested Party.

6 Each State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, inform the Secretary General of the Council of Europe that, for reasons of efficiency, requests made under this chapter are to be addressed to its central authority.

Article 31 – Information

The requested Party shall promptly inform the requesting Party of the action taken on a request under this chapter and the final result of that action. The requested Party shall also promptly inform the requesting Party of any circumstances which render impossible the carrying out of the action sought or are likely to delay it significantly.

Chapter V – Final provisions

Article 32 – Signature and entry into force

1 This Convention shall be open for signature by the member States of the Council of Europe and by non-member States which have participated in its elaboration. Such States may express their consent to be bound by:

- a signature without reservation as to ratification, acceptance or approval; or
- b signature subject to ratification, acceptance or approval, followed by ratification, acceptance or approval.

2 Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

3 This Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date on which fourteenth States have expressed their consent to be bound by the Convention in accordance with the provisions of paragraph 1. Any such State, which is not a member of the Group of States against Corruption (GRECO) at the time of ratification, shall automatically become a member on the date the Convention enters into force.

4 In respect of any signatory State which subsequently expresses its consent to be bound by it, the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of the expression of their consent to be bound by the Convention in accordance with the provisions of paragraph 1. Any signatory State, which is not a member of the Group of States against Corruption (GRECO) at the time of ratification, shall automatically become a member on the date the Convention enters into force in its respect.

Article 33 – Accession to the Convention

1 After the entry into force of this Convention, the Committee of Ministers of the Council of Europe, after consulting the Contracting States to the Convention, may invite the European Community as well as any State not a member of the Council and not having participated in its elaboration to accede to this Convention, by a decision taken by the majority provided for in Article 20d of the Statute of the Council of Europe and by the unanimous vote of the representatives of the Contracting States entitled to sit on the Committee of Ministers.

2 In respect of the European Community and any State acceding to it under paragraph 1 above, the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of deposit of the instrument of accession with the Secretary General of the Council of Europe. The European Community and any State acceding to this Convention shall automatically become a member of GRECO, if it is not already a member at the time of accession, on the date the Convention enters into force in its respect.

Article 34 – Territorial application

1 Any State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, specify the territory or territories to which this Convention shall apply.

2 Any Party may, at any later date, by a declaration addressed to the Secretary General of the Council of Europe, extend the application of this Convention to any other territory specified in the declaration. In respect of such territory the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of receipt of such declaration by the Secretary General.

3 Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn by a notification addressed to the Secretary General of the Council of Europe. The withdrawal shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of such notification by the Secretary General.

Article 35 – Relationship to other conventions and agreements

1 This Convention does not affect the rights and undertakings derived from international multilateral conventions concerning special matters.

2 The Parties to the Convention may conclude bilateral or multilateral agreements with one another on the matters dealt with in this Convention, for purposes of supplementing or strengthening its provisions or facilitating the application of the principles embodied in it.

3 If two or more Parties have already concluded an agreement or treaty in respect of a subject which is dealt with in this Convention or otherwise have established their relations in respect of that subject, they shall be entitled to apply that agreement or treaty or to regulate those relations accordingly, in lieu of the present Convention, if it facilitates international co-operation.

Article 36 – Declarations

Any State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, declare that it will establish as criminal offences the active and passive bribery of foreign public officials under Article 5, of officials of international organisations under Article 9 or of judges and officials of international courts under Article 11, only to the extent that the public official or judge acts or refrains from acting in breach of his duties.

Article 37 – Reservations

1 Any State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, reserve its right not to establish as a criminal offence under its domestic law, in part or in whole, the conduct referred to in Articles 4, 6 to 8, 10 and 12 or the passive bribery offences defined in Article 5.

2 Any State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession declare that it avails itself of the reservation provided for in Article 17, paragraph 2.

3 Any State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession declare that it may refuse mutual legal assistance under Article 26, paragraph 1, if the request concerns an offence which the requested Party considers a political offence.

4 No State may, by application of paragraphs 1, 2 and 3 of this article, enter reservations to more than five of the provisions mentioned thereon. No other reservation may be made. Reservations of the same nature with respect to Articles 4, 6 and 10 shall be considered as one reservation.

Article 38 – Validity and review of declarations and reservations

1 Declarations referred to in Article 36 and reservations referred to in Article 37 shall be valid for a period of three years from the day of the entry into force of this Convention in respect of the State concerned. However, such declarations and reservations may be renewed for periods of the same duration.

2 Twelve months before the date of expiry of the declaration or reservation, the Secretariat General of the Council of Europe shall give notice of that expiry to the State concerned. No later than three months before the expiry, the State shall notify the Secretary General that it is upholding, amending or withdrawing its declaration or reservation. In the absence of a notification by the State concerned, the Secretariat General shall inform that State that its declaration or reservation is considered to have been extended automatically for a period of six months. Failure by the State concerned to notify its intention to uphold or modify its declaration or reservation before the expiry of that period shall cause the declaration or reservation to lapse.

3 If a Party makes a declaration or a reservation in conformity with Articles 36 and 37, it shall provide, before its renewal or upon request, an explanation to GRECO, on the grounds justifying its continuance.

Article 39 – Amendments

1 Amendments to this Convention may be proposed by any Party, and shall be communicated by the Secretary General of the Council of Europe to the member States of the Council of Europe and to every non-member State which has acceded to, or has been invited to accede to, this Convention in accordance with the provisions of Article 33.

2 Any amendment proposed by a Party shall be communicated to the European Committee on Crime Problems (CDPC), which shall submit to the Committee of Ministers its opinion on that proposed amendment.

3 The Committee of Ministers shall consider the proposed amendment and the opinion submitted by the CDPC and, following consultation of the non-member States Parties to this Convention, may adopt the amendment.

4 The text of any amendment adopted by the Committee of Ministers in accordance with paragraph 3 of this article shall be forwarded to the Parties for acceptance.

5 Any amendment adopted in accordance with paragraph 3 of this article shall come into force on the thirtieth day after all Parties have informed the Secretary General of their acceptance thereof.

Article 40 – Settlement of disputes

1 The European Committee on Crime Problems of the Council of Europe shall be kept informed regarding the interpretation and application of this Convention.

2 In case of a dispute between Parties as to the interpretation or application of this Convention, they shall seek a settlement of the dispute through negotiation or any other peaceful means of their choice, including submission of the dispute to the European Committee on Crime Problems, to an arbitral tribunal whose decisions shall be binding upon the Parties, or to the International Court of Justice, as agreed upon by the Parties concerned.

Article 41 – Denunciation

1 Any Party may, at any time, denounce this Convention by means of a notification addressed to the Secretary General of the Council of Europe.

2 Such denunciation shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of the notification by the Secretary General.

Article 42 – Notification

The Secretary General of the Council of Europe shall notify the member States of the Council of Europe and any State which has acceded to this Convention of:

- a any signature;
- b the deposit of any instrument of ratification, acceptance, approval or accession;
- c any date of entry into force of this Convention in accordance with Articles 32 and 33;
- d any declaration or reservation made under Article 36 or Article 37;
- e any other act, notification or communication relating to this Convention.

In witness whereof the undersigned, being duly authorised thereto, have signed this Convention.

Done at Strasbourg, this 27th day of January 1999, in English and in French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe, to the non-member States which have participated in the elaboration of this Convention, and to any State invited to accede to it.

9.3.2. Civil Law Convention on Corruption (ETS 174)¹⁴⁴

Chapter I – Measures to be taken at national level

Article 1 – Purpose

Each Party shall provide in its internal law for effective remedies for persons who have suffered damage as a result of acts of corruption, to enable them to defend their rights and interests, including the possibility of obtaining compensation for damage.

¹⁴⁴. See www.coe.int/corruption.

Article 2 – Definition of corruption

For the purpose of this Convention, “corruption” means requesting, offering, giving or accepting, directly or indirectly, a bribe or any other undue advantage or prospect thereof, which distorts the proper performance of any duty or behaviour required of the recipient of the bribe, the undue advantage or the prospect thereof.

Article 3 – Compensation for damage

1 Each Party shall provide in its internal law for persons who have suffered damage as a result of corruption to have the right to initiate an action in order to obtain full compensation for such damage.

2 Such compensation may cover material damage, loss of profits and non-pecuniary loss.

Article 4 – Liability

1 Each Party shall provide in its internal law for the following conditions to be fulfilled in order for the damage to be compensated:

- i the defendant has committed or authorised the act of corruption, or failed to take reasonable steps to prevent the act of corruption;
- ii the plaintiff has suffered damage; and
- iii there is a causal link between the act of corruption and the damage.

2 Each Party shall provide in its internal law that, if several defendants are liable for damage for the same corrupt activity, they shall be jointly and severally liable.

Article 5 – State responsibility

Each Party shall provide in its internal law for appropriate procedures for persons who have suffered damage as a result of an act of corruption by its public officials in the exercise of their functions to claim for compensation from the State or, in the case of a non-state Party, from that Party’s appropriate authorities.

Article 6 – Contributory negligence

Each Party shall provide in its internal law for the compensation to be reduced or disallowed having regard to all the circumstances, if the plaintiff has by his or her own fault contributed to the damage or to its aggravation.

Article 7 – Limitation periods

1 Each Party shall provide in its internal law for proceedings for the recovery of damages to be subject to a limitation period of not less than three years from the day the person who has suffered damage became aware or should reasonably have been aware, that damage has occurred or that an act of corruption has taken place, and of the identity of the responsible person. However, such proceedings shall not be commenced after the end of a limitation period of not less than ten years from the date of the act of corruption.

2 The laws of the Parties regulating suspension or interruption of limitation periods shall, if appropriate, apply to the periods prescribed in paragraph 1.

Article 8 – Validity of contracts

1 Each Party shall provide in its internal law for any contract or clause of a contract providing for corruption to be null and void.

2 Each Party shall provide in its internal law for the possibility for all parties to a contract whose consent has been undermined by an act of corruption to be able to apply to the court for the contract to be declared void, notwithstanding their right to claim for damages.

Article 9 – Protection of employees

Each Party shall provide in its internal law for appropriate protection against any unjustified sanction for employees who have reasonable grounds to suspect corruption and who report in good faith their suspicion to responsible persons or authorities.

Article 10 – Accounts and audits

1 Each Party shall, in its internal law, take any necessary measures for the annual accounts of companies to be drawn up clearly and give a true and fair view of the company's financial position.

2 With a view to preventing acts of corruption, each Party shall provide in its internal law for auditors to confirm that the annual accounts present a true and fair view of the company's financial position.

Article 11 – Acquisition of evidence

Each Party shall provide in its internal law for effective procedures for the acquisition of evidence in civil proceedings arising from an act of corruption.

Article 12 – Interim measures

Each Party shall provide in its internal law for such court orders as are necessary to preserve the rights and interests of the parties during civil proceedings arising from an act of corruption.

Chapter II – International co-operation and monitoring of implementation

Article 13 – International co-operation

The Parties shall co-operate effectively in matters relating to civil proceedings in cases of corruption, especially concerning the service of documents, obtaining evidence abroad, jurisdiction, recognition and enforcement of foreign judgements and litigation costs, in accordance with the provisions of relevant international instruments on international co-operation in civil and commercial matters to which they are Party, as well as with their internal law.

Article 14 – Monitoring

The Group of States against Corruption (GRECO) shall monitor the implementation of this Convention by the Parties.

Chapter III – Final clauses

Article 15 – Signature and entry into force

1 This Convention shall be open for signature by the member States of the Council of Europe, by non-member States that have participated in its elaboration and by the European Community.

2 This Convention is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

3 This Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date on which fourteen signatories have expressed their consent to be bound by the Convention in accordance with the provisions of paragraph 2. Any such signatory, which is not a member of the Group of States against Corruption (GRECO) at the time of ratification, acceptance or approval, shall automatically become a member on the date the Convention enters into force.

4 In respect of any signatory which subsequently expresses its consent to be bound by it, the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of the expression of their consent to be bound by the Convention in accordance with the provisions of paragraph 2. Any signatory, which is not a member of the Group of States against Corruption (GRECO) at the time of ratification, acceptance or approval, shall automatically become a member on the date the Convention enters into force in its respect.

5 Any particular modalities for the participation of the European Community in the Group of States against Corruption (GRECO) shall be determined as far as necessary by a common agreement with the European Community.

Article 16 – Accession to the Convention

1 After the entry into force of this Convention, the Committee of Ministers of the Council of Europe, after consulting the Parties to the Convention, may invite any State not a member of the Council and not having participated in its elaboration to accede to this Convention, by a decision taken by the majority provided for in Article 20.d. of the Statute of the Council of Europe and by the unanimous vote of the representatives of the Parties entitled to sit on the Committee.

2 In respect of any State acceding to it, the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of deposit of the instrument of accession with the Secretary General of the Council of Europe. Any State acceding to this Convention shall automatically become a member of the GRECO, if it is not already a member at the time of accession, on the date the Convention enters into force in its respect.

Article 17 – Reservations

No reservation may be made in respect of any provision of this Convention.

Article 18 – Territorial application

1 Any State or the European Community may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, specify the territory or territories to which this Convention shall apply.

2 Any Party may, at any later date, by a declaration addressed to the Secretary General of the Council of Europe, extend the application of this Convention to any other territory specified in the declaration. In respect of such territory the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of receipt of such declaration by the Secretary General.

3 Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn by a notification addressed to the Secretary General. The withdrawal shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of such notification by the Secretary General.

Article 19 – Relationship to other instruments and agreements

1 This Convention does not affect the rights and undertakings derived from international multilateral instruments concerning special matters.

2 The Parties to the Convention may conclude bilateral or multilateral agreements with one another on the matters dealt with in this Convention, for purposes of supplementing or strengthening its provisions or facilitating the application of the principles embodied in it or, without prejudice to the objectives and principles of this Convention, submit themselves to rules on this matter within the framework of a special system which is binding at the moment of the opening for signature of this Convention.

3 If two or more Parties have already concluded an agreement or treaty in respect of a subject which is dealt with in this Convention or otherwise have established their relations in respect of that subject, they shall be entitled to apply that agreement or treaty or to regulate these relations accordingly, in lieu of the present Convention.

Article 20 – Amendments

1 Amendments to this Convention may be proposed by any Party, and shall be communicated by the Secretary General of the Council of Europe to the member States of the Council of Europe, to the non member States which have participated in the elaboration of this Convention, to the European Community, as well as to any State which has acceded to or has been invited to accede to this Convention in accordance with the provisions of Article 16.

2 Any amendment proposed by a Party shall be communicated to the European Committee on Legal Co-operation (CDCJ) which shall submit to the Committee of Ministers its opinion on that proposed amendment.

3 The Committee of Ministers shall consider the proposed amendment and the opinion submitted by the European Committee on Legal Co-operation (CDCJ) and,

following consultation of the Parties to the Convention which are not members of the Council of Europe, may adopt the amendment.

4 The text of any amendment adopted by the Committee of Ministers in accordance with paragraph 3 of this article shall be forwarded to the Parties for acceptance.

5 Any amendment adopted in accordance with paragraph 3 of this article shall come into force on the thirtieth day after all Parties have informed the Secretary General of their acceptance thereof.

Article 21 – Settlement of disputes

1 The European Committee on Legal Co-operation (CDCJ) of the Council of Europe shall be kept informed regarding the interpretation and application of this Convention.

2 In case of a dispute between Parties as to the interpretation or application of this Convention, they shall seek a settlement of the dispute through negotiation or any other peaceful means of their choice, including submission of the dispute to the European Committee on Legal Co-operation (CDCJ), to an arbitral tribunal whose decisions shall be binding upon the Parties, or to the International Court of Justice, as agreed upon by the Parties concerned.

Article 22 – Denunciation

1 Any Party may, at any time, denounce this Convention by means of a notification addressed to the Secretary General of the Council of Europe.

2 Such denunciation shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of the notification by the Secretary General.

Article 23 – Notification

The Secretary General of the Council of Europe shall notify the member States of the Council and any other signatories and Parties to this Convention of:

- a any signature;
- b the deposit of any instrument of ratification, acceptance, approval or accession;
- c any date of entry into force of this Convention, in accordance with Articles 15 and 16;
- d any other act, notification or communication relating to this Convention.

In witness whereof the undersigned, being duly authorised thereto, have signed this Convention.

Done at Strasbourg, the 4th day of November 1999, in English and in French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe, to the non-member States which have participated in the elaboration of this Convention, to the European Community, as well as to any State invited to accede to it.

9.3.3. Common Rules on Political Finance

Council of Europe Committee of Ministers

Recommendation Rec(2003)4 of the Committee of Ministers to member states on common rules against corruption in the funding of political parties and electoral campaigns¹⁴⁵

(Adopted by the Committee of Ministers on 8 April 2003 at the 835th meeting of the Ministers' Deputies)

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Considering that the aim of the Council of Europe is to achieve a greater unity between its members;

Considering that political parties are a fundamental element of the democratic systems of states and are an essential tool of expression of the political will of citizens;

Considering that political parties and electoral campaigns funding in all states should be subject to standards in order to prevent and fight against the phenomenon of corruption;

Convinced that corruption represents a serious threat to the rule of law, democracy, human rights, equity and social justice, that it hinders economic development, endangers the stability of democratic institutions and undermines the moral foundations of society;

Having regard to the recommendations adopted at the 19th and 21st Conferences of European Ministers of Justice (Valetta, 1994 and Prague, 1997 respectively);

Having regard to the Programme of Action against Corruption adopted by the Committee of Ministers in 1996;

In accordance with the Final Declaration and the Plan of Action adopted by the Heads of State and Government of the Council of Europe at their Second Summit, held in Strasbourg on 10 and 11 October 1997;

Having regard to Resolution (97) 24 on the twenty guiding principles for the fight against corruption, adopted by the Committee of Ministers on 6 November 1997 and in particular Principle 15, which promotes rules for the financing of political parties and election campaigns which deter corruption;

Having regard to Recommendation 1516 (2001) on the financing of political parties, adopted on 22 May 2001 by the Council of Europe's Parliamentary Assembly;

In the light of the conclusions of the 3rd European Conference of Specialised Services in the Fight against Corruption on the subject of Trading in Influence and Illegal Financing of Political Parties held in Madrid from 28 to 30 October 1998;

Recalling in this respect the importance of the participation of non-member states in the Council of Europe's activities against corruption and welcoming their valuable contribution to the implementation of the Programme of Action against Corruption;

145. See www.coe.int/corruption.

Having regard to Resolution (98) 7 authorising the Partial and Enlarged Agreement establishing the Group of States against Corruption (GRECO) and Resolution (99) 5 establishing the Group of States against Corruption (GRECO), which aims at improving the capacity of its members to fight corruption by following up compliance with their undertakings in this field;

Convinced that raising public awareness on the issues of prevention and fight against corruption in the field of funding of political parties is essential to the good functioning of democratic institutions,

Recommends that the governments of member states adopt, in their national legal systems, rules against corruption in the funding of political parties and electoral campaigns which are inspired by the common rules reproduced in the appendix to this recommendation, – in so far as states do not already have particular laws, procedures or systems that provide effective and well-functioning alternatives, and instructs the “Group of States against Corruption – GRECO” to monitor the implementation of this recommendation.

Appendix

Common rules against corruption in the funding of political parties and electoral campaigns

I. External sources of funding of political parties

Article 1 – Public and private support to political parties

The state and its citizens are both entitled to support political parties.

The state should provide support to political parties. State support should be limited to reasonable contributions. State support may be financial.

Objective, fair and reasonable criteria should be applied regarding the distribution of state support.

States should ensure that any support from the state and/or citizens does not interfere with the independence of political parties.

Article 2 – Definition of donation to a political party

Donation means any deliberate act to bestow advantage, economic or otherwise, on a political party.

Article 3 – General principles on donations

a. Measures taken by states governing donations to political parties should provide specific rules to:

- ▶ avoid conflicts of interests;
- ▶ ensure transparency of donations and avoid secret donations;
- ▶ avoid prejudice to the activities of political parties;
- ▶ ensure the independence of political parties.

b. States should:

- i. provide that donations to political parties are made public, in particular, donations exceeding a fixed ceiling;
- ii. consider the possibility of introducing rules limiting the value of donations to political parties;
- iii. adopt measures to prevent established ceilings from being circumvented.

Article 4 – Tax deductibility of donations

Fiscal legislation may allow tax deductibility of donations to political parties. Such tax deductibility should be limited.

Article 5 – Donations by legal entities

a. In addition to the general principles on donations, states should provide:

- i. that donations from legal entities to political parties are registered in the books and accounts of the legal entities; and
- ii. that shareholders or any other individual member of the legal entity be informed of donations.

b. States should take measures aimed at limiting, prohibiting or otherwise strictly regulating donations from legal entities which provide goods or services for any public administration.

c. States should prohibit legal entities under the control of the state or of other public authorities from making donations to political parties.

Article 6 – Donations to entities connected with a political party

Rules concerning donations to political parties, with the exception of those concerning tax deductibility referred to in Article 4, should also apply, as appropriate, to all entities which are related, directly or indirectly, to a political party or are otherwise under the control of a political party.

Article 7 – Donations from foreign donors

States should specifically limit, prohibit or otherwise regulate donations from foreign donors.

II. Sources of funding of candidates for elections and elected officials

Article 8 – Application of funding rules to candidates for elections and elected representatives

The rules regarding funding of political parties should apply *mutatis mutandis* to:

- ▶ the funding of electoral campaigns of candidates for elections;
- ▶ the funding of political activities of elected representatives.

III. Electoral campaign expenditure

Article 9 – Limits on expenditure

States should consider adopting measures to prevent excessive funding needs of political parties, such as, establishing limits on expenditure on electoral campaigns.

Article 10 – Records of expenditure

States should require particular records to be kept of all expenditure, direct and indirect, on electoral campaigns in respect of each political party, each list of candidates and each candidate.

IV. Transparency

Article 11 – Accounts

States should require political parties and the entities connected with political parties mentioned in Article 6 to keep proper books and accounts. The accounts of political parties should be consolidated to include, as appropriate, the accounts of the entities mentioned in Article 6.

Article 12 – Records of donations

- a. States should require the accounts of a political party to specify all donations received by the party, including the nature and value of each donation.
- b. In case of donations over a certain value, donors should be identified in the records.

Article 13 – Obligation to present and make public accounts

- a. States should require political parties to present the accounts referred to in Article 11 regularly, and at least annually, to the independent authority referred to in Article 14.
- b. States should require political parties regularly, and at least annually, to make public the accounts referred to in Article 11 or as a minimum a summary of those accounts, including the information required in Article 10, as appropriate, and in Article 12.

V. Supervision

Article 14 – Independent monitoring

- a. States should provide for independent monitoring in respect of the funding of political parties and electoral campaigns.
- b. The independent monitoring should include supervision over the accounts of political parties and the expenses involved in election campaigns as well as their presentation and publication.

Article 15 – Specialised personnel

States should promote the specialisation of the judiciary, police or other personnel in the fight against illegal funding of political parties and electoral campaigns.

VI. Sanctions

Article 16 – Sanctions

States should require the infringement of rules concerning the funding of political parties and electoral campaigns to be subject to effective, proportionate and dissuasive sanctions.

9.3.4. Model Code of Conduct for Public Officials¹⁴⁶

Interpretation and application

Article 1

1. This Code applies to all public officials.
2. For the purpose of this Code “public official” means a person employed by a public authority.
3. The provisions of this Code may also be applied to persons employed by private organisations performing public services.
4. The provisions of this Code do not apply to publicly elected representatives, members of the government and holders of judicial office.

Article 2

1. On the coming into effect of this Code, the public administration has a duty to inform public officials about its provisions.
2. This Code shall form part of the provisions governing the employment of public officials from the moment they certify that they have been informed about it.
3. Every public official has the duty to take all necessary action to comply with the provisions of this Code.

Article 3 – Object of the Code

The purpose of this Code is to specify the standards of integrity and conduct to be observed by public officials, to help them meet those standards and to inform the public of the conduct it is entitled to expect of public officials.

General principles

Article 4

1. The public official should carry out his or her duties in accordance with the law, and with those lawful instructions and ethical standards which relate to his or her functions.
2. The public official should act in a politically neutral manner and should not attempt to frustrate the lawful policies, decisions or actions of the public authorities.

Article 5

1. The public official has the duty to serve loyally the lawfully constituted national, local or regional authority.
2. The public official is expected to be honest, impartial and efficient and to perform his or her duties to the best of his or her ability with skill, fairness and understanding, having regard only for the public interest and the relevant circumstances of the case.

¹⁴⁶. Appendix to Recommendation No. R (2000) 10, at www.coe.int/corruption.

3. The public official should be courteous both in his or her relations with the citizens he or she serves, as well as in his or her relations with his or her superiors, colleagues and subordinate staff.

Article 6

In the performance of his or her duties, the public official should not act arbitrarily to the detriment of any person, group or body and should have due regard for the rights, duties and proper interests of all others.

Article 7

In decision making the public official should act lawfully and exercise his or her discretionary powers impartially, taking into account only relevant matters.

Article 8

1. The public official should not allow his or her private interest to conflict with his or her public position. It is his or her responsibility to avoid such conflicts of interest, whether real, potential or apparent.

2. The public official should never take undue advantage of his or her position for his or her private interest.

Article 9

The public official has a duty always to conduct himself or herself in a way that the public's confidence and trust in the integrity, impartiality and effectiveness of the public service are preserved and enhanced.

Article 10

The public official is accountable to his or her immediate hierarchical superior unless otherwise prescribed by law.

Article 11

Having due regard for the right of access to official information, the public official has a duty to treat appropriately, with all necessary confidentiality, all information and documents acquired by him or her in the course of, or as a result of, his or her employment.

Article 12 – Reporting

1. The public official who believes he or she is being required to act in a way which is unlawful, improper or unethical, which involves maladministration, or which is otherwise inconsistent with this Code, should report the matter in accordance with the law.

2. The public official should, in accordance with the law, report to the competent authorities if he or she becomes aware of breaches of this Code by other public officials.

3. The public official who has reported any of the above in accordance with the law and believes that the response does not meet his or her concern may report the matter in writing to the relevant head of the public service.

4. Where a matter cannot be resolved by the procedures and appeals set out in the legislation on the public service on a basis acceptable to the public official concerned, the public official should carry out the lawful instructions he or she has been given.

5. The public official should report to the competent authorities any evidence, allegation or suspicion of unlawful or criminal activity relating to the public service coming to his or her knowledge in the course of, or arising from, his or her employment. The investigation of the reported facts shall be carried out by the competent authorities.

6. The public administration should ensure that no prejudice is caused to a public official who reports any of the above on reasonable grounds and in good faith.

Article 13 – Conflict of interest

1. Conflict of interest arises from a situation in which the public official has a private interest which is such as to influence, or appear to influence, the impartial and objective performance of his or her official duties.

2. The public official's private interest includes any advantage to himself or herself, to his or her family, close relatives, friends and persons or organisations with whom he or she has or has had business or political relations. It includes also any liability, whether financial or civil, relating thereto.

3. Since the public official is usually the only person who knows whether he or she is in that situation, the public official has a personal responsibility to:

- ▶ be alert to any actual or potential conflict of interest;
- ▶ take steps to avoid such conflict;
- ▶ disclose to his or her supervisor any such conflict as soon as he or she becomes aware of it;
- ▶ comply with any final decision to withdraw from the situation or to divest himself or herself of the advantage causing the conflict.

4. Whenever required to do so, the public official should declare whether or not he or she has a conflict of interest.

5. Any conflict of interest declared by a candidate to the public service or to a new post in the public service should be resolved before appointment.

Article 14 – Declaration of interests

The public official who occupies a position in which his or her personal or private interests are likely to be affected by his or her official duties should, as lawfully required, declare upon appointment, at regular intervals thereafter and whenever any changes occur the nature and extent of those interests.

Article 15 – Incompatible outside interests

1. The public official should not engage in any activity or transaction or acquire any position or function, whether paid or unpaid, that is incompatible with or detracts from the proper performance of his or her duties as a public official. Where it is not clear whether an activity is compatible, he or she should seek advice from his or her superior.

2. Subject to the provisions of the law, the public official should be required to notify and seek the approval of his or her public service employer to carry out certain activities, whether paid or unpaid, or to accept certain positions or functions outside his or her public service employment.

3. The public official should comply with any lawful requirement to declare membership of, or association with, organisations that could detract from his or her position or proper performance of his or her duties as a public official.

Article 16 – Political or public activity

1. Subject to respect for fundamental and constitutional rights, the public official should take care that none of his or her political activities or involvement on political or public debates impairs the confidence of the public and his or her employers in his or her ability to perform his or her duties impartially and loyally.

2. In the exercise of his or her duties, the public official should not allow himself or herself to be used for partisan political purposes.

3. The public official should comply with any restrictions on political activity lawfully imposed on certain categories of public officials by reason of their position or the nature of their duties.

Article 17 – Protection of the public official's privacy

All necessary steps should be taken to ensure that the public official's privacy is appropriately respected; accordingly, declarations provided for in this Code are to be kept confidential unless otherwise provided for by law.

Article 18 – Gifts

1. The public official should not demand or accept gifts, favours, hospitality or any other benefit for himself or his or her family, close relatives and friends, or persons or organisations with whom he or she has or has had business or political relations which may influence or appear to influence the impartiality with which he or she carries out his or her duties or may be or appear to be a reward relating to his or her duties. This does not include conventional hospitality or minor gifts.

2. Where the public official is in doubt whether he or she can accept a gift or hospitality, he or she should seek the advice of his or her superior.

Article 19 – Reaction to improper offers

If the public official is offered an undue advantage he or she should take the following steps to protect himself or herself:

- ▶ refuse the undue advantage; there is no need to accept it for use as evidence;
- ▶ try to identify the person who made the offer;
- ▶ avoid lengthy contacts, but knowing the reason for the offer could be useful in evidence;
- ▶ if the gift cannot be refused or returned to the sender, it should be preserved, but handled as little as possible;
- ▶ obtain witnesses if possible, such as colleagues working nearby;

- ▶ prepare as soon as possible a written record of the attempt, preferably in an official notebook;
- ▶ report the attempt as soon as possible to his or her supervisor or directly to the appropriate law enforcement authority;
- ▶ continue to work normally, particularly on the matter in relation to which the undue advantage was offered.

Article 20 – Susceptibility to influence by others

The public official should not allow himself or herself to be put, or appear to be put, in a position of obligation to return a favour to any person or body. Nor should his or her conduct in his or her official capacity or in his or her private life make him or her susceptible to the improper influence of others.

Article 21 – Misuse of official position

1. The public official should not offer or give any advantage in any way connected with his or her position as a public official, unless lawfully authorised to do so.
2. The public official should not seek to influence for private purposes any person or body, including other public officials, by using his or her official position or by offering them personal advantages.

Article 22 – Information held by public authorities

1. Having regard to the framework provided by domestic law for access to information held by public authorities, a public official should only disclose information in accordance with the rules and requirements applying to the authority by which he or she is employed.
2. The public official should take appropriate steps to protect the security and confidentiality of information for which he or she is responsible or of which he or she becomes aware.
3. The public official should not seek access to information which it is inappropriate for him or her to have. The public official should not make improper use of information which he or she may acquire in the course of, or arising from, his or her employment.
4. Equally the public official has a duty not to withhold official information that should properly be released and a duty not to provide information which he or she knows or has reasonable ground to believe is false or misleading.

Article 23 – Public and official resources

In the exercise of his or her discretionary powers, the public official should ensure that on the one hand the staff, and on the other hand the public property, facilities, services and financial resources with which he or she is entrusted are managed and used effectively, efficiently and economically. They should not be used for private purposes except when permission is lawfully given.

Article 24 – Integrity checking

1. The public official who has responsibilities for recruitment, promotion or posting should ensure that appropriate checks on the integrity of the candidate are carried out as lawfully required.

2. If the result of any such check makes him or her uncertain as to how to proceed, he or she should seek appropriate advice.

Article 25 – Supervisory accountability

1. The public official who supervises or manages other public officials should do so in accordance with the policies and purposes of the public authority for which he or she works. He or she should be answerable for acts or omissions by his or her staff which are not consistent with those policies and purposes if he or she has not taken those reasonable steps required from a person in his or her position to prevent such acts or omissions.

2. The public official who supervises or manages other public officials should take reasonable steps to prevent corruption by his or her staff in relation to his or her office. These steps may include emphasising and enforcing rules and regulations, providing appropriate education or training, being alert to signs of financial or other difficulties of his or her staff, and providing by his or her personal conduct an example of propriety and integrity.

Article 26 – Leaving the public service

1. The public official should not take improper advantage of his or her public office to obtain the opportunity of employment outside the public service.

2. The public official should not allow the prospect of other employment to create for him or her an actual, potential or apparent conflict of interest. He or she should immediately disclose to his or her supervisor any concrete offer of employment that could create a conflict of interest. He or she should also disclose to his or her superior his or her acceptance of any offer of employment.

3. In accordance with the law, for an appropriate period of time, the former public official should not act for any person or body in respect of any matter on which he or she acted for, or advised, the public service and which would result in a particular benefit to that person or body.

4. The former public official should not use or disclose confidential information acquired by him or her as a public official unless lawfully authorised to do so.

5. The public official should comply with any lawful rules that apply to him or her regarding the acceptance of appointments on leaving the public service.

Article 27 – Dealing with former public officials

The public official should not give preferential treatment or privileged access to the public service to former public officials.

Article 28 – Observance of this Code and sanctions

1. This Code is issued under the authority of the minister or of the head of the public service. The public official has a duty to conduct himself or herself in accordance with this Code and therefore to keep himself or herself informed of its provisions and any amendments. He or she should seek advice from an appropriate source when he or she is unsure of how to proceed.

2. Subject to Article 2, paragraph 2, the provisions of this Code form part of the terms of employment of the public official. Breach of them may result in disciplinary action.
3. The public official who negotiates terms of employment should include in them a provision to the effect that this Code is to be observed and forms part of such terms.
4. The public official who supervises or manages other public officials has the responsibility to see that they observe this Code and to take or propose appropriate disciplinary action for breaches of it.
5. The public administration will regularly review the provisions of this Code.

9.3.5. Twenty Guiding Principles for the Fight against Corruption¹⁴⁷

[Public awareness and ethics]

1. to take effective measures for the prevention of corruption and, in this connection, to raise public awareness and promoting ethical behaviour;

[Criminal law]

2. to ensure co-ordinated criminalisation of national and international corruption;

3. to ensure that those in charge of the prevention, investigation, prosecution and adjudication of corruption offences enjoy the independence and autonomy appropriate to their functions, are free from improper influence and have effective means for gathering evidence, protecting the persons who help the authorities in combating corruption and preserving the confidentiality of investigations;

4. to provide appropriate measures for the seizure and deprivation of the proceeds of corruption offences;

5. to provide appropriate measures to prevent legal persons being used to shield corruption offences;

6. to limit immunity from investigation, prosecution or adjudication of corruption offences to the degree necessary in a democratic society;

[Specialised bodies]

7. to promote the specialisation of persons or bodies in charge of fighting corruption and to provide them with appropriate means and training to perform their tasks;

[Tax sector]

8. to ensure that the fiscal legislation and the authorities in charge of implementing it contribute to combating corruption in an effective and co-ordinated manner, in particular by denying tax deductibility, under the law or in practice, for bribes or other expenses linked to corruption offences;

147. Resolution (97) 24 adopted at the 101st session of the Committee of Ministers.

[Public administration]

9. to ensure that the organisation, functioning and decision-making processes of public administrations take into account the need to combat corruption, in particular by ensuring as much transparency as is consistent with the need to achieve effectiveness;

10. to ensure that the rules relating to the rights and duties of public officials take into account the requirements of the fight against corruption and provide for appropriate and effective disciplinary measures; promote further specification of the behaviour expected from public officials by appropriate means, such as codes of conduct;

11. to ensure that appropriate auditing procedures apply to the activities of public administration and the public sector;

12. to endorse the role that audit procedures can play in preventing and detecting corruption outside public administrations;

13. to ensure that the system of public liability or accountability takes account of the consequences of corrupt behaviour of public officials;

14. to adopt appropriately transparent procedures for public procurement that promote fair competition and deter corruptors;

[Political sector]

15. to encourage the adoption, by elected representatives, of codes of conduct and promote rules for the financing of political parties and election campaigns which deter corruption;

16. to ensure that the media have freedom to receive and impart information on corruption matters, subject only to limitations or restrictions which are necessary in a democratic society;

17. to ensure that civil law takes into account the need to fight corruption and in particular provides for effective remedies for those whose rights and interests are affected by corruption;

[Research]

18. to encourage research on corruption;

[Organised crime and money laundering]

19. to ensure that in every aspect of the fight against corruption, the possible connections with organised crime and money laundering are taken into account;

[International co-operation]

20. to develop to the widest extent possible international co-operation in all areas of the fight against corruption.

“In countries where corruption is widespread, people tend to quickly attribute anything that goes wrong to corruption. Definitions here can help to distinguish corruption from, for example, mismanagement, or other forms of economic crime and administrative violations.”

The Economic Crime and Cooperation Unit (ECCU) at the Directorate General Human Rights and Rule of Law of the Council of Europe is responsible for designing and implementing technical assistance and co-operation programmes aimed at facilitating and supporting anti-corruption, good governance and anti-money laundering reforms in the Council of Europe members states, as well as in some non-member states.

www.coe.int

The Council of Europe is the continent's leading human rights organisation. It comprises 47 member states, 28 of which are members of the European Union. All Council of Europe member states have signed up to the European Convention on Human Rights, a treaty designed to protect human rights, democracy and the rule of law. The European Court of Human Rights oversees the implementation of the Convention in the member states.

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE