National Anti-corruption Center of the Republic of Moldova

Customs Service of the Republic of Moldova

Ministry of Internal Affairs of the Republic of Moldova

Organization for Security and Cooperation in Europe

EU Border Assistance Mission to Moldova and Ukraine

State Border Guard Service Of Ukraine

Ministry of Revenue and Duties, Customs Department

PREVENTION AND COMBATING CORRUPTION

MANUAL

for conducting the training course in the educational establishments of the Border Guard and Customs agencies of the Republic of Moldova and Ukraine

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The manual is developed in the framework of the implementation of the Moldova's and Ukraine's Action Plan on Visa Liberalization, with support of the EU Border Assistance Mission to Moldova and Ukraine and OSCE. It's purpose is to assist trainers in conducting lessons in order to train personnel of all the units of the Border Police Department of the Ministry of Home Affairs of the Republic of Moldova, the State Customs Service of the Republic of Moldova, the State Customs Service and the State Border Guard Service of Ukraine and to form the knowledge system on prevention and combating corruption.

Contents

PROGRAM of the training course "PREVENTION AND COMBATING CORRUPTION"

I. GENERAL PROVISIONS

1. **The role and the place of the course** is determined by the need to develop anti-corruption knowledge (skills) of the personnel of different units of the Border Police Department of the Ministry of Internal Affairs of the Republic of Moldova, the State Customs Service of the Republic of Moldova, the Ministry of Incomes and Fees of Ukraine and the State Border Guard Service of Ukraine.

2. **The objective of the course** is to train the respective agencies personnel, capable of introducing modern approaches to prevention and combating corruption. As a result of the training, students will exercise the standards of professional ethics and principles of good governance in their service activity.

During the course, trainees will become familiar with:

- the basic definitions of "corruption" as a social phenomenon,
- the history of corruption and the development of anti-corruption legislation,
- preconditions and consequences of corruption,
- the main anti-corruption standards, practices and approaches, used to effectively combat and prevent corruption,
- formation of the system of knowledge about the national anti-corruption legislation, in-house regulations, the role and the place of the State Border Guard and Customs Services among the bodies that implement measures to prevent and combat corruption,
- acts of corruption, their characteristic features, the classification criteria and legal liability for committing them,
- principles of good governance.

II. ORGANIZATIONAL ISSUES

1. The training course is conducted in accordance with the terms and plans approved by the administrations of the respective services.
2. The training course is taught in the higher educational establishments of the respective services for 5 days (15 lessons). The day of training lasts 6 hours, a lesson – 90 minutes.
3. **Training providers:** respective services.
4. **The number of trainees in one group** should not exceed 18 people.
5. **Logistical support of the training course:** flipchart, plastic board, markers, laptop, multimedia projector, screen, multimedia presentations, test tasks, workshops, instructional videos.

III. METHODOLOGICAL RECOMMENDATIONS

1. Teaching methods and techniques should contribute to achieving the final course objectives.
2. During the lessons the trainees should receive theoretical as well as practical training. Within the framework of the training course the following lesson types should be used: interactive lectures, workshops and debates. The basic suggested principle of training is: "what you hear – you forget, what you see – you remember, what you do – you know how." The practical orientation of the training is provided by solution of situational and test problems, practical exercises, etc., developed by the trainers and partially included in this manual. At some lessons videorecords will be made and discussed.
3. During the lessons the trainees work in groups and individually.

4. In the end of the training the trainees are interviewed and fill in a questionnaire in order to assess the course. The assessment system is worked out by the trainer.
5. Materials used in the classroom: multimedia presentations, training videos, handouts with tasks and tests for the trainees, a video camera.
6. Classrooms to conduct classes with groups and subgroups.

IV. TRAINEE'S COMPETENCE SPECIFICATION

NAME OF COMPETENCE
DEFINITION OF COMPETENCE
DESCRIPTION OF COMPETENCE AND PROFICIENCY LEVEL

Team building
Formation, integration and organizing team work

A trainee builds a team, supports favorable moral and psychological climate among the staff; encourages staff to open dialogue; creates and maintains corporate spirit and harmonious relations in the team.

Striving for results

Striving for goal achievement in spite of difficulties

A trainee clearly and distinctly defines goals; directs his activities and the personnel activities to achieving results despite the difficulties; while performing the duties he seeks to use in full his potential and the potential of his subordinates.

Flexibility of thinking
Responding to changing circumstances

A trainee promptly responds to changing circumstances; skillfully uses management methods and ways of tasks performing in accordance with the situation; finds unconventional ways of problem solving, considering the multiplicity of solutions; controls changes.

Identification with the organization

Knowledge of the organization and active formation of its positive image.

Combining personal professional goals with the purpose and strategy of the organization

A trainee recognizes the purpose of the organization, identifies his own goals with those of the organization and supports its policy; adheres to the established principles and standards; actively creates the positive image of the organization; introduces the principle – the interests of one person or a group of employees should not prevail over the interests of the organization.

Management

Administrative activity, planning, organization and monitoring of the activities

A trainee efficiently organizes his work and the work of the staff; applies modern managerial styles; creates effective action plans, which are modified depending on the situation; integrates and mobilizes staff for cooperation; timely controls the terms and quality of the tasks performance.

Sociability

Accurate and clear presentation of information, understanding and acceptance of others, openness in dealing with people

A trainee organizes and conducts office meetings, meetings and talks; expresses his thoughts concisely and clearly; practices effective communication techniques; follows his body language (postures, gestures, intonations, etc.), doesn't send conflicting signals; develops the ability to listen, motivates staff to open communication, improves feedback.

Motivation
Recognizing the importance of the staff.

Individual motivation and encouragement of the staff to carry out tasks

A trainee applies modern motivation theories; appreciates individual contribution of every staff member to achieving the objectives; in relations with the staff balances praise and criticism; the motivation method is applied in accordance with the individual needs of the staff; he sets tasks having regard to the interests and skills of the staff.

Managerial activity

Ensuring the tasks performance by using the resources of the organization, coordination of the staff activity

A trainee takes the responsibility for the distribution of the organization resources; distributes powers and organizes a rational managerial structure; coordinates and organizes interaction and cooperation

Planning

Defining goals and ways of their achievement

A trainee is responsible for strategic planning and implementation of strategic plans; defines the steps of goals achievement and terms; develops realistic action plans that take into account all the factors and the influence of the environment.

Decision-making
Taking managerial decisions in accordance with the situation

A trainee takes decisions in accordance with the situation; is open-minded and able to assess the problem and select a suitable solution from available alternatives; takes responsibility for the consequences of decisions, fosters a sense of responsibility among the personnel.
Development and assessment
Assessment of the personnel competence, planning and ensuring their self-development

A trainee organizes staff training, defines the professional level of the personnel; encourages professional growth; he is actively engaged in self-development, uses the knowledge and skills of the staff, masters innovative managerial techniques and encourages subordinates to this.

V. TIME DISTRIBUTION

The trainer distributes the time with consideration for the specific course objectives and the audience. According to the developers calculations this manual can fully provide the anti-corruption training course in the amount of 30 hours of lectures and 10 hours of practical trainings conducted in higher educational establishments of the respective services with full-time students.

VI. TRAINING PROGRAM

1. Module
I. CORRUPTION OVERVIEW

2. Theme
1. Background and genesis of corruption
3. Aim

As a result of the training, the trainees become familiar with the basic definitions of corruption as a social phenomenon, with the history of corruption and the development of anti-corruption legislation

4. Discussion points

1.1. Definition of corruption

1.2. Historical review of corruption

5. Specific expected results

5.1. Skills development

A trainee defines and explains the essence of corruption; distinguishes characteristic features of corruption; provides an overall assessment of corruption as a social phenomenon; applies his knowledge in the daily activities; identifies corruption among other forms of deviant behavior

5.2. Knowledge development

A trainee connects etymology of the term “corruption” with the phenomenon of corruption; analyzes manifestation of corruption in different historical eras; finds connection between the development of the phenomenon of corruption and anti-corruption legislation; analyzes the relationship between efficiency and the need for anti-corruption legislation in different historical periods; considers development of anti-corruption legislation

5.3. Increase of information awareness

A trainee reflects on corruption and thinks critically; shapes his outlook on the problems of modern society; realizes the negative impact of corruption on the development of the state and society as a whole

6. Teaching methods

Discussion, group work, simulations, learning by example, situational analysis, solution of practical tasks, lecture

7. Teaching materials and logistical support

Multimedia presentations, handouts, worksheets for small groups / dilemmas, etc.

Laptop, projector, CDs, flipchart, handouts

8. Evaluation method

Group work, discussions

9. Bibliography

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2. Theme

2. PRECONDITIONS AND CONSEQUENCES OF CORRUTION

3. Aim

As a result of the training, trainees become familiar with preconditions and consequences of corruption

4. Discussion points
2.1. Aspects of corruption
2.2. Causes and preconditions of corruption
2.3. Damage caused by corruption and its consequences

5. Specific expected results
5.1. Skills development

A trainee specifies and categorizes preconditions and consequences of corruption; analyzes connection between preconditions and consequences of corruption; identifies possible damage caused by corruption; applies the acquired knowledge for corruption prevention

5.2. Knowledge development

A trainee identifies and analyzes preconditions and consequences of corruption; identifies the areas prone to corruption; defines his role in minimizing the impact and consequences of corruption

5.3. Increase of information awareness

A trainee recognizes his role in minimizing the impact and consequences of corruption; is conscious of the negative impact of corruption on the society

6. Teaching methods

Discussion, group work, lecture, situational analysis, solution of practical tasks

7. Teaching materials and logistical support

Multimedia presentations, handouts, worksheets for small groups / dilemmas, etc.

Laptop, projector, CDs, flipchart

8. Evaluation method

Test, interview

9. Bibliography

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1. Module
II. INTERNATIONAL AND NATIONAL ANTI-CORRUPTION STANDARDS
2. Theme
1. INTERNATIONAL ANTI-CORRUPTION STANDARDS AND PRACTICES
3. Aim
(of the theme)

As a result of the training, trainees become familiar with the main anti-corruption standards, practices and approaches used to effectively combat and prevent corruption

4. Discussion points

1.1. International sources of anti-corruption law
- 1.1.1. International anti-corruption legal framework
- 1.1.2. EU anti-corruption legal instruments.

1.2. EU anti-corruption policy
- 1.2.1. Combating corruption as a segment of the EU policy

1.2.2. The EU Anti-Corruption Report as the mechanism encouraging political participation in combating corruption
1.2.3. Better implementation of the EU anti-corruption instruments
1.3. Specialized international bodies and EU institutions to monitor and combat corruption
1.3.1. Role of European Anti-Fraud Office (OLAF) in combating fraud and corruption. Monitoring mechanisms of Group of States against Corruption (GRECO)
1.3.2. National specialized anti-corruption bodies in the EU

5. Specific expected results

5.1. Skills development

A trainee applies the basic international standards and approaches in prevention and combating corruption in his daily work.

5.2. Knowledge development

A trainee defines the main anti-corruption legal instruments and major international approaches to combating corruption; knows the powers and tasks of the major agencies and organizations which monitor and combat corruption in Europe.

5.3. Increase of information awareness

A trainee gets an overview of the international anti-corruption instruments and practices.

6. Teaching methods

Lecture, discussion, group work, learning by example

7. Teaching materials and logistical support

Multimedia presentations, handouts, worksheets for small groups, etc.

8. Evaluation method

Interview

9. Bibliography

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2. Theme
2/A. NATIONAL ANTI-CORRUPTION INSTRUMENTS OF THE REPUBLIC OF MOLDOVA

3. Aim (of the theme)

Formation of the system of knowledge about the national anti-corruption legislation, in-house regulations, the role and the place of the State Border Guard and Customs Services among the bodies that implement measures to prevent and combat corruption

4. Discussion points
2/A.1. National anti-corruption policy and legislation
2/A.1.1. National anti-corruption strategy.
2/A.1.2. National legal framework of the Republic of Moldova to prevent and combat corruption.
2/A.2. In-house anti-corruption regulations
2/A.2.1. Customs Service of the Republic of Moldova.
2/A.2.2. Border Police Department of the Republic of Moldova.
2/A.3. Competence of the national anti-corruption bodies
2/A.3.1. Bodies responsible for prevention and combating corruption.
2/A.3.2. Cooperation and coordination of national anti-corruption bodies.
2/A.4. International cooperation against corruption
5. Specific expected results
5.1.Skills development

A trainee is able to interpret regulatory effect of the main categories in anti-corruption legislation; identifies specific situations in life in terms of their compliance with the national anti-corruption legislation; discusses the practical application of anti-corruption legislation in specific situations; evaluates certain actions in terms of their compliance with anti-corruption laws; models his behavior and evaluates the behavior of others.

5.2. Knowledge development

A trainee knows strategic planning regulations; traces the connection between the general and specific regulations; defines the role and the place of the State Border Guard and Customs Services among the bodies that implement measures to prevent and combat corruption; classifies national regulations on prevention and combating corruption and finds the connection between these acts

5.3. Increase of information awareness

A trainee is aware of the statutory provisions of national laws and regulations on prevention and combating corruption and finds the connection between them; highlights the role of interaction and international cooperation in the sphere of prevention and combating corruption

6. Teaching methods

Lecture, discussion, group work, solution of practical tasks

7. Teaching materials

Multimedia presentations, handouts, etc.

8. Logistical support

Laptop, projector, CDs, flipchart

9. Evaluation method

Test, activity evaluation while solving practical tasks

10. Bibliography

Council of Europe Criminal Law Convention on Corruption (Strasbourg, 27.01.1999), ratified by Law No. 428-XV of 30.10.2003.
Criminal Code of the Republic of Moldova No. 985 of 18.04.2002.
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Decision of the Parliament of the Republic of Moldova No. 232 of 25.10.2012 "On Institutional Strengthening Strategy of the National Anti-Corruption Center".
Decision of the Government of the Republic of Moldova No. 32 of 11.01.2007 "On Approval of the Action Plan on Implementation of the Preliminary Plan of the Republic of Moldova within the Millennium Challenges USA Program".
Decision of the Government of the Republic of Moldova No. 456 of 27.07.2009 "On Approval of Customs Officer Code of Ethics".

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http://www.uncitral.org
www.oecd.org/corruption/acn/library/41603502.pdf
www.greco.coe.int
www.transparency.org

http://www.cna.md
http://www.cni.md
http://www.procuratura.md
http://customs.gov.md

2. Theme
2/B. NATIONAL ANTI-CORRUPTION INSTRUMENTS OF UKRAINE
3. Aim (of the theme)

Formation of the system of knowledge about the national anti-corruption legislation, in-house regulations, the role and the place of the State Border Guard and Customs Services among the bodies that implement measures to prevent and combat corruption

4. Discussion points
2/B.1. National anti-corruption policy and legislation
2/B.1.1. National anti-corruption strategy
2/B.1.2. National legal framework to prevent and combat corruption
2/B.2. In-house anti-corruption regulations
2/B.2.1. Anti-corruption regulations of the State Border Guard Service of Ukraine
2/B.2.2. Anti-corruption regulations of the State Customs Service of Ukraine
2/B.3. Competence of the national anti-corruption bodies
2/B. 4. International cooperation against corruption
2/B.4.1. Types of international cooperation according to the interaction areas.
2/B.4.2. Types of international cooperation according to involved bodies.
2/B.4.3. Legal framework of international anti-corruption cooperation

5. Specific expected results

5.1.Skills development

A trainee is able to interpret regulatory effect of the main categories in anti-corruption legislation; identifies specific situations in life in terms of their compliance with the national anti-corruption legislation; discusses the practical application of anti-corruption legislation in specific situations; evaluates certain actions in terms of their compliance with anti-corruption laws; models his behavior and evaluates the behavior of others.

5.2. Knowledge development

A trainee knows strategic planning regulations; traces the connection between the general and specific regulations; defines the role and the place of the State Border Guard and Customs Services among the bodies that implement measures to prevent and combat corruption; classifies national regulations on prevention and combating corruption and finds the connection between these acts

5.3. Increase of information awareness

A trainee is aware of the statutory provisions of national laws and regulations on prevention and combating corruption and finds the connection between them; highlights the role of interaction and international cooperation in the sphere of prevention and combating corruption

6. Teaching methods

Lecture, discussion, group work, solution of practical tasks

7. Teaching materials

Multimedia presentations, handouts, etc.

8. Logistical support

Laptop, projector, CDs, flipchart

9. Evaluation method

Test, activity evaluation while solving practical tasks

10. Bibliography

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Plan for Prevention and Combating Corruption in the State Border Guard Service of Ukraine for the current year.
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2. Theme

3. PREVENTION OF CORRUPTION

3. Aim

As a result of the training, trainees become familiar with the main international and national standards in the field of corruption prevention

4. Discussion points
1. Measures to prevent corruption and their significance.
2. Anti-corruption education and training.
3. Corruption risk assessment.
4. Anti-corruption expertise of draft legislation.
5. Corruption diagnostics and measurement tools.
5. Specific expected results:
5.1 Skills development
5.2 Knowledge development
5.3 Increase of information awareness

A trainee applies acquired knowledge in the daily practice; states the basic aims and objectives of the corruption prevention measures; defines the essence and the content of the corruption prevention measures; assesses the importance of and the need for the corruption prevention measures; classifies measures to prevent corruption; defines the basic preventive measures used in the international and national practice; knows the instruments for corruption diagnostics and measurement, and explains their essence; recognizes the importance of measures to prevent corruption; realizes the significance of corruption diagnostics and measurement.

6. Teaching methods

Brainstorming, discussion, group work, learning by example, situational analysis, solution of practical tasks, presentation

7. Teaching materials and logistical support

Multimedia presentations, handouts, worksheets for small groups, etc.
Laptop, projector, CDs, flipchart

8. Evaluation method

Test, interview

9. Bibliography

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http://do.gendocs.ru/docs/
http://gtmarket.ru/ratings/corruption-perceptions-index/info
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Appendices:

Appendix 1. Practical exercises (situations, extracts from legal acts).
Appendix 2. Evaluation form.

1. Module
III. CLASSIFICATION OF CORRUPT PRACTICES AND LEGAL LIABILITY THEREFOR IN THE REPUBLIC OF MOLDOVA AND UKRAINE

2. Theme
1. CLASSIFICATION OF CORRUPT BEHAVIOR

3. Aim

As a result of the training, trainees become familiar with acts of corruption, their characteristic features, the classification criteria and legal liability for committing them

4. Discussion points
1.1. Classification of corruption offences
1.2. Subjects of corruption offences
1.2.1. Subjects of corruption offences (according to legislation of the Republic of Moldova).
1.2.2. Subjects of corruption offences (according to legislation of Ukraine).
1.3. Forms of corruption in border guard and customs agencies.

5. Specific expected results

5.1. Skills development

A trainee defines the notions “corruption offence” and “subject of corruption offence”; classifies facts of corrupt behavior; interprets legal terms; compares different forms and types of corrupt behavior; assesses the legal consequences of committing acts of corruption.

5.2. Knowledge development

A trainee applies acquired knowledge in the daily practice; reveals the characteristic features of different corruption offences and corrupt behavior; identifies the object and the subject of corruption; defines criteria for the classification of the corrupt behavior facts.

5.3. Increase of information awareness

A trainee is aware of the negative consequences of corrupt behavior.

6. Teaching methods

Discussion, simulations, learning by example, solution of practical tasks, lecture

7. Teaching materials and logistical support

Multimedia presentations, handouts, worksheets for small groups / dilemmas, etc.
Laptop, projector, CDs,, flipchart

8. Evaluation method

Test, interview

2. Theme
2. LEGAL LIABILITY FOR CORRUPTION OFFENCES

3. Aim

As a result of the training, the trainees become familiar with the types and categories of legal liability for corruption offences.

4. Discussion points
2.1. Criminal liability for corruption offences
2.1.1. Criminal liability according to legislation of the Republic of Moldova.
2.1.2. Criminal liability according to legislation of Ukraine.
2.2. Administrative liability for corruption offences
2.2.1. Administrative liability according to legislation of the Republic of Moldova.
2.2.2. Administrative liability according to legislation of Ukraine.
2.3. Disciplinary liability for corruption offences
2.3.1. Disciplinary liability according to legislation of the Republic of Moldova.
2.3.2. Disciplinary liability according to legislation of Ukraine.
2.4. Civil legal liability

5. Specific expected results

5.1. Skills development

A trainee defines the norms of criminal, administrative and civil law providing for liability for corruption offences in a particular situation; classifies the types of legal liability for acts of corruption; compares different types of liability for acts of corruption; explains the differences between various types of liability; applies acquired knowledge in the daily practice; selects the type of liability corresponding to the committed act.

5.2. Knowledge development

A trainee identifies and lists the types of legal liability for acts of corruption; reveals the characteristic features of different types of liability

5.3. Increase of information awareness

A trainee recognizes the importance of the correct determination of liability for corruption-related offences; is aware of the legal consequences of the sanction for corruption offences

6. Teaching methods

Discussion, group work, lecture, solution of practical tasks

7. Teaching materials and logistical support

Multimedia presentations, handouts, worksheets for small groups / dilemmas, etc.
The Criminal Code of Ukraine (Section 17 of the Special Part); Code of Administrative Offences of Ukraine (Chapter 13-A)

Laptop, projector, screen

8. Evaluation method

Test, interview

9. Bibliography

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1. Module
IV. INTEGRITY. PROFESSIONAL ETHICS

2. Theme
1. BASIC PRINCIPLES AND STANDARDS OF PROFESSIONAL ETHICS

3. Aim (of the theme)

As a result of the training, the trainees will be guided by professional ethics

4. Discussion points

1.1. Definition of INTEGRITY, ethical conduct of public officials and professional ethics
1.2A. Mechanisms to ensure professional ethics in government institutions of the Republic of Moldova
1.2A.1. Providing professional ethics / integrity in Customs / Border Guard Service of the Republic of Moldova. Codes of conduct and regulations relating to: conflict of interest; nepotism and favoritism; declaration of assets and income, gifts and other benefits; rotation.
1.2A.2. Nepotism and favoritism.
1.2A.3. Declaration of assets and income.
1.2A.4. Restrictions and prohibitions.
1.2B. Moral and professional standards provided by legislation of Ukraine and mechanisms for their implementation
1.2B.1. Ethical conduct of public officials and professional ethics.
1.2B.2. Moral and professional standards provided for in Ukrainian legislation and mechanisms for their implementation.
1.2B.3. Standards of ethical conduct of officials of the State Border Guard Service of Ukraine.
1.3. Duties of the head and management of state institutions of the Republic of Moldova
1.3.1. Duties of a person holding a management position.
1.3.2. Ethical conduct of a manager.
1.3.3. Leadership.
1.4. Whistleblowers and their protection

5. Specific expected results

5.1. Skills development

A trainee is guided by the rules of professional ethics

5.2. Knowledge development

A trainee recognizes the need for ethical conduct in the public service as a corruption prevention means; defines the legal basis of the ethical conduct rules; identifies legal liability for violation of the ethical conduct rules

5.3. Increase of information awareness

A trainee recognizes the importance of INTEGRITY and professional ethical conduct as a corruption prevention means

6. Teaching methods

Group work, solution of practical tasks, discussion of the trainees' practical experience, lecture

7. Logistical support

Laptop, projector, CDs, flipchart

8. Evaluation method

Test, activity evaluation while solving practical tasks

9. Bibliography

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1. Module
V. PRINCIPLES OF GOOD GOVERNANCE AS A TOOL FOR COMBATING CORRUPTION

2. Theme
1. PRINCIPLES OF GOOD GOVERNANCE

3. Aim (of the theme)

As a result of the training, the trainees learn the principles of good governance and apply them in their service activities

4. Discussion points
1.1. Concept and principles of good (proper) governance in the European Union.
1.2. Good governance: some aspects of practical application

5. Specific expected results:

5.1. Skills development

A trainee follows the principles of good governance and applies them in his professional activity

5.2. Knowledge development

A trainee defines the principles of good governance: openness and transparency, participation, accountability, effectiveness, coherence; he defines interconnection between the principles of good governance and anti-corruption activities

5.3. Increase of information awareness

A trainee realizes the importance of good governance as one of the fundamental principles of the state apparatus functioning in general, and of his professional activities in particular; raises awareness of the essence of the principles of good governance in the EU

6. Teaching methods

Brainstorming, group work, discussion, lecture

7. Teaching materials and logistical support

Multimedia presentations, handouts, laptop, projector, CDs, flipchart

8. Evaluation method

Test, solving situational tasks

2. Theme
2. APPLICATION OF GOOD GOVERNANCE PRINCIPLES IN NATIONAL CONTEXT

3. Aim (of the theme)

As a result of the training, the trainees become familiar with the regulatory principles of good governance in Ukraine and the Republic of Moldova

4. Discussion points
2.1. Provision and access to information.
2.2. Consultation procedures and decision-making.
2.3. Effectiveness, coherence and accountability to society.

5. Specific expected results:

5.1. Skills development

A trainee applies acquired knowledge in the daily practice

5.2. Knowledge development

A trainee compares the peculiarities of the good governance principles application at the level of national legislation of Ukraine and the Republic of Moldova; defines interconnection between the principles of good governance and anti-corruption activities

5.3. Increase of information awareness

A trainee realizes the importance of good governance as one of the fundamental principles of the state apparatus functioning in general, and of his professional activities in particular

6. Teaching methods

Brainstorming, work in groups, discussion, lecture

7. Teaching materials and logistical support

Multimedia presentations, handouts laptop, projector, CDs, flipchart

8. Evaluation method

Test, solving practical tasks

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VII. TEACHING MATERIALS

Teaching materials include lectures and tasks for practical training.

Module I. CORRUPTION OVERVIEW

Theme 1. Background and genesis of corruption

1.1. *Definition of corruption*

In the ancient world corruption was understood quite differently. **To corrupt** (from Latin "corrumpere") meant to harm stomach with bad food, to spoil water in a closed container, to ruin business, to squander a fortune, to have a bad effect on morals, to miss the opportunity, to deplete a spring, to exterminate insects, to commit an arson, to restrict liberty, to seduce women, to deprave young people, to distort sense, to falsify results, to dishonor.

In addition, "to corrupt" meant to bribe somebody or a group of people (not always officials) with money or liberal gifts. The prefix **"cor-"**, a variant of the prefix **"com-"** – with, together, by means of, was added to the polysemantic verb "rumpere" – to tear, to break, to crush, to hack, to pierce, to break through; among others there were meanings, which expanded the circle of addressees – to disturb peace, to terminate a contract, to break law. The prefix "cor-" seemed "to invite somebody" to break a law or a contract, defining from the very beginning that corruption was an action which demanded a partner.

In the Roman law "corrumpere" meant to crush, to mutilate, to damage, to falsify evidence as well as to bribe a judge (praetor). As an important separate lawsuit was envisaged actio de albo corruptio against those who damaged or changed the text of praetor's edict displayed on the white board (album) for public announcements. Or, for example, actio de servo corrupto – a complaint brought against those who morally corrupted someone else's slave (made him commit a crime).

Also, in the Roman law this term referred to the activities of a group of people, who tried to disturb the course of the trial or the state governing. A number of other offences, such as fraud or distortion of state documents, bribery of judges or moral perversion of someone's slave, were also considered corruptive.

Over the next nearly a thousand years, during the Middle Ages, the term "corruption" had exclusively ecclesiastical, canonical semantics – seduction, temptation of the devil. About 500 years ago, Fathers of the Inquisition contributed to the rapid finishing of the two-thousand-year-struggle between the Latin and the Greek languages. As a result the long used term "catalysis" (from Greek "katalysis" – destruction, decay, elimination) was replaced by the Latin term "corruption". "Corruptibilitas" meant frailty of a human being, susceptibility to destruction, but not his ability to give and take bribes. Corruption in the theology of Catholicism was the manifestation of sin, for "sin is lawlessness".

The modern concept of corruption starts to develop at the turn of the New Age with the formation of centralized states and the currently existing legal systems. An important impetus to understanding corruption in the present sense was given in the works of Niccolo Machiavelli. He compared corruption to a disease, such as tuberculosis. At first it is difficult to recognize but easier to treat, but when it is running, it is easy to recognize but difficult to cure, – stated the great Italian philosopher and politician of the XIV century. Corruption in the state affairs manifests similarly, the author continues. If an incipient disease is early detected, which can be done only by a wise governor, it is easy to get rid of, but if it is running, so that everyone can see it, no remedy will help. According to Machiavelli, **corruption – is the use of public opportunities for private benefit.**

Later, the emphasis in the understanding of corruption has been moved to its legal and criminological aspects. Thomas Hobbes a century later wrote in "Leviathan" that people, who boast their wealth, feel free to commit crimes in hope that they will manage to avoid punishment by corrupting public justice, or will be forgiven for money or other forms of compensation. This group also included people with

many powerful relatives or celebrities with high reputation, who dared to break law in hope that they would be able to put pressure on the law authorities. Corruption according to Hobbes is **"a root from which flows at all times, and upon all temptations, a contempt of all laws".**

Considering the modern concept of corruption, its most common definitions can be found in dictionaries. So, in the Dictionary of the Russian Language (Ozhegov) corruption is defined **as moral degradation of officials and politicians, expressed in illicit enrichment, bribery, embezzlement.** According to the Concise Dictionary of Foreign Words, corruption **is bribery, venality of public and political figures, as well as officials, who use their position for personal gain.**

However, there are other definitions of this notion. The most commonly used one, covering a wide range of illegal acts is **"the abuse of social status or official position for personal gain".**

In addition to this general definition, there are as many definitions of corruption as manifestations of the problem. The definitions vary depending on the cultural, legal, or other features, and there is no agreement as to which specific acts should be included and which excluded. The problem of such definitions is that they are not appropriate for all cultures and societies. Besides, what is considered corruption in one society may not be so in another. Nevertheless, in every society actions, condemned for cultural reasons, can be committed, as well as there are specific expectations that are assigned to the executors of public functions.

In continuation of this theme we would like to offer some of the definitions of corruption. For example, Transparency International – a non-governmental organization to fight corruption and research the level of corruption around the world, offers the following definition: "Corruption involves such behavior of public sector officials, public servants and politicians, as a result of which they or their relatives improperly and unlawfully enrich themselves due to abuse of the powers delegated to them by the state".

Korea Independent Commission against Corruption urges to disclose cases when "any public official who abuses his office or authority and violates the law while performing his official duties in order to benefit himself or a third party".

According to the Asian Development Bank's definition: "Corruption involves such behavior of officials of public and private sectors, when they and/or their relatives improperly and unlawfully enrich themselves, or force others to do so as a result of office and power abuse".

In the Civil Law Convention on Corruption "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 behavior required of the recipient of the bribe, the undue advantage or the prospect thereof.

Summing up, we can state that there are as many different definitions of corruption, as manifestations of the problem. However, despite the desire to give a unified, suitable and acceptable to all common definition of corruption, this mission was not successful: definitions vary depending on the cultural, legal, or other features.

1.2. *Historical review of corruption*

In the analysis of corruption it is very important to follow the principle of historicism. Corruption evolves over time, it occurs at a certain stage of a human society development, goes through a number of stages in its development, modifies taking on new forms and guises. Corruption is not a unique phenomenon. It takes place in the history of all countries and peoples, but manifests itself in

each case originally and essentially depends on the social conditions and traditions of a country.

The historical roots of corruption are likely to go back to the custom of giving gifts in order to curry favor with someone. In primitive societies paying the priest, the leader or the commander for a personal appeal in order to get their help was considered a universal norm. Tributes singled out the man among other applicants and contributed to the fulfillment of his request.

The first record of corruption in the public service, as reflected in the oldest known monument of statehood – the archives of ancient Babylon, dates from the second half of the XXIV century BC. In the age of the Sumerians and the Semites King of Lagash (ancient city-state in Sumer, in present-day Iraq) Urukagina reformed the state governing in order to curb power abuse among the officials and judges, to reduce the extortion of illegal fees from the vergers by the royal administration, and to reduce and streamline payments for ceremonies.

Urukagina was the king who became famous not for his military exploits, but for the social and ethical reforms, the earliest in the documented history of humanity. He openly declared equal responsibility of the ruler to the poor and the rich. To put an end to economic exploitation, Urukagina rid of the bureaucracy, fleecing boatmen, fishermen and cattle-farmers. He also reduced the number of tax collectors and restored rights and powers of temples. Unfortunately, his reign was short and had a tragic end when Lugalzaggesi, an ambitious and warlike ruler of neighboring Umma, burned, looted and destroyed almost all the shrines of Lagash.

The first treatise condemning corruption – "The Arthashastra" – was published under the pseudonym Kautilya by one of the ministers of Bharat (India) in the IV century BC. The ancient Indian author identified 40 ways of state property embezzlement by greedy officials and sadly stated that "just as we can not resist honey, when it is on the tongue, similarly those, who are responsible for the king's property, can not resist appropriating at least something of it".

Yuriy Kuzovkov in the book "World History of Corruption", devoted to the phenomenon of corruption in the history of nations and civilizations, divides corruption into two different phenomena. The first is small or domestic corruption associated with the presentation of a gift or a small bribe to government officials, sometimes for their fine service, sometimes for no particular reason or for maintaining good relations. Such corruption existed in different historical epochs. Quite another matter is a large-scale corruption. Adhering to the author's initiative, in this section we will discuss historical examples related to the large-scale corruption.

The first extant mention of large-scale corruption in antiquity refers to the Hellenistic world. Thus, in 320 BC Cleomenes, the Greek governor of Egypt, appointed to this position by Alexander the Great, used his position to manipulate the supplies of grain from Egypt to Greece. At that time Greece didn't produce enough grain and had to import it in large quantities. Cleomenes created artificial barriers to these supplies, which led to an acute shortage of grain in the Greek cities. As a result, prices for grain rose manyfold, the people in Greece and Epirus were on the verge of starvation, but the governor himself gained on grain speculation vast fortune. Famine in Greece lasted five years – from 329 to 325 BC.

A similar example of large-scale speculation in the IV century BC is traced in marketing of metals. It is known that a Sicilian tycoon bought up all the iron, forming a complete monopoly on the market of this product, and then sold it at a price three times higher than the prior one, getting on that 200% profit.

Even in the old days, such actions were, as a rule, not possible without the involvement of state officials. In addition, the state was the first to suffer from such actions: in the very example the state was forced to buy products made of iron (weapons, plating for warships, etc.) at a price much

higher than normal. Therefore, if government officials do not try to prevent or hinder explicit branch monopolization, causing direct damage to the state and society as a whole, it is still a question of corruption, even if it is not known whether they get profit or not. However, it is quite obvious that, in the case of direct damage to the state from such activity, one or several state officials are involved in this, otherwise it is not clear why the state does not notice these actions.

In view of this, according to Yuriy Kuzovkov, large-scale corruption can be defined as **the sale or ignoring the interests of the society by the officials and the state governors in favor of the interests of some individuals or foreign states.**

The foreign states were mentioned in the definition not accidentally. Antiquity gives examples of such corruption. It is known that in the III century BC Carthage was much richer than Rome. But that did not stop it from being the most corrupt state of the time. The Greek historian Polybius wrote, "in Carthage nothing is shameful that leads to profit ... candidates for public offices get them through explicit bribery".

Corruption there reached such a scale that, as noted by the famous German historian T. Mommsen, in the government and public bodies of Carthage dominated the party, which effectively upheld not the interests of their own country but the interests of Rome. And the worst thing was that it happened during the Second Punic War with participation of Hannibal Barca, which lasted 27 years.

What represents the party that acted in the interests of the enemy? T. Mommsen states, that it was the party of the oligarchy, unlike the people's party, supported by the people and the Carthaginian army officers, which demanded the continuation of active struggle against the hegemony of Rome. Why were the Carthaginian oligarchs against it? It is unlikely that the matter was in banal bribe from Rome, because Rome did not have money yet. The point was rather that the war had led to reduction in profitable trade with Rome and local oligarchs received less profit than they had expected. At the same time the oligarchs, apparently didn't care that it was the question of the very existence of the state of Carthage (which was subsequently destroyed by the Romans). Most likely, they believed in the possibility to achieve peace with Rome through regular territorial concessions that would bring peace and profitable trade in the coming years, and they could not care less what happens then. Carthaginian oligarchs were probably led by the economic and domestic political reasons to desire the defeat of their own state in the war with its worst enemy. Thus, that was an extreme manifestation of corruption, when the ruling "elite" acted in the interests of the enemy in the war against their own country and their own people.

It is interesting that Aristotle, Plato, Isocrates (IV c. BC) and other ancient authors separated oligarchy (from Greek: the power of the few) as an independent form of government, along with democracy (the power of people) and tyranny (the rule of a tyrant or, in modern terms, authoritarian governing). All the power of Carthage was actually in the hands of the so-called "corporation of a hundred and four" meaning that the state was ruled by one hundred and four richest people in the country. Officially, they were called "judges" for life, though in fact they were not judges. The Romans and the Greeks called them "senators", though they were not – the formal duties of the Senate (parliament) in Carthage were performed by the Council of Elders, elected by the people. The legal status of the "corporation of a hundred and four" was not clear, but its actual status was definite: it, in fact, ruled Carthage. Even the Parliament of Carthage (Council of Elders) imparted the news at first to one hundred and four judges, and only then, having consulting with the judges, to people.

So, it should be stated that the dominance of Carthage oligarchy was accompanied by an unprecedented flourishing of corruption. The country, which until the middle of the III century BC was the most powerful and wealthiest state in the ancient world, ceased to exist largely as a result of betrayal and corruption of its ruling oligarchic top.

Till the II century BC the Roman Republic was the society without corruption. It was a country with deep-rooted democracy and a striking sense of civic duty. The authorities elected by the people (the consuls, praetors, aediles, tribunes and others) did not get a salary, however, there were lots of candidates to occupy these positions. The reason was that many Romans felt the need to do something for the good of the society, and public recognition of their services was more important than material rewards. Therefore, despite the fact that officials in Rome did not receive any salary, the traces of corruption were not found there until the II century BC. Moreover, if the place of a consul was occupied by a wealthy Roman, it was normal that he did something for the public good at the expense of his own funds, for example, the consul at his own expense built a public building (a theater or a forum), or organized a performance for the people.

Also, there were no cases of the state property appropriation by the officials. During the First Punic War, Roman generals passed war trophies (works of art) to the state.

During the talks with Rome (240 BC), the ambassadors of Carthage dined many times at prominent Roman senators' and were surprised to find identical utensils of silver in all the houses. It turned out that it was one and the same set of silverware that Roman senators passed each other because they didn't have their own one. Carthaginian ambassadors were surprised, especially as their own oligarchic senators possessing untold wealth had to beg almost beggarly, by their standards, Roman senators for humiliating peace. These are the examples of unselfishness, modesty and humility, typical of the Roman society and the Roman elite till the II century BC. Oriental authors of that time with amazement wrote about the Romans, "none of them had placed on the crown, no one could boast of a purple robe ... and there was no jealousy among them, no strife".

Over time, the Roman society transformed gradually. There appeared fabulously rich Romans who showed off their wealth. If in the III century BC several prominent senators could afford only one set of silverware, then in the I century BC Livius Drusus alone was believed to own five tons of silver and gold goods. Even the average-income senator Cicero (I c. BC) had in different places 10 palaces, not counting 5 apartments in Rome and 6 houses in the country. Earlier all senators moved around the city on foot, but now more often they went to town in palanquins or carriages, accompanied by a few dozen of servants, and every appearance of such senator in public resembled a royal ceremony. Frugal Roman repasts turned into orgies of gluttony when guests were treated to dozens of different dishes. Also, at their service there was a special room, where, having taken an emetic, they could free their stomach in order to try new delicious dishes. Juriy Kuzovkov states, that the above examples can not be considered as evidences of corruption, but they illustrate the atmosphere in which in the late Roman Republic evolved corruption.

At that time the Roman society tried to work out some measures to prevent corruption, the danger of which, due to sharp changes of morals, many Romans began to realize at the close of the III century BC. These measures include, for example, introduced at this time prohibition for the senators to be engaged in maritime trade, finance and state contracts. Of course, execution of state contracts, such as contracts for building, by the government officials (as private entrepreneurs) was a direct manifestation of corruption, so the ban was not accidental, and was one of the ways to combat this phenomenon. But trade itself, as it was shown in the examples above (trade of grain and metals), gave grounds for corruption. Later senators easily evaded these limits, through participation in trade associations (similar to the current joint-stock companies) or trading through proxies. So, these measures could only for a short while slow down the spread of corruption in the sphere of trade, building and finance. Since I century BC the signs of serious corruption in these areas were evident. In addition to the above mentioned measures, attempts were made to struggle against changes of morality that provoked development of corruption. For this purpose, in the II century BC the so-called Laws on luxury (Latin: Leges sumptuariae) were repeatedly adopted. According to them, all the things that were listed as luxury goods (especially jewelry) were taxed heavily; besides, formal dinner parties were strictly regulated, weight of jewelry allowed to wear in public was limited, as well as the

number of silver objects in the house. Though these laws had little effect, they caused widespread dissatisfaction among wealthy citizens and, in particular, women.

The changes of morals in the Roman society could have been provoked by the great conquests of the II century BC, which brought great wealth to the Roman elite, caused an unprecedented surge of greed and avarice, and, as a consequence, led to corruption.

Large-scale corruption emerged in the distribution of the state land. In the IV century BC some influential Romans attempted to privatize state land, originating from the military conquests. But the law of Lucius Sextius from 367 BC prevented this tendency, limiting the maximum size of land transferred to one person. However, in the next century (III c. BC) Rome seized record amount of land: to the end of the century it already owned the whole Italy, Sicily, Sardinia, and a large part of Spain. Till the close of the II century BC Rome already owned the rest of Spain, Greece, southern Gaul, Anatolia and the former lands of Carthage in North Africa. According to the law, all the lands, confiscated by Rome during the military campaigns, came into possession of the Roman state. In fact, Roman senators gradually assumed control of part of these lands. The deals were, as a rule, not legalized, and the fees for the use of the lands were not charged. This is an illustrative example of corruption: senators, using their power and as representatives of the state, grabbed (but as individuals) public lands.

The struggle of Tiberius Gracchus with the Roman Senate was nothing more than an attempt to stop corruption and ensure equitable distribution of public lands. Through the nationwide vote in 133 BC he managed, despite the fierce opposition of the Senate, to achieve the adoption of the law of Sempronius, similar to the already mentioned law of Lucius Sextius of 367 BC. The law prohibited a person to own a plot of the public lands bigger than the specified size – 500 jugera (125 hectares). It also stipulated the creation of a special commission on the distribution of land among Roman citizens.

Tensions over the public lands allocation grew to such an extent that a group of senators killed Tiberius Gracchus, and then, when the commission started redistribution of the lands in Italy, was killed its new chairman Mutsian Publius Crassus, and later – Gaius Gracchus (brother of Tiberius), who attempted to distribute among people the lands, occupied by the Romans after the conquest of Carthage in Africa.

However, land allocation was not the only sphere in which corruption showed itself in the Late Roman Republic. Another area was, for example, the collection of taxes on the newly conquered territories of Rome. Severe abuse in this field occurred in Anatolia after the Roman conquest in the end of the II century BC. A group of people made arrangements with the Roman consul that they alone would collect taxes on behalf of Rome on a particular territory. They paid in advance to the state a certain amount of money, usually every five years, although the consul didn't have information on the tax rate. Later on, these so-called "publicans" started, by hook or by crook, to extort money from the local population.

Publicans' revenues from the collection of money were many times greater than the amount they had paid the Roman state. This system of tax collection in Anatolia lasted more than 70 years until it was abolished by Caesar in the middle of the I century BC.

There are other examples of corruption, such as piracy. Pirates were so numerous, and their attacks on the Roman merchant ships were so frequent that it threatened the stability of the state, and, as a result, there arose big problems with the supply of large cities, including Rome. Expeditions against pirates in the period from 102 to 68 BC were organized 4 times, but were to no effect as they had rather limited powers. Pirates brazened so, that about 68 BC they attacked the port of Ostia, in the mouth of the Tiber, important for supplies of Rome, looted and destroyed the Roman fleet anchored there. Therefore, the proposal to organize the expedition of Pompey against pirates in 67 BC and to give him broad powers was immediately supported by the masses, but strongly opposed by the Senate.

Senators wanted to kill the people's tribune Gabinius, who made the proposal, but he managed to escape the massacre by hiding in the crowd of people who gathered in front of the Senate. A question arises: why were the Roman senators opposed to the expedition, necessary for eradicating piracy in the Mediterranean?

Of course, one can assume that some senators were linked with the pirates, and the last shared with them their income. This assumption is proved by arrogance, with which pirates attacked the suburbs of Rome and its main port – Ostia.

But even if a few senators were associated with pirates, it still does not explain such a massive and sharp opposition to the expedition of Pompey in the Senate. Maybe they were afraid that Pompey would usurp power and turn ships against the Senate? But a few years before, Pompey had almost the same power.

Another question: if the senators had something against the expedition of Pompey, why didn't they offer any other radical measures to combat piracy, which for decades had been the scourge of Rome? For example, why didn't they raise the question of a permanent military fleet, which the Romans didn't have? So, it could be the measure (subsequently carried out by Emperor Augustus), which once and for all would prevent Rome from maritime piracy.

Juriy Kuzovkov considers, that there can be only one explanation for this. Having become big landowners – latifundists, Roman senators received their main income from the supply of bread and other food to Rome and other major cities. Food supplies disruptions, caused by the pirates' activities, were profitable for the senators, since they led to a sharp increase in prices for food. It is known that during this period (70 - 60s BC) there were strong price surges: grain price in some periods rose to 10 times compared with the normal level. In 68 BC the attack of pirates on Ostia led to dramatic rise in grain price. As long as the law of Gabinius was being discussed the grain price in Rome was kept at a very high level, which fueled the resentment of the masses. But as soon as the law was passed in 67 BC by popular vote and it became clear that the expedition of Pompey against the pirates would take place, the grain price immediately dropped to the normal level, even before the expedition was launched. So, it is clear, that the very existence of pirates was the main reason for the sharp rise in price and grain speculation, and as soon as the traders ascertained that the evil would be soon eradicated and food supplies wouldn't be interrupted, prices were cut. Thus, the Roman senators, who, according to their status, had to take care of public good, in fact, acted as wreckers, patronized maritime piracy and grain speculation for personal gain.

It is quite obvious, that with such scale of corruption and moral lapse in the Roman Republic in the first half of the I century BC, there could hardly be found any sphere of activity or social life not affected by these phenomena. We have already seen, that distribution of public lands, collection of taxes and food supply were corrupt, activities to enhance trade and supply infrastructure and the fight against marine piracy were paralyzed. But corruption penetrated also in, for example, the distribution of cheap bread among the poorest. Rich Romans managed to include in the list their slaves, who by the law were not entitled to cheap bread (they had to be fed by their master), in addition, part of the lists was a fake, which served as a cover for the theft of grain by officials. Anyway, when Caesar came to power, after checking these lists and excluding fictitious persons or those, who had been included illegally, the lists were reduced from 320 to 150 thousand people.

Corruption was also widely spread in the financial sphere. Just as publicans arbitrarily assigned penalties for late payment of taxes, in the same way landowners, who loaned to farmers in a lean year, used their financial stringency to impose onerous conditions. Such loans were usually provided against a pledge of land and at high interest rates, which increased in case of non-repayment of the loan in time. It is known, that the loan interest rates in this period reached 75% and even 100% per annum. As a result of these usurious loans, landowners in the end had every reason to expel the

farmer's family from the house and grab its property. Moreover, the state did not protect farmers from such tyranny: the judges were easily bribed by those who had money, and the farmers couldn't get any credit or help from the state in lean years.

There is every reason to believe, that corruption affected also the sphere of urban development. The wealthiest man in Rome – Marcus Licinius Crassus – made his fortune in this area. At that time in Rome, fires and collapses of multistorey buildings were very frequent. Crassus managed to immediately appear at the site of another accident, bought the ruins of the collapsed building for nothing, quickly built a new one, and then sold or rent it out for good money. Plutarch pointed out, that about 500 builders, mostly slaves, were permanently employed by Crassus for this business. As he had such a large group of workers, who had to be loaded down with work, one can only guess which of these accidents (fires and collapses) were random and which of them were organized by Crassus. And taking into account his connections and influence among the senators, half of which are reported to have been his debtors, even if there were evidences, nobody of them would dare to accuse the most influential man in Rome of nefarious deeds.

Now it's difficult to say whether these suspicions are justified or not, but it looks at least strange that the richest man in Rome, made his fortune on fires and collapses of buildings. And the fact, that some of the senators, who hadn't managed to accumulate a fortune, were debt-ridden and completely financially dependent on the Roman oligarchs, completes the picture of widespread corruption and venality typical of the Roman society in the period of the late Republic. T. Mommsen wrote about Rome of that period: "Poverty was regarded not only sole, but also the worst disgrace and the most serious offence; for money a statesman sold the state, a citizen – his freedom; one could buy an officer's position, and the voice of the jury; a noble lady gave herself for money, as well as a street courtesan; forgery and perjury were so widespread that one of the famous poets of the time called oath "a debt band". Honesty was forgotten, one who refused a bribe, was regarded not as an honest man, but as a personal enemy".

The British historian P. Brant pointed out, that up to Augustus, there was no system of prevention and control of fires and floods in the cities and no inspection of the height and quality of multistorey buildings. On the other hand, the absence of these measures allowed magnates such as Crassus, put together their vast fortunes on misfortunes and miseries of the population.

In addition to the above stated facts, it is necessary to note, that to the beginning of the I century BC the existing legislation on bribery virtually didn't work. Bribery had become so widespread and common, and nobody had been on trial for it for such a long period, that everyone, including the senators, was convinced that bribes were quite normal, unpunishable acts, and discussed them openly. So, when in 91 BC the tribune Livius Drusus tried to revive the old laws on bribery and made a proposal to arrange a senatorial investigation on bribery, it provoked strong dissatisfaction and opposition from senators and knights, and Livius Drusus was killed.

Bribery of voters in Ancient Rome occurred so frequently, that Roman citizens began to consider the amount received as a legitimate salary. Emperor Augustus tried to counteract this and gave voters his own money, hoping that they wouldn't demand anything from the candidates for public office, but in vain. The devastating impact of corruption was one of the reasons for the collapse of the Roman Empire.

In the Roman Empire with its branched bureaucratic apparatus corruption flourished. State officials were described so: "As a poor man he came in the rich province, and as a rich man he left the poor province". At this time, the above mentioned term "corrumpire" was introduced in the Roman law.

Having come to power, Gaius Julius Caesar reduced the power of the Senate and took a series of measures to combat corruption and to restore order. First, he abolished the system of tax farming

that existed in Anatolia and Sicily, and eliminated all the other intermediaries to collect taxes. Second, he started an active redistribution of public lands in favor of the Italian poor: just during 4 years of his governing, from 50 to 80 thousand of people were given a plot of land, and in many cases, the land and original capital for its tillage was provided purposefully to proletariat, that is, individuals who did not have any property, in other cases they were provided to large families and veterans. Third, he took some measures to limit corruption in the financial sector: he forbade to charge high usurious interest rates (more than 1% per month); established rules for assessing and selling mortgaged property, which facilitated the state of indebted peasants against their creditors; banned enslaving for debts. Fourth, he took or planned to take a series of measures to improve the organization of trade and fight against piracy, including tightened state control over grain trade, although he didn't have enough time to implement all the measures (including the establishment of a regular fleet and the development of trade infrastructure, which subsequently was carried out by Augustus). Fifth, he eliminated corruption in selling cheap bread to the population. Sixth, he began to take steps to restore law and order: he organized urban police, tightened criminal penalties and demanded strict observance of the laws, laid down demands for house-owners to maintain streets and sidewalks, banned movement of palanquins and carriages in the daytime in the city, which interfered with the city life. Finally, seventh, he introduced new laws against luxury and, in contrast to previous practice, he strictly monitored their implementation, imposing heavy fines on violators.

But, apparently, the anti-corruption measures taken by Caesar were greatly disliked by the senators. These arrangements in total undermined the main sources of wealth of the Roman senatorial elite, including ownership of public lands, which Caesar began to take away from big landowners and gave to the poor, and including various kinds of speculative gains (tax farming, usury, grain speculation, etc.), that could disappear altogether due to Caesar's reforms. Therefore, the murder of Caesar in the Senate in 44 BC, committed by a crowd of senators, was a direct response to these measures.

Almost all of the conspirators held high public offices, but were annoyed because of their devaluation. After all, before Caesar came to power, each such post promised a golden rain, which immediately began to pour out on the official in the form of bribes, speculative profits and illegal fees from the population. Caesar blocked all these revenues, and turned the posts of top officials of sinecures into heavy and unrewarding duty. Caesar's assassins Gaius Cassius Longinus (who became governor of Syria under Caesar), Marcus Brutus (Macedonia), Decimus Brutus (Gaul), Gaius Trebonius (Ionic part of Anatolia), Tillius Cimber (Bithynia in Anatolia) knew what fabulous income former governors of the provinces had received. Under Caesar it all ended: he blocked all the channels of corruption, imposed strict financial discipline and control, and hired informants everywhere, to report any violation of the law, and even all the excesses that wealthy Romans afforded in their private lives. And after hard work and ordeals, instead of enjoying the power in their provinces and living there in luxury, and then returning to Rome as rich and powerful people, their destiny was to remain forever field officers of Caesar or his future successor, and to do hard and unrewarding job in barbarous countries for a relatively small salary.

Public complaints of Brutus and Cassius against Caesar after his assassination, as Appian writes, confirm these motives: "Caesar neither vest us with any authority in Rome or in the provinces ... nor in the distribution of colonies, or in anything else". But it was Caesar, who gave them power by making the governors of the largest provinces, what else did they lack? But they wanted not the power, which he had given them, but other, uncontrolled power of the Senate, which would allow to steal and accumulate wealth.

The Western Roman Empire collapsed in 479 year, although the Byzantine public morals were based on the important concept – "public benefit", and everything that prevented this benefit or reduced it (as corruption), was considered an undisputed social evil. There was every reason to believe, that violations in the state management would harm the material wellbeing of the state, and personally the emperor. Emperors, therefore, tried to organize their bureaucratic apparatus so, that its maintenance

costs didn't increase. However, all these, in a paradoxical way, gave rise to corruption. Just then, officials learned to "get the missing", in their opinion, income from the pockets of the suppliants. Cunning Byzantines taught the first head clerks of the Russian princes to do so.

During the V-VII centuries BC the strong Byzantine Empire was not affected by corruption. For example, Emperor Anastasius in the VI century practiced strict accountability of officials that multiplied the reasons to punish them. He toughened control over the performance of duties by officials. In the special centers were used standards of weights and measures so, that officials and customs officers could not understate (or overstate) the weight of the goods for their personal gain. Certain categories of officials received fixed salaries, so they could not immensely enrich themselves at the expense of the state treasury or people. Officials of all ranks and titles had to report on their activities, and control was almost the only way to reduce the abuse of power.

A little later, in the legislative "constitutions" of Justinian I was traced the desire to limit the number of officials in the provinces, namely "to reduce the excess number of adjutors (freelance officials) to the legal norm". Isn't it similar to our current unsuccessful attempts to reduce the number of clerks, which, alas, is only growing?

Of course, anti-corruption measures of that era were quite primitive. Mostly, they were limited to prohibitions and threats. In the VI century Emperor Justinian practiced reward for snitching on embezzlers and bribe exactors. Reports were believed to be voluntary and benefit the community, and, therefore, in the morality of that time were not condemned. Justinian, for example, appointed not anyone, but leading clergymen (bishops) to control officials. In his turn, he himself closely watched the bishops. Thus, in spite of all the drawbacks, combating corruption was for early Byzantine emperors quite a systematic activity.

As it has been already mentioned, in the Middle Ages the term "corruption" assumed entirely ecclesiastical significance. Despite the condemnation of the church, in the early Middle Ages in Europe the use of public office for private gain became an accepted norm.

Public punishments of corrupt officials were almost to no effect, because the place of the dismissed (demoted or executed) was immediately taken by a new bribe exactor. Since the central government couldn't ensure overall control over the officials activity, it usually adhered to so-called "tolerable rate" of corruption, stopping just its dangerous manifestations.

Spread of bribery and embezzlement undermined the credibility of the government and the principles of state management, causing serious social upheaval in all the European countries, including Russia.

Apparently, corruption in Russia is as deeply rooted as in other countries, and its occurrence is associated with the formation of the state apparatus and the judicial system.

Simultaneously in the judicial and everyday use appeared some new terms. If an official performed his duties for offerings, it was called "mzdoimstvo" (bribery) and was considered a norm, if the official did not violate the law. If he was bribed to make something illegal using his position, it was referred to as "lihoimstvo" (extortion), and there were made attempts to combat extortion.

The "Russkaya Pravda", a collection of ancient laws, compiled in the Kievan state in the XI-XII centuries on the basis of customary law, warns not to justify anything "wicked for the sake of reward".

Russkaya Pravda had a major impact on all the subsequent legal Ukrainian monuments of the medieval history.

In the XV century, in the legislation acting on the Ukrainian territory, among others there were official

crimes, such as bribery, embezzlement and peculation. These crimes were punishable by a corporal punishment, confiscation of property or a fine.

Under Ivan the Terrible, in Sudebnik of 1550 bribery was considered in detail. So, the clerk who drew up a fake report or distorted the testimony of the parties for a bribe was sent to prison, and the minor clerk for the same action was whipped. In addition, the offender had to pay a fine in the amount of the claim.

Contemporaries said, that it was necessary to give a bribe even in order to enter prikaz (administrative office). If the clerk did not like the "conduct" of some foreign ambassadors, they were not fed properly – such complaints are kept in archives. Ivan the Terrible issued a decree according to which high-handed officials were to be executed immediately. For the first time the decree was applied to the clerk, who had took a roast goose, stuffed with coins, as a bribe.

Taking an oath to the new king, officials promised, as, for example, in the oath of 1598 to Boris Godunov, "not to take any gift or offering from anyone..."

In the XVI century, a new manifestation of bribery – extortion – appeared. There showed up also such form of extortion, as red tape – deliberate delaying of a case consideration in order to get a bribe.

World history gives a number of interesting facts and events. For example, during the reign of Ivan IV Vasilyevich (known as Ivan the Terrible), the Grand Prince of Moscow and All Russia, for two years, from February 1572 to June 1574, the ruler of Moldavia was John III the Terrible (Romanian: Ioan Vodă cel Cumplit).

In the history, he is known for his policy of strengthening the authority of the prince and direct persecution of boyars, who called him for it Terrible. Acquired power found its reflection in an unusual behavior for that time – protection of peasants. The prince forbade landowners to abuse peasants' labor, as the national army consisted mostly of peasants.

During his short reign he managed to introduce an unprecedented series of reforms, including:

1. Personal control over the state acts of the princely office (it should be noted that before John III the Terrible rulers did not sign documents personally);

2. Liberation of people from the yoke of clergymen and boyars;

3. Introduction of strict rules of tax levies from each Moldavian, be it a common man or a nobleman;

4. Gold and silver coins were replaced with bronze ones, which contributed to enlarging the state ownership.

As it was expected, the measures taken caused hatred of the nobility and clergy towards the ruler of the country, especially because of John's unwillingness to abandon his principles.

Governor's hatred for boyars and priests exceeded all bounds. John was sure that these two social classes were guilty of weakening the country, robbing the people and development of the art and philosophy of intrigues, betrayals and conspiracies.

Thanks to a very good organization, the state economy grew significantly, which resulted in the increase of the requirements of the Ottoman Empire. Turks increased the amount of fees to be paid by Moldavia twice, thereby charging 40000 gold coins.

To protect the country from the Turkish yoke, John III the Terrible formed the national army, mostly of peasants, who were trained in military fundamentals.

As a commander he was more talented than other European rulers. The Moldovan army had at its disposal 200 guns, to compare: the French had 40 guns.

Scared of the Moldovan governor's achievements, in the summer of 1574 the Turks sent against him a new military expedition, and this time the Turkish army was huge and consisted of 200,000 men against 35,000 of the Moldovan army. Even if the Moldovan army fought fiercely, evident numerical inferiority, as well as lack of water (soldiers were suffering from thirst), inevitably dictated the outcome of the battle. Being a man of character, John the Terrible agreed to surrender to the Turks under three conditions: the lives of the Moldovan soldiers would be saved, the Cossacks, who were his allies, would be able to return home alive, and he would be sent alive to Sultan Selim II.

Ahmed Pasha, the commander of the Turkish army, agreed to the conditions, and having sworn 7 times on the Koran, guaranteed their implementation. As proof of devotion and love for their leader, as if they felt that something was wrong, the Moldovan soldiers expressed their disagreement with this decision and asked John not to surrender. However, the word was not kept, and unarmed John was killed in a Turkish pavilion. The decapitated body was tied to four camels for quartering. Seeing what was happening, the Moldovans were determined to take vengeance for such injustice, rushed the Turks with their bare hands and were killed by janissaries as a lesson for those who would try to rebel. Their allies, the Cossacks, having realized that the Turks were not going to keep to the word given on the Koran, desperately attacked. Only 12 survived, led by Ivan Svirgovsky, the Hetman of the Ukrainian Cossacks.

During the two years of his governing, John III the Terrible managed to do a lot for his country: he raised a powerful army armed with guns, refilled the state treasury, destroyed most of the corrupt nobles, protected and supported peasants, what his predecessors didn't venture.

In the Zaporizhian Sich, the military and administrative center of the Ukrainian Cossacks in the XVI - XVIII centuries, corruption was eradicated quite tough. Justice was administered in accordance with the "ancient customs, verbal law and common sense". Caught stealing, an officer was easily deprived of his rank, and even life. It depended on the circumstances of the crime and the public opinion on the personality of the perpetrator.

During the Hetmanate (the semi-official name of the territory of modern Ukraine, on which the power of Hetman's government spread in 1649 - 1764.), documents recorded an act of corruption, which had historical significance. When Hetman Ivan Mazepa (1639 - 1709) set out against the Russian Tsar Peter I, Colonel Burlai surrendered the fortress in the city of Bila Tserkva to the Russian army for a bribe. Hetman Mazepa at his time got the hetman's mace for a bribe, given to Golitsyn, the governor of Moscow. Perhaps in that situation corruption was one of the reasons, why the population did not believe in the sincerity of the Hetman's intentions and did not follow him.

Corruption was also widely spread in the religious sphere. In May 1686, Ecumenical Patriarch Dionysius V (1820 - 1891) signed the document, according to which the Ukrainian church transferred to the jurisdiction of the Moscow Patriarchate, taking for it a big bribe from the Moscow ambassador – 200 gold coins and 120 black shiny sables. After this non-canonical action, Dionysius was deprived of his patriarchic throne, but the Ukrainian church did not recover its autonomy.

Peter I actively fought against corruption, and in the legislation in that period, in addition to officials, among the subjects of corruption were also mentioned mediators, accomplices, and instigators.

Peter I enacted decrees "On prohibiting bribes and tributes", "On punishment for bribery and extortion", "On Punishment of bribe-takers through depriving of property and life".

Decrees of Peter the Great threatened "dodgers who endeavored to get someone's possessions in order to satisfy their insatiability" with all sorts of punishments. Under the decree "On prohibiting bribes and tributes and punishment for them", extortion was punished through flogging, confiscation of property, public dishonor and execution. The historical significance of this decree is determined by the fact, that it introduces the common term "crime", which covers "... all that may cause damage and loss to the state", and corruption is defined as extortion.

Not to let anyone plead ignorance, all the new employees made a signed statement, that they had been informed about the decree, prohibiting to take bribes from officials and private persons, and to inform people the decrees were displayed prominently.

Among the duties of fiscals (sneaks), introduced in 1711, was "to find out, expose and report" on any violation of the law, abuse, theft, bribery, etc. For this purpose, denunciations were accepted also from private individuals. It is interesting, that for the untruthful report fiscals were not punished, and for truthful information they got half of the fine, imposed on the official by the court.

All the bodies of state authority had a clearly defined and formalized in legislation structure, strength and competence, and the legal status of the state machinery officials was fixed in the "Table of Ranks". With this document Peter I finally abolished the residues of the ancient order of precedence, and recognized the right of honor only for personal merits of each.

Since 1715 Russian officials began to receive a fixed salary. It should be noted, that at about the same period, the Phanariote ruler of Romania and Moldavia Constantine Mavrocordatos, in order to avoid abuse of official position, introduced fixed salary for the boyars employed in the public service. It seems probable that, the new trend in the officials' labor remuneration was brought in as a result of a number of administrative and social reforms carried out in the countries of Western Europe. However, the state apparatus grew and to maintain it became problematic. Salaries were paid irregularly, so bribes again became the main source of income, especially for officials of lower rank.

To fight against corruption there was established the post of chief-fiscal. By the personal order of the emperor, to the position was appointed Alexey Nesterov. He valiantly carried out his duties and actively fought against bribery and embezzlement. Three years later Nesterov was caught taking bribes and was broken on the wheel.

An effective anti-corruption activity was hindered by the double standards, originating from the Tsar and spread all over Russia: for the same offence someone was forgiven and others were mercilessly punished. For example, Peter was furious when he learned that his right hand, Prince Alexander Menshikov was the biggest bribe-taker in Russia. And what happened? The Tsar only ordered to give his favorite a thrashing.

The introduction of the Phanariots regime may serve as an example of severe corruption of the time in the Danubian Principalities. The rulers were appointed by the Ottoman Empire, and the opinion of the local boyars was not taken into account. Moldavia suffered the same fate.

The new prince, who received the post in exchange for a corresponding tribute, came to the country accompanied by a large retinue, consisting of numerous relatives, favorites and even creditors, who invested in his post. The prince and his entourage during the period of government sought to recover the investments as quickly as possible, and also to raise enough money for the subsequent luxurious life after the short period of government.

Due to the numerous cases of treason, the number of the Greek families, from which it was possible to assign a prince, became less and less. Several governors repeatedly occupied the throne of two principalities. While the ruling Prince of Bucharest paid to avoid moving in Iasi, the Moldavian ruler

used the same method to take the throne of Wallachia, which was considered richer than Moldavia. For example, Constantine Mavrocordatos was appointed to the throne of one of the two principalities not less than 10 times. The prince owed to different creditors, sometimes even to the Sultan of Turkey. Nevertheless, the Ottoman rulers sought to retain control of the both principalities in order to avoid the irrational exploitation. Thus, Ahmed III paid part of the amount owed by Nicholas Mavrocordatos, in order to reduce the financial burden on the grass roots.

Thus, the post of a ruler or a governor was the way to easy money, and the investments in the appointment were justified. In the period from 1716 to 1821, the Moldavian boyars 40 times asked to substitute local rulers for the ruling Phanariotes.

However, being descendants of the Greek aristocratic families and having received a good education, some ruling Phanariotes made a significant contribution to the existing legislation of the country and initiated a number of social and administrative reforms. It is worth noting, that in most cases these initiatives and reformation attempts faced staunch conservatism of the ruling local boyars.

Destructive consequences of some Phanariotes governing could be contrasted with the achievements of others. For example, in 1746 above mentioned Constantine Mavrocordatos abolished serfdom in Moldova. Alexandros Mavrocordatos (son of Constantine Mavrocordatos) adopted and issued the "Conciliar Charter" – a specific set of rules, regulating some aspects of social life.

This Charter banned "collecting tributes from the poor and the lower classes in favor of the rich and those, who are in power". Tributes could be paid to poor people by rich, to a person by his relative, or to monasteries and churches.

The finale of the Phanariotes epoch was the uprising of peasants in 1821 in Wallachia, Oltenia and Moldavia under the leadership of Tudor Vladimirescu. The reason for the uprising was the plight of the peasants: high taxes, corvée, dependence on the boyars. Malcontents were also supported by some petty landowners and boyars, who didn't get lucrative posts in the government.

The revolution led by Tudor Vladimirescu was a kind of paradox: although it was suppressed, its most important political goal was achieved. In 1822, the epoch of Phanariotes dominance in Romania and Moldavia finished and the both principalities gained again, a century later, the right to elect local rulers.

It is likely, that T. Vladimirescu and his comrades-in-arms decided to adopt the positive experience of France, where in the end of the XVII century the monarchy turned into the republic of free and equal citizens.

Gradually, during the XVIII century, the top of the French society began to realize, that the old order, with underdevelopment of market relations, chaos in the management system, corrupt system of the government posts sale, lack of clear legislation, "Byzantine" tax system and the archaic system of class privileges, must be reformed. Moreover, Rousseau and Montesquieu stated, that the royal authority was losing confidence in the eyes of the clergy, the nobility and the bourgeoisie, who considered, that the king, having usurped the power, infringed on the rights of estates and corporations, or on the rights of the people.

The French Revolution began with the seizure of the Bastille on July 14, 1789. But on August 26, 1789, the National Constituent Assembly adopted the Declaration of the Rights of Man and of the Citizen – one of the first democratic documents. The "old regime", based on class privileges and arbitrary rules, was opposed to the equality of all before the law, inalienability of "natural" human rights, popular sovereignty, freedom of opinion, the principle, that "nothing may be prevented, which is not forbidden by law", and other democratic fundamentals of the revolutionary enlightenment.

Even under moderate governments, political freedom exists only in the states, where the possibility of power abuse is excluded. For this purpose, it's necessary to divide the state power into legislative, executive and judicial. The main purpose of the separation of powers is to avoid the abuse of power. To prevent this possibility, emphasizes Montesquieu, "it is necessary to arrange things so, that different authorities could mutually constrain each other". Such mutual control of different branches of power is a necessary condition of their lawful and consistent functioning in the legal framework. "One would think, – he writes, – that these three powers should come to rest and inactivity. But as the necessary course of events will force them to act, they will have to act in concord". And the leading and determinative position among other branches of power takes, according to Montesquieu, the legislature.

The separation of powers and mutual control are, as Montesquieu asserts, the main condition for political liberty in connection with the state system. "When, – he writes, – the legislative and executive powers are united in the same person, or in the same body of magistrates, there can be no liberty; because apprehensions may arise, that the same monarch or senate should enact tyrannical laws, to execute them in a tyrannical manner. Again, there is no liberty, if the judiciary power is not separated from the legislative and executive. Were it joined with the legislative, the life and liberty of the subject would be exposed to arbitrary control; for the judge would be then the legislator. Were it joined to the executive power, the judge might behave with violence and oppression. There would be an end of everything, were the same man or the same body, whether of the nobles or of the people, to exercise those three powers, that of enacting laws, that of executing the public resolutions, and of trying the causes of individuals".

The attitude of the society to the personal income of the state officials was gradually changing. The ideology of the social contract proclaimed, that citizens paid taxes to the state, and the state, in exchange, adopted reasonable laws and strictly monitored their implementation. Personal relations gave way to the official ones, that's why the fact, that the official received personal profit in addition to his salary, was treated as the violation of public morals and norms of the law.

In addition, the grounded by the representatives of the neoclassical economic theory ideology of economic freedom demanded, that the government "let people themselves take care of their business and let the business run its course". If the officials' opportunities for regulatory interference declined, their chances to extort bribes also diminished.

In the late XIX – early XX centuries, laws against bribery were enacted in many countries (for example, the Law on Bribery in Public Institutions in 1889 – UK), as well as laws against corruption, sale of public offices, official malfeasances, abuse of power, abuse of levying fees and charges. Anti-corruption legislation became rather branched.

The legal document containing the anti-corruption standards in Ukraine was "Pacts and Constitutions of Rights and Freedoms of the Zaporizhian Host", written by the Hetman of the Zaporozhian Cossacks Pylyp Orlyk (1672 - 1742). Nearly a third of the Constitution, which in the Ukrainian historiography received the name "Constitution of Pylyp Orlyk", was devoted to the fight against abuses of power.

The document was written in Latin, and in the text itself the word "corruption" was used. Article 9 of the Constitution forbade the very Hetman "to use military treasure for his personal needs", and demanded to content himself with "dues and incomes that were allocated for the hetman's mace and his personality".

Having limited his own income to salary, the Hetman took the colonels in hands. According to the Constitution, they "should not take an interest in the regimental treasure" and had to content themselves also with their personal incomes. Article 10 of the Constitution of Pylyp Orlyk was aimed against careerists, "who gave rise to corruption in the hetman's heart". Therefore, the Hetman was cautioned against "promoting somebody to a colonel position for corruption".

Article 14 was aimed at combating abuses of power. According to it, military men and servants of the hetman, if they were travelling "on private, not military affairs", were forbidden to demand "carts, food, beverages and conductors, because that could put the city governor to expenses". Finally, the last, Article 16 of the Constitution was dedicated to overcoming tax tyranny. Tax collectors were forbidden to take extras from the merchants.

The turn of the XX century became a new stage in the evolution of corruption in the developed countries. On the one hand, there began a new rise of state regulation measures and, accordingly, of the officials' power. On the other hand, there developed big business that began to "capture the state" – not by individual small episodic bribery of civil servants, but by direct subordination of politicians and high-ranking officials to the protection of their financial interests.

The XIX century in Russia began with the administrative reforms aimed, in particular, at improving the organization of the civil service and changing the quality of the bureaucratic apparatus.

Liability of the officials in office was fixed in the Charter of Civil Service (1830), where the character traits necessary for an official were determined. One of the items ran: "Honesty, selflessness and forbearance from taking a bribe". Employees were called to perform their duties according to the oath, "unhypocritically and honestly", to comply with the existing laws, "not allowing themselves anything contrary to the oath, honesty or service duties either out of hostility or friendship, and moreover out of greed or bribes".

Alexander III banned to combine public office with the work in the governing bodies of banks and corporations.

Corruption in all times was inseparable from favoritism. The reign of the last Russian Emperor Nicholas II was also characterized by the rise of corruption, in which were involved not only the officials of all ranks, but also people close to the emperor, and even members of the royal family. One should recall the activities of the "holy elder" Grigori Rasputin, who openly took bribes for the solution of various problems, including the appointment to high public office. It was corruption, that along with other contradictions in the society, became the reason for impending revolution, and ultimately contributed to the seizure of power by the Bolsheviks.

The policy of "war communism", pursued by the Bolsheviks during the Civil War, led to the development of new bureaucracy, which undertook the distribution function. After the Civil War and transition to peace, the new state apparatus was formed, but as the Bolsheviks lacked trained personnel, they couldn't prevent employing former officials. So, the new bureaucracy gradually merged with the old pre-revolutionary one, resulting in appearance of Soviet bureaucracy, which inherited most of the vices of the old times, and, above all, corruption.

In 1918, during the Ukrainian People's Republic (the state that existed in 1917-1920 in Central, Eastern and Southern Ukraine) at one of the first meetings of the Ukrainian-German Barter Commission, the Ukrainian representatives seriously discussed the need for finding ways of "personal influence" on the members of the German delegation with the help of bribes or so-called "guest parties" in order to promote decisions profitable for the Ukrainian party.

In the period of the NEP the problem became evident: there were revealed numerous acts of bribery, embezzlement of public funds and raw materials from state enterprises. Therefore, the young Soviet state was forced to take strict measures. The new law, according to which bribery was punishable by shooting, was adopted in 1922. Later, crackdowns on corruption became customary in the Soviet state, especially by Iosif Stalin, which undoubtedly influenced the reduction of corruption. However, it would be wrong to conclude, that there was no corruption in the Soviet Union during Stalin's governing. It existed, but not in such forms and amounts as in the tsarist Russia. The fact is, that at that time one could clearly

see the interaction between power and wealth, and wealth was understood a little differently. The officer did not need money to buy a car, a mansion, an apartment, etc. The position in the government gave him all these. The official could be sent to prison or even shot for purchasing a car with the money received as a bribe. In addition, to buy a car in the USSR was rather problematic, but to use at his discretion the service vehicle with a personal driver, provided by the state, was not forbidden by law. Therefore, at the highest levels there was a fierce struggle for a place in the government, and not for taking bribes. Therefore, in the top echelons of power there was a fierce struggle for a place in the government, and not for taking bribes. By Iosif Stalin bureaucratic apparatus grew and strengthened, and there appeared the so-called nomenclature, which by its nature and position in the society reminded the class of bureaucrats that had existed under Nicholas I. This similarity became evident in the Brezhnev period, especially in the last years of his life. Even the general principles of the national policy in the period of "developed socialism" were very much like those in the days of Nicholas I in the "apogee of autocracy" epoch. These two periods can be characterized with the term "stagnation". Corruption penetrated all the echelons of power, discrediting it and being at variance with the needs of society. There is no doubt, that corruption exacerbated the crisis of the socialist era and hastened the collapse of the USSR.

During the late Brezhnev era, bribery affected such areas as public health and education, that earlier hadn't been observed in the Soviet Union.

The dissolution of the Soviet Union and formation of the independent states of the former republics were accompanied by political, economic and social crises, conflicts on ethnic grounds. The formation of the new Russian state was going on in extreme conditions of hyperinflation, unemployment, and hasty voucher privatization, which resembled looting of the state property. Inaction of the law-enforcement authorities and vehement strife for the power led to the criminalization of the society.

At that time were formed the tendencies, that largely explain the huge scale of corruption nowadays. First, the state property after the privatization was owned either by the representatives of the nomenclature, or by those, who related to them, and thus gained access to the privatization. Second, the process of privatization, to a varying degree, involved representatives of the criminal world, who turned out to be connected with the nomenclature. Many of them later managed to legalize their business and criminal assets. Third, there was a return to the days of "feeding". As the salaries were not paid or held back, representatives of different professions, including doctors, teachers, law-enforcement officers and others, began to use their work to get additional revenue, some to survive, others to enrich themselves. Fourth, the bureaucracy, the backbone of which became the old nomenclature, further increased. The bureaucratic apparatus in the country had enormous power and was used with mercenary motives.

In this situation, implementation of reforms was of vital importance. And the creation of a nationwide system, that included anti-corruption measures, had priority. Taking into account the positive experience of the European Union, a number of legal acts to combat corruption was subsequently adopted at the national level. The key point in improving the national anti-corruption legislation was signing by our countries of the United Nations Convention against Corruption, the European Union Criminal Law Convention on Corruption and the Civil Law Convention on Corruption.

The first international act regulating measures for the prevention and criminalization of corruption, as an anti-social phenomenon, is the UN Convention against Corruption. The high-level Political Conference for the purpose of signing the United Nations Convention against Corruption, adopted by the UN General Assembly on October 31, 2003, took place on May 9, 2003 in the Mexican city of Merida. According to the document, the signatories were bound to declare a felony such acts as bribery, embezzlement of budget funds and laundering of money, derived from acts of corruption. According to one of the Convention provisions, the states were obliged to return the funds, resulted from corruption, to the country whence they came. In this regard, on the initiative of the United Nations, the International Anti-Corruption Day is annually observed on December 9.

Theme 2. PRECONDITIONS AND CONSEQUENCES OF CORRUTION

2.1. *Aspects of corruption*

In the context of **sociological discourse** corruption is regarded as a complex, multidimensional social phenomenon, which covers all areas of social interaction between the civil society and the state, and is rooted in the community, becoming a social norm. In sociology corruption is treated as a kind of deviant behavior, which manifests itself in the violation of the role functions of the society members under the direct influence of private interests, as a profit-motivated act, incompatible with the status of a civil servant ("renunciation of the expected standards of behavior on the part of the authorities for illegal personal gain"). It is regarded as a disease of developing societies, the result of poverty.

As a **cultural phenomenon** corruption can be considered in the context of culture of the particular society, rooted in traditions, national traits of character, mentality (the cultural aspect), as the ideological characteristics of the society and the individual (the ideological aspect). Corruption as an ideology is the ideology of a public official directed at serving not the interests of the people and the society, but the interests of his clan, family, and personally himself.

In the **moral and ethical** point of view, fight against corruption is equivalent to the fight against human sins – greed, envy, sloth, and insatiable hedonism.

In the **political aspect** corruption can be regarded as a means of power struggle, as a way of power existence or as a characteristic feature of the political regime. The Western political science defines corruption as a political behavior, manifesting itself in the illegitimate use of public resources by the ruling political elite for strengthening its power or enrichment. Traditionally, political corruption is associated with the desire of big business to influence the nominated candidates or parties, in order to receive further opportunities for illegal or semi-legal lobbying of the business interests. There is another type of political corruption before the elections – the abuse of public resources for the benefit of the ruling party. So, the ruling party begins to use public institutions, administrative resources, the state budget and state mass media in order to campaign for themselves free of costs.

In the **economic aspect** corruption is the result of economic relations and impacts on their development directly. It can be regarded as a powerful incentive to "shadowing" economy, as a kind of business "tax". The economic nature of corruption is manifested in discrimination of entrepreneurs by the authorities, resulted from the abuse of power. It should be noted, that not all entrepreneurs consider corruption as a phenomenon, which has an extremely negative impact on the development of the economic relations. Some of them adhere to the opinion, that corruption makes business possible, and a bribe is the payment for the acceleration of documents execution or settling other issues.

Considering corruption in the psychological aspect, one should focus on the specific psychological characteristics of the individual, which contribute to his corrupt behavior.

Understanding of "petty" or everyday corruption is based on the experience of the population. The phenomenon of corruption is often reduced to bribery, nepotism, it is mythologized and is treated as an inevitable, integral part of culture, certain game rules, which, due to absence of choice, should be unconditionally accepted by all. Bribery, power trip, nepotism have become the social norm, finding its expression in everything, even in folklore ("wheels don't run without oil" or "no silver, no servant").

One can distinguish between three types of everyday corruption:

"Survival corruption" is the most infamous manifestation of corruption for the society. This kind of corruption has ceased to exist in the civilized countries! Among the measures to combat it in the world are: rise in the level of social sphere, development of a feedback system, connecting an average citizen

with middle and top authorities or law enforcement agencies (hotlines, etc.), powerful propaganda with a view to inciting moral intolerance to this phenomenon.

"Corruption of comfort". This kind of corruption involves mostly the middle class. (Someone needs to get an international passport within three days instead of three weeks. Someone is stopped by a traffic policeman, but needs to go on travelling).

"Corruption of prestige". This corruption involves powerful and rich representatives of the society. "I want what is not allowed, for good money". This corruption is dangerous because it depraves and creates a false sense of superiority of money over law. In this case a serious law enforcement and operational work must be done.

Many approaches to corruption are reflected in numerous definitions, given on the basis of singling out a specific aspect or feature of corruption, an act or subject of corruption.

Typology of corruption involves a number of features according to which it is classified.

According to spheres of occurrence. In the field of trade, economy – economic. Political – in state government, in politics in general (electoral – bribery of voters or organizers of the election process; parliamentary, party – defending the interests of business by shadow financing of parliamentarians and party bosses, etc.).

According to status of subject (who commits an act of corruption) –state (bureaucratic) corruption (government officials, civil servants at different levels), commercial (managers of companies, entrepreneurs), political (politicians). For example, nowadays the "disease of white-collars" or the "white-collar corruption" is mentioned rather often.

According to corruption initiator – the one who extorts a bribe and the one who bribes officials and civil servants.

According to degree of centralization – decentralized corruption (each bribe-giver is acting on his own initiative), centralized corruption "bottom-up" (bribes, regularly collected by subordinate officials, are divided between them and their bosses), centralized corruption "top-down" (bribes, regularly collected by higher officials and then partially transferred to their subordinates).

According to nature of act itself – legal, illegal, criminal.

According to spread of corruption – "petty" (at the lower and middle levels of the government), "grand" (top officials and politicians), international (in the world economic relations). "Grand" and "petty" corruption occur, but manifest themselves differently in separate areas: in public health, education, housing and communal services, in law enforcement agencies, in field of taxes and various fees (fines), during the period of conscription, while issuing permits for different types of activity, and monitoring by the government agencies.

High level or "grand" corruption is the corruption on the part of political and state authorities, and, as the issue price is very high, it is rewarded considerably. In some sources it is called "elite" corruption. It is characterized by high social status of its committers, sophisticated intelligent way of their actions, great material, physical and moral damage (involves making decisions that have a "high price" – wording of law, government contracts, change of ownership form, etc.)

"Petty" corruption manifests itself in many forms: bribery (but in much smaller amounts than by "grand" corruption), material compensation (gifts, jewelry, food, drinks, etc.), services (repair of apartment, villa, car, tailoring, service preference, sex, etc.); neglect or prevention of legal actions included in the

list of official duties. Everyday or "petty" corruption is not less dangerous than corruption in the higher echelons of power. Sociological studies show that 98% of motorists at least once in their life bribed a traffic police inspector. This testifies not only to the high level of corruption in this service, but also to corruption of public consciousness, and proves that "petty" corruption is rooted in social practice.

According to regularity of occurrence, corruption may be episodic, systematic (institutional) and kleptocracy (corruption as an integral component of power relations).

According to type of corrupt relationships – vertical (chief – subordinate), horizontal (between individuals and institutions of the same level).

According to type of action – bribery, exchange of services including patronage of "bosses", friendship and nepotism.

Different attitudes to corruption prompted Arnold Heidenheimer to use color scale and distinguish between white, gray and black corruption.

Concerning "white corruption" there is no disagreement in public opinion: these actions are regarded as tolerable.

"Black corruption" is another object of consensus: the actions are condemned by all social strata.

"Grey corruption" is referred to actions in respect of which no agreement exists. It is "grey corruption" that provokes scandals.

According to nature of joining a corruption bargain, corruption may be forced and concerted.

U.S. judge Whitman Knapp divided corrupt cops into "herbivore" and "carnivore". "Herbivores" are those who, imitating senior colleagues, hunt for petty extortion from drug dealers, prostitutes and frequenters of underground gambling establishments. "Acting as others" among "herbivores" is quite normal, this is confirmation of loyalty to the actions of colleagues. So, Knapp later wrote, that the most effective way to put an end to "herbivores" is to get rid of the "old-timers" who teach beginners.

To "carnivores" belong those "policemen, who take active efforts to get personal gain by putting the squeeze on pimps and drug dealers, and at the same time justifying themselves – say, "victims of my extortion are worth it".

Typology of corruption enables to distinguish between directions to combat it (against whom, in what sectors, at what levels, etc.).

Thus, scientists of our country and from abroad have accumulated vast experience in classification of corruption. Nevertheless, none of the presented today classifications of corruption can be considered to meet the needs of efficient combating this phenomenon.

However, as an American political activist Bess Myerson states, "our own indifference most often becomes an accomplice of corruption".

2.2 *Causes and preconditions of corruption*

What causes corruption? Extant legal monuments of civilization suggest that corruption is as old as mankind.

As noted by some authors, it is easy to notice that prevalence and social danger of this phenomenon increases in times of great social upheaval, often accompanied by almost complete destruction of the rule of law and simultaneous growth of the population dependence on the arbitrariness of officials.

It is important to differentiate between the "original" cause of corruption, which may be rooted in the very essence of society, and causes of its growth or, conversely, extinction.

Factors of corruption that vary in different countries are "global" factors: human rights, rights of property, level of income and education; and "specific" factors: type of corruption, number of corruption victims. "Global" factors may explain the variety of corruption in different countries at different times, while "specific" factors account for the differences in various public organizations. Different corruption levels may also be explained by the background of the society and its history. In addition, the level of corruption depends on the cultural standards of the society: the more personalized relationships between people are, the more corrupt the society is, as the bureaucrats are under constant pressure from their friends and relatives.

What are the causes of corruption and how to fight against it – the answers to these questions depend on the approach to this phenomenon. T. Kachkina and A. Kachkin have thoroughly analyzed these approaches.

Political analysts, considering corruption as a set of different ways to use power by the interested structures and individuals, believe that the main causes of corruption consist in lack of democratic rules (although they thus recognize that corruption also spreads in democratic states). Among ways to combat corruption they consider counteraction to collusion between legislative and executive branches, and involvement of population in the democratic process, focused on the establishment and development of civil society.

Lawyers believe that fight against corruption must be conducted mainly through the improvement of the legislation and toughening of legal sanctions against acts of corruption. Figuratively speaking, for lawyers fight against corruption is "an aimed shot with sharpened norms".

Educators and cultural workers emphasize the need for formation and development of moral and ethical qualities of an individual, formation of legal culture and legal education of students.

Sociologists point to fulfillment of social functions by the members of the society (especially officials), and adjustment of status of civil servants on the basis of their compliance with the standards of behavior by increasing social control over the performance of official duties. The institutionalization of corruption in this perspective requires institutional efforts to combat it. The essential point in the study of corruption causes is the efficiency of government regulation, and this depends on the specific situation in a specific country. That's why, while studying the causes of corruption, it is impossible to ignore the state of the society as a whole.

Corruption is a symptom of deeper problems of the society, which is confirmed by the empirical evidence: corruption is closely linked to the decline in economic development, decrease in investment, underestimation of property rights and contractual rights for the credit-guarantees, weak institutionalization of the government, weakness of the law, lack of competitiveness, ethnic cleavages, low level of participation of population in politics and insufficient protection of civil liberties, low educational level and relatively closed economic and political systems.

The last two decades researchers of corruption focus their attention, as a rule, not on corruption itself, but on its causes, factors, and conditions of its occurrence. In the Book on Combating Corruption, causes of corruption are divided into economic, political, legal, moral, and cultural.

Economic causes. It is widely believed that the root of the problem is poverty. If poverty were the only cause of corruption, it would be difficult to explain why wealthy countries are rocked by scandals and their participants can not be classified as "poor" or "needy". If we accept this point of view, we would have to put an equal sign between the concepts of poverty and dishonesty, and such conception is not tenable. The source of corruption can be both wealth and poverty. This means that neither poverty nor destitution, as its extreme manifestation, is the root of corruption.

The World Bank estimates the amounts transferred by corrupt African leaders to European banks at several billion dollars. None of these leaders can be called a victim of poverty. But by robbing their own countries, they have undoubtedly aggravated poverty and misery of the people. Decisions on spending of public funds are based on self-interest, supported by huge bribes from large companies of industrialized countries, which are not concerned about the welfare of the country and its people. These factors negatively affect socio-economic development of the society. In this case, is it possible to treat corruption as a cause of poverty, and not as its consequence?

Persons, whose corruption inflicts the most damage on the state, are comparatively few, and ordinary citizens are, as a rule, not aware of their activities. As for corruption, which people constantly face in everyday life, it, to a greater or lesser extent, is a consequence of poverty and misery.

In the poorest countries – especially those, where high-level officials are corrupt – the government is unable to pay salaries to officials, in order to provide a reasonable standard of living. Sometimes the government simply does not have any opportunity for this. Insufficient level of civil service remuneration is a common factor, contributing to corruption if not in the whole system, then at least at the lower levels.

However, it is clear that to achieve full compliance between the level of remuneration of officials and the economic equivalent of the price of their powers is impossible in principle.

Among other economic incentives of corruption, instability plays a special role. It manifests itself primarily in uncontrolled inflation jumps, which induce officials to look for any source of income.

Political causes. In the history of humanity there are plenty of evidences, that between will to power and benefiting from it there is an objective link. It seems almost incredible that a person climbing up the service ladder doesn't have any personal interest. And a ruler, living in relatively unpretentious way, is treated as a god. The versatility of this formula, unfortunately, extends to the dictatorship, as well as democracy.

No form of state management can do without alienation of greater or smaller part of the population from power, in particular, from property management, law-making and law enforcement. It's just impossible. One of the most attractive ideas of communism (and anarchism) – everyone knows how to manage public affairs, i.e., without specially trained personnel – in the XXI century is even more utopian than it seemed at the beginning of the XX century. The need for such alienation gives grounds for dependence of a citizen on the officials throughout the foreseeable future. Effective models to solve this problem with the help of modern information technologies have not been fully defined yet. Only one thing is obvious – the number of those who solve other people's problems will diminish.

Political preconditions are characterized by the following features:

- retaining instability of the society political structure at all levels, which cultivates contempt of public servants for their duties;
- "unfulfilled dream" of the legislature to qualify for immediate removal from office executive functionaries, who have committed ethical violations and corruption offenses;
- substitution of anti-corruption political slogans for political will;
- recurrent penetration of criminal community members into the authorities;
- insufficient non-governmental control over the activities of the state authorities, local government bodies and their officials.

Legal causes. If it were possible to replace the general rules of behavior for individual, the problem of corruption would disappear along with the legal norms, as there would be no need for their selection, interpretation and application. Alas, modern law, which virtually has little changed since the times of the Hammurabi Stele, can not exist without a law enforcer. Law is vague by nature. It needs an interpreter and an enforcer. A wise legislator keeps to an optimal level of legal norms ambiguity. Then, the actions of the law enforcer are easy to control, and the legislation resembles rails rather than an endless field.

The legal definition of corruption is only a prerequisite to ensure that the "enemy" is accurately identified and effectively controlled. Unfortunately, not every definition of corruption can fulfill this task, but only the one that eliminates any ambiguity and, for the application of which, there is no need to maintain an army of interpreters.

Disdain for the law is just one of the factors determining the development of the state's corruption.

Moral causes. It is very difficult to fight against corruption in the society, where the legislator almost always has to be more righteous than the voter, declaring the actions, which have become a social norm, to be a crime. Inflated punitive claims, concerning corruption, on behalf of the significant part of the population (mainly the most disadvantaged), often hide reluctance to find corruption in themselves. Among the acts of corruption, traditionally justified, is giving a bribe for:

- exemption from military service;
- providing better care and more attention to a person or his relatives in a medical institution;
- obtaining a driving license without examination or if the driving skills are unsatisfactory;
- giving positive qualifying evaluation even in case of absence or lack of professional knowledge and skills;
- more considerate and tolerant attitude of a teacher to the child;
- admission to a prestigious public university;
- exemption from or mitigation of punishment for a crime;
- exemption from liability for any offence;
- getting any benefit "provided by the law" out of turn;
- connivance of the boss.

Unfortunately, this list can be continued. In the atmosphere of complete readiness to bribery, legal prohibitions are dead. Collusion between a bribetaker and a bribegiver predetermines invulnerability of corruption.

The growth of corruption is provoked by such psychological phenomenon as inform corruption. How often do you personally give a bribe? How often does anybody extort a bribe from you? And how many times have you observed (or have you been told) that others give a bribe or extort it? The differences in the responses to these questions quite well illustrate the difference between objective reality and its information phantom.

Cultural causes. The natural origin of corruption is justified by the so-called "cultural relativistic" approach. In the developed countries the opinion, that corruption is a part of the "culture" of many developing countries, is widely spread. The fact that the citizens of a country are tolerant to collection of small amounts of money for officials' services (for example, for the issuance of permits, licenses, etc.), does not mean that they unreservedly approve of this practice. Maybe the society just takes it as the most realistic way to achieve the desired result, and this approach may be gradually eradicated by raising prices, or to put an end to it once and for all, it's just necessary to make consumers understand that the shortage is artificially created and that there are other, more appropriate ways of achieving the desired result.

One might ask whether corruption is a "part of culture" in the countries – developed and developing – with anti-corruption legislation.

In some countries, corruption is the result of customs imposed by a foreign power.

Sometimes introduction of corruption stereotypes is attributed to economically developed powers. Most Europeans indignantly reject any suggestion that corruption is "a part of European culture". However, there are many evidences to support this assertion. And this refers not only to political scandals involving "big business" and corrupt politicians, which rocked Italy and Spain, and recently have come to France.

Fundamental approaches to identical phenomena may vary significantly in different cultural traditions. Usually "comity" and "gratitude" considerably differ from "gratitude-bribe". An interesting opinion, in this context, expressed General Obasanjo, the former head of the Nigerian government. He harshly criticized those who were trying to explain and justify the practice of rewarding officials for the services provided by national and cultural traditions: "Personally, I shudder at how an integral part of African culture, for one, can be taken as a basis for rationalizing otherwise despicable behavior. In the African concept of appreciation and hospitality, the gift is usually a token. It is not demanded. The value is in the spirit, rather than in the material worth. It is done in the open and never in secret. And when a gift is excessive, it becomes an embarrassment and is returned. If anything, corruption has perverted and destroyed this aspect of our age-old culture".

"Grand" corruption causes. Most experts agree on the fact that the main cause of "grand" corruption is imperfection of political institutions that provide internal and external mechanisms of deterrence:

- ambiguous laws;
- insufficient understanding of laws or ignorance of the population, which allows officials to arbitrarily interfere with the bureaucratic procedures or overstate the proper payments;
- unstable political situation in the country;
- underdeveloped mechanisms of interaction between government institutions;
- dependence of the standards and principles, that underlie the work of the bureaucracy, on the policy of the ruling elite;

- professional incompetence, bureaucracy;
- nepotism and political patronage, which lead to collusions that weaken the mechanisms of corruption control;
- lack of unity within the executive branch, i.e. regulation of one and the same activity by different institutions;
- low activity of citizens in controlling the state.

The World Bank, that made a significant contribution to the development of the world program to combat fraud and corruption, as well as ensuring good governance, identified four reasons for corruption growth.

Possibilities. People are prone to corruption when the system is inefficient and they need to find a way to achieve their goals ignoring current order and laws.

Low probability of exposure. Lack of accountability is the consequence of insufficient transparency (for example, government officials do not inform about their actions and do not explain them), and unsatisfactory law enforcement (law enforcement officers do not make state officials legally liable for abuse of power).

Poor motivation. For example, when an officer earns not enough to live on, or when he does not have confidence in his future, he supplements his income with bribes.

In certain situations and under certain circumstances ordinary people no longer respect the law. They are trying to evade laws, which they consider unfair. Poverty or lack of goods (e.g., drugs) can also incite people to the violation of law.

Speaking about the common causes of corruption, a number of authors are of the opinion that all the causes of corruption can be divided into six large groups, arranged in the following Table 1.

Table 1

Factors	Causes of corruption
Fundamental	Imperfection of economic institutions and economic policy; irregularity of political decision-making, underdevelopment of competition, excessive state intervention in the economy, monopolization of certain sectors of economy, state control over the resource potential, low level of the civil society development, the ineffectiveness of the judicial system
Legal	Weakness of law, lack of clear legal framework and too frequent changes in economic legislation, non-compliance with the international law, inadequate penalties for corrupt transactions, possibility to influence court decisions, availability of norms enabling subjective interpretation of regulations
Organizational and economic	Lax control over the distribution of state (in particular – natural) resources, challenges of managing a large territory, numerous and inefficient bureaucracy, relatively low salaries of civil servants, discrimination in access to infrastructure networks, trade protectionism (tariff and non-tariff barriers), and other forms of discrimination
Informational	Non-transparency of the state mechanism, information asymmetry, lack of real freedom of speech and press, offshore areas, lack of corruption studies

Social	Clan structures, nepotism, exploitation of “friendly relations”, cronyism, tradition of “giving gifts-bribes”, low level of literacy and education
Cultural and historical	Current system of bureaucratic rules of conduct; mass culture, forming lenient attitude towards corruption; peculiarities of historical development, putting little value upon the concepts of integrity and honor

2.3. *Damage caused by corruption and its consequences*

There are many opinions about consequences of corruption and its impact on different areas of public life.

Researchers focus their attention primarily on the impact of corruption on economic growth and development. Studies, conducted by the World Bank and other institutions, have proved that between economic growth and corruption there is a negative relation.

The impact of corruption resembles a regressive tax, which becomes a heavy burden to the needy citizens and smaller companies. It narrows the availability of services to the most vulnerable citizens, and is associated with poor quality of public services. It may cause significant costs for business. It is estimated that developing countries lose 20 to 40 billion U.S. dollars due to embezzlement.

When it comes to corruption, the common example is bribery. But corruption is not only “bribes, kickbacks, gifts”, but also negative effects of venal decisions and deals. Corruption puts economic entities to great expense. But, of course, society and the state suffer mostly from the systemic corruption. Such damage may be estimated with the help of several evaluation methods.

The main consequences of corruption:

- corruption hinders the implementation of the state tasks (for example, venal appointments lead to the decrease in efficiency of labor and cause damage). Dieter Frisch, former Director General for Development at the European Commission, states that corruption enhances the price of goods and services; it increases the national debt (and postpones current debt expenses to the future); causes the decrease in standards because of the supply of second-rate goods and the use of poor-quality or useless technologies; leads to the decisive role of capital in the selection of projects (because it is gainful for corrupt officials), but not human resources that could contribute to the development goals. When the government increases its debt because of economically unpromising projects, the debt increases not only by 10 - 20% spent on bribes, but by 100% of the project cost, as the investment in non-productive and unnecessary project is the result of venal decision;

- admission to prestigious public universities for bribes deprives society of much of the intellectual potential, making higher education inaccessible to talented young people who can not afford it or pay for their education in the private college of the same level, etc.;

- corruption spoils the investment climate, resulting in the only intention of private business to immediately realize a profit (often – superprofit) in the unpredictable conditions, and the conditions for long-term investment are not available;

- corruption leads to the increase in the cost of the administrative apparatus (bribery ultimately affects taxpayers, and as a result they have to pay for the services several times more);

- if corruption is manifested in the form of “black” commission charges, this leads to the reduction in the total amount of funds allocated for the social needs;

- corruption demoralize the administrative staff in both public and private sectors, reducing incentives for honest work ("in the atmosphere of lax morals everyone asks himself why he should be the one who observes the rules of morality");
- corruption in the top echelons of power, becoming public, undermines their credibility and, therefore, calls into question their legitimacy;
- people, convinced that the political elite is corrupt, can not resist "grabbing a tidbit";
- corrupt administrative staff is not psychologically prepared to sacrifice their personal interests for the prosperity of the society and the state;
- corruption makes justice senseless, as the one with more money and less morals is always right;
- corruption leads to replacement of real priorities of social development by false ones;
- corruption is a threat to democracy because people have no moral incentives to participate in the elections;
- corruption leads to groundless redistribution of the state budget in favor of the security agencies, exhausting strategic social programs, as it allows corruptionists to preserve a status quo of the spheres of influence and property.

Economic consequences of corruption. In 1960 Swedish economist Gunnar Myrdal, the researcher of economics of corruption, summing up the experience of the "third world" modernization, stigmatized corruption as a major obstacle to economic development. This view is shared by many modern scholars, blaming corruption for the following negative economic consequences:

- funds, raised from bribes, are often withdrawn from the circulation and are frozen in the form of real estate, treasures, savings (usually in foreign banks);
- entrepreneurs have to spend time on the dialogue with captious officials, even if they manage to avoid bribes;
- inefficient projects are supported, inflated estimates are funded, inefficient contractors are chosen;
- corruption stimulates creation of excessive number of instructions, in order to "help" to observe them for additional fees;
- skilled personnel, for whom bribery is morally unacceptable, leave the civil service;
- there are obstacles to the implementation of the state macro-economic policy, as corrupt lower and middle management distorts the information passed to the government and subordinate the realization of the set objectives to their own interests;
- corruption restructures public spending, as the corrupt politicians and bureaucrats tend to direct public resources to those areas where the strict control is impossible and where there are more possibilities to extort bribes;
- costs of doing business increase (especially for small firms, more vulnerable to exactors);
- bribes turn into a kind of additional taxation.

Summing up, it is possible to divide the economic consequences of corruption into several categories:

1. Expansion of shadow economy (leads to reduction of tax revenues and weakens the state budget. Government loses the financial leverage of economic management).

2. Disruption of competitive market mechanisms (the gainer is not the one who is competitive, but the one who receives odds through bribery; effective private owners less often appear on the market. This reduces the efficiency of the market and discredits the idea of market competition as a whole. The investment climate is worsening; the problems of the decline in production and the capital maintenance can not be solved).

3. Inefficient use of budget funds (in particular, in the allocation of public contracts and loans resulting in the decline in the quality and scope of social services, provided by the state to its citizens and businesses).

4. Price increase (is a consequence of corruption overhead expenses. Eventually the consumer suffers).

5. Government's loss of credibility (is the consequence of the market participants' loss of confidence in the ability of government to establish and fairly follow the game rules).

The social consequences of corruption are:

1. Budget crisis (is the consequence of the decrease in the amount of taxes paid, diversion of social development funds, which reduces the ability of the government to solve social problems).

2. Property inequalities (appear due to the fact that the venal deals parties benefit at the expense of the budget funds, or by privileges that are not available to others. Corruption spurs unequal distribution of resources in favor of oligarchic groups at the expense of the most vulnerable social groups).

3. Discrediting the law (is the result of law violations, and all (business and the public) know that this is happening and is allowed. The law ceases to be the main instrument for regulating the life of the state).

4. Organized crime (is the consequence of the loss of credibility and inefficiency of the law enforcement, corruption in the law enforcement agencies).

5. Social tensions (result from the above mentioned and affect the economy and the political stability of the state).

Jim Yong Kim, the World Bank Group President, in his speech "Anti-corruption Efforts in a Global Environment" on January 30, 2013, reflecting on the harmfulness of corruption and its consequences, said: "Bono came to speak at the World Bank recently, and he called corruption "the biggest killer of them all." His statement seemed to surprise many people, but corruption is indeed often the slow, silent killer of effective development.

When corruption seeps into the social sector, it means that a hospital is built without life-saving equipment or that a school is built without adequate salaries for teachers. It means roads are built without guardrails, or in some cases not built at all. And who pays for this? It is the poor who pay – sometimes with their lives. Corruption steals from the poor. It steals the promise of a brighter future."

Political consequences of corruption. This category includes:

1. Shift of the policy objectives (instead of providing benefits to the entire society, the goal is to ensure the prosperity of the oligarchic groups).

2. Lessening the government's credibility (inability or unwillingness of the authorities to cope with corruption lessens its credibility. The authorities dissociate themselves from society. Citizens and business representatives are inclined to apply illegal practices of problem-solving).

3. Reduction of political competition (results from the fact that politicians are, in fact, not elected. They "buy" places in the representative bodies. And, as a result, the interests of the voters are no longer important for the policy makers).

4. Risk of the democracy breakdown (democracy is, above all, the separation of legislative, executive and judicial powers. Corruption leads to de facto merger of these branches of power. Democracy withers and disappears.)

5. Decline in respect for the state and its isolation (the international community evaluates the level of corruption, and the states where corruption affected all the spheres of public life are given the lowest score. The prestige of the country on the world stage declines, the threat of political and economic isolation increases).

As we have already mentioned, experts divided corruption into "grand" and "petty". "Grand" corruption undermines the constitutional order, which is dangerous in all aspects. It goes beyond the separate effects of corruption, "puts at risk the very existence of the state". "Petty" corruption concerns mostly the private moral norms and reflects the depravity of some individuals. According to some authors, corruption – for example, giving a bribe to an official – is usually considered as an immoral act, an isolated crime that affects only the parties of the corrupt deal. It's the money of the person who has given a bribe. He hasn't stolen it. Does it have any effect on us? How can we, having nothing to do with this deal, become victims of corruption?

The following are the examples of "petty" corruption from the real life and its tangible consequences.

The situation: a traffic cop at night stops a car for exceeding the speed limit, in addition it appears that the driver is dead drunk. Having fully repaid the officer for the "absence of the traffic rules violation", the driver continues his route at the same speed and in the same physical condition. A few kilometers away, he knocks down a child. To death. The child would have lived if it had not been for the regular harmless bribe. And no court will judge the traffic cop for the death of the small, innocent child.

Let's return to the above mentioned "corruption of comfort", which includes giving a bribe for inspection sticker without the inspection itself, for petty offences being ignored, for saving time, which is to be wasted on the protocol and going to the bank to pay the fine, sophisticated methods of obtaining a driver's license without training, and for many other things. All these innocent tricks along with many people who were knocked down by drunk drivers, who had enough money to bribe, constitute the phenomenon that we call "corruption on the roads". It has global consequences for all, regardless of age, education, economic and social status – drivers, passengers, pedestrians and even traffic officers.

Let's follow the same logic. Education in universities – money for knowledge or knowledge for money? We'll start with individual victims. Any applicant who entered the college because of the high score, "earned" at high school, displaces a talented girl and an intelligent young man. They are direct victims of specific corrupt deals. But besides that, there is the practice of paying for examinations, tests, yearly projects, graduation papers, theses. All these facts are constituents of the social phenomenon called "corruption in higher education", which entails inevitable consequences. The basic function of

the university is to train professional and intellectual elite of the country. What do we get instead? Lawyers, teachers, architects, doctors, etc., have high grades and diplomas, but no knowledge. Could you confide in such doctor, engineer, teacher, lawyer, judge, or prosecutor?

In this way, unfortunately, higher education is discredited in whole. Instead of young professionals, universities graduate those, who have learned well that all the problems can be easily solved with the help of bribes. At the same time the younger generation is deprofessionalized and deintellectualized. The worst thing is that the effects of corruption in higher education are rectified and eradicated for decades, for generations.

The above mentioned examples are not the only ones that can be attributed to "petty" corruption. Life experience teaches a number of these seemingly ordinary, familiar, everyday, innocuous incidents with disastrous consequences.

Despite the fact that corruption is often compared to a virus, there are effective methods to combat this phenomenon, as evidenced by successful international practice.

Not to fight against corruption means to support it, and taking into account the devastating consequences of such inactivity for all the spheres of social life, combating this "internal enemy" is a burning problem for any state.

Therefore, it is so important to study the causes of corruption, as to control weeds one must control its seeds. Realizing what corruption is, investigating this phenomenon and the experience of other countries in combating it, we gain knowledge. And knowledge, as we know, is power. The main thing is to find proper application for this power. This requires not only political will, but also the support of the whole society. Otherwise, the fight against corruption will be lost.

Module II. INTERNATIONAL AND NATIONAL ANTI-CORRUPTION STANDARDS

Theme 1. INTERNATIONAL ANTI-CORRUPTION STANDARDS AND PRACTICES

1.1. *International sources of anti-corruption law*

1.1.1. *International anti-corruption legal framework*

In the mid-1990s, the international community recognized that corruption was a global problem, and numerous national and intergovernmental organizations began to work actively in this area. This activity resulted in the adoption of a code of laws, both binding (treaties and conventions) and non-binding in character (recommendations, resolutions, statements, and declarations), prepared and adopted within such organizations as the UN, Council of Europe OECD, EU, international organizations of America and Africa. International legal instruments differ in scope, legal status, membership, mechanisms of implementation and monitoring. However, they all have the same objective – to establish common standards for the fight against corruption at the national level by the introduction of criminal liability for corruption offences, enforcement of anti-corruption laws, and taking measures to prevent corruption. On the other hand, international legal instruments contribute to the identification and global dissemination of the positive experience in combating corruption and promote further strengthening of international cooperation between countries.

In the chronological order, the system of the main sources of international anti-corruption law can be represented as follows:

Code of Conduct for Law Enforcement Officials (UN General Assembly Resolution adopted on December 17, 1979);

International Code of Conduct for Public Officials (Appendix to Resolution 51/59 of the UN General Assembly adopted on December 12, 1996);

United Nations Declaration against Corruption and Bribery in International Commercial Transactions, adopted on December 16, 1996;

Resolution (97) 24 of the Committee of Ministers of the Council of Europe adopted on November 6, 1997 "On the Twenty Guiding Principles for the Fight against Corruption";

Council of Europe Civil Law Convention on Corruption, adopted on November 4, 1999;

Council of Europe Criminal Law Convention on Corruption, adopted on November 4, 1998, entered into force on July 1, 2002. Additional Protocol to the Council of Europe Criminal Law Convention on Corruption, adopted on May 15, 2003;

Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism, adopted on May 16, 2005;

Recommendation CM/Rec (2010) 12 of the Committee of Ministers of the Council of Europe to member states on judges: independence, efficiency and responsibilities, adopted on November 17, 2010.

It's necessary to highlight the key provisions of the main international instruments regulating legal relationship in the sphere of prevention and combating corruption.

Resolution (97) 24 of the Committee of Ministers of the Council of Europe adopted on November 6, 1997 "On the Twenty Guiding Principles for the Fight against Corruption". In the European context it is one of the first sources of non-binding international standards that indicate the need for specialized institutions or appointment of officials, responsible for the prevention, investigation and legal prosecution of crimes related to corruption. In the framework of the material presented we will focus on guiding principles 3 and 7.

Principle 3 provides that States should 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.

Principle 7 binds to promote the specialization of persons or bodies in charge of fighting corruption and to provide them with appropriate means and training to perform their tasks.

In 1998, most of these guiding principles were reflected in the **Council of Europe Criminal Law Convention on Corruption,** adopted on November 4, 1998, enacted on July 1, 2002. Additional Protocol to the Council of Europe Criminal Law Convention on Corruption was adopted on May 15, 2003.

The Convention, which is the first international treaty of this magnitude, demands from member-states to establish not only specialized agencies to fight corruption, but also institutions with preventive functions.

Article 20 – Specialized authorities – specifies that each Party shall adopt such measures as may be necessary to ensure that persons or entities are specialized 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.

United Nations Convention against Corruption, dated December 11, 2003 (UNCAC).

Article 6 – Preventive anti-corruption body or bodies – defines that each State Party shall, in accordance with the fundamental principles of its legal system, ensure the existence of a body or bodies, as appropriate, that prevent corruption by such means as:

(a) implementing the policies referred to in article 5 of this Convention and, where appropriate, overseeing and coordinating the implementation of those policies;

(b) increasing and disseminating knowledge about the prevention of corruption.

Each State Party shall grant the body or bodies the necessary independence, in accordance with the fundamental principles of its legal system, to enable the body or bodies to carry out its or their functions effectively and free from any undue influence. The necessary material resources and specialized staff, as well as the training that such staff may require to carry out their functions, should be provided.

Each State Party shall inform the Secretary-General of the United Nations of the name and address of the authority or authorities that may assist other States Parties in developing and implementing specific measures for the prevention of corruption.

In accordance with the fundamental principles of its legal system each State Party shall, as defined in article 36 – Specialized authorities, ensure the existence of a body or bodies or persons specialized in combating corruption through law enforcement. Such body or bodies or persons shall be granted the necessary independence, in accordance with the fundamental principles of the legal system of the State Party, to be able to carry out their functions effectively and without any undue influence. Such persons or staff of such body or bodies should have the appropriate training and resources to carry out their tasks.

Ultimately, the international standards do not provide for the procedure of establishing and organizing the work of the specialized anti-corruption institutions, or any single most effective or universal model of an anti-corruption body.

From this point of view, we can state that the provisions of the international law relating to the institutional framework in prevention and eradication of corruption, are much less detailed and clearly defined, than, for example, those provisions relating to corruption offences, both giving and receiving bribes, trade-related offences or abuse of office.

However, the above-mentioned conventions define the basic principles and criteria according to which specialized institutions can be set up. In addition, international monitoring mechanisms in the fight against corruption have accumulated a large amount of reviews and recommendations, which reflect useful examples of best practices in this area.

To ensure effective control over corruption it's not enough to improve only the legislative framework. Complex and diverse manifestations of corruption are the signals of poor functioning of public institutions and public administration. In the international community there is a common understanding that the specialized agencies or staff with the appropriate authority, resources and expertise must

be responsible for the implementation and monitoring of anti-corruption laws and measures. Such specialized anti-corruption bodies and staff should be protected from undue political pressure, and this requires mechanisms to ensure a high level of structural, operational and financial autonomy. As stated in the Conclusions and Recommendations of the 1st Conference for law enforcement officers specialized in the fight against corruption, which took place in Strasbourg in April 1996, "corruption is a phenomenon the prevention, investigation and prosecution of which need to be approached on numerous levels, using specific knowledge and skills from a variety of fields (law, finance, economics, accounting, civil engineers, etc.). Each State should therefore have experts specialized in the fight against corruption. They should be of a sufficient number and be given appropriate material resources."

Initially, the international legal instruments contained provisions for the establishment of specialized institutions to combat corruption in the form of investigation and prosecution bodies, which were supposed to ensure strict enforcement of anti-corruption laws. And only after the adoption of the UN Convention against Corruption in 2003, special attention was also paid to the prevention of corruption.

Prevention of corruption includes numerous and diverse activities that cover all aspects of good governance and can not be implemented by only one body. According to the UN Convention against Corruption, preventive measures include: avoiding conflicts of interests; property declarations, ensuring integrity and transparency of public service, prevention of money laundering and financial control over budget spending. Accordingly, in many countries, many of these tasks are being implemented by the existing authorities, including monitoring and auditing bodies, the ombudsman institution and the executive authorities, the commission on ethics and conflict of interest, the specialized agencies and bodies to prevent corruption and authorities to combat money laundering. There are a number of other tasks that are usually distributed to many institutions, but still require attention. They include development of professional educational programs on fight against corruption, information and awareness-raising campaigns, work with the media, civil society and business community; international cooperation.

Coordination, monitoring and study of corruption – these are three additional tasks that are considered essential components of the comprehensive national anti-corruption strategy and demand institutionalizing through specialized agencies. Coordination is required at two levels – policy coordination and coordination of its implementation. Monitoring and analysis of the anti-corruption plans implementation and study of the corruption level are the most important constituents of the successful anti-corruption policy and its implementation. In those countries where the detection, investigation and prosecution of crimes related to corruption are carried out by different structures, coordination is of particular importance. Even if the law enforcement functions are concentrated in a single body, it is necessary to ensure inter-agency coordination and cooperation with other supervisory authorities – tax, customs, financial regulatory institutions, and other bodies of executive power. In addition, to coordinate the implementation activities between different bodies and to prepare regular reports on the implementation of the comprehensive national anti-corruption strategy, programs or action plan, a multidisciplinary coordination mechanism is needed. Such mechanism should function at a sufficiently high level in the government structure in order to exercise its authority through different state institutions. Ideally, it should include representatives of civil society.

1.1.2 *EU anti-corruption legal instruments*

The European Union has prepared a number of documents on combating corruption:

1) Article 29 of the Treaty on European Union lists the prevention and combating corruption, as one objective enabling the creation and safeguarding of the European area of freedom, security and justice;

2) the Millennium Strategy on the Prevention and Control of Organized Crime reiterated the need for instruments aimed at the approximation of national legislations and developing a multi-disciplinary EU policy towards corruption; it urged the Member States to ensure speedy ratification of the EU and Council of Europe anti-corruption legal instruments;

3) the Vienna Action Plan, adopted by the Council in 1998, and the Tampere European Council in 1999, identified corruption as one of the sectors of particular relevance where common sanctions should be agreed upon;

4) the Action Plan against organized crime, adopted by the Council in 1997, advocated a comprehensive policy against corruption, primarily focusing on preventive measures.

In addition, the European Union has developed its own anti-corruption legal instruments: 1) the EU Convention on the protection of the European Communities' financial interests and the EU Convention on the fight against corruption involving officials of the European Communities or officials of the EU Member States; 2) the European Anti-fraud Office (OLAF) entrusted with interinstitutional investigative powers, established in 1999.

Let's focus on the main EU anti-corruption legal acts: the EU Convention on the fight against corruption involving officials of the European Communities or officials of the EU Member States of 1997 and the Framework Decision on combating private sector corruption of 2003.

As it can be assumed from their titles, the EU Convention targets corruption involving a public official, while the Framework Decision covers corruption committed entirely within the private sector, that is, between two commercial entities.

The EU Convention is in fact a criminal law convention and does not include items relating to preventive measures. However, it also contains provisions on technical cooperation between the investigative and prosecution authorities of the EU Member States in cases of cross-border bribery. The main objective of the EU Convention on the fight against corruption was to ensure that anti-corruption criminal laws of the Member States included not only the bribery of their own public officials, as they originally did, but bribery of the officials from other EU countries or government officials of the European communities. The Convention also prescribes that, for bribery committed by private companies, those companies' management shall be criminally liable for acts of corruption committed by persons under their supervision.

The Framework Decision concerns bribery committed between private parties in a business context. Like the EU Convention, the Framework Decision is mainly concerned with sanctioning and not with preventive measures. Aside criminal sanctions for the natural person perpetrating corruption, the Framework Decision prescribes that a legal person (a company) shall be liable for the acts of corruption perpetrated by people having legal representation, decision or control power within the given legal person.

Additionally, companies shall be held liable for acts of bribery committed for their benefit by a person under their authority, when the act of bribery occurred due to lack of supervision. Prior to

the Framework Decision, the rationale behind the fight against corruption in the private sector was preventing the distortion of market competition and/or protecting companies' assets. The EU fight against private corruption is now mainly concerned with the intangible right to loyalty that employees owe their employers.

The EU institutions also support the accession to a number of instruments originating with other international bodies. The aim is to take account of the activities that already exist, in order to avoid duplication, and to ensure that measures already existing in the EU have the same mandatory character in other international organizations.

1.2. *EU anti-corruption policy*

1.2.1. *Combating corruption as a segment of the EU policy*

The Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee COM (2011)308 "Fighting Corruption in the EU", dated June 7, 2011, states that "four out of five EU citizens regard corruption as a serious problem in their Member State".

As the Commission notes, despite the fact that the European Union over the last decades has contributed significantly to opening up Europe and making it more transparent, it is evident that a lot remains to be done. It is not acceptable that an estimated 120 billion Euros per year, or one percent of the EU GDP, is lost to corruption. This is certainly not a new problem to the EU, and we will not be able to totally eradicate corruption from our societies, but it is telling that the average score of the EU-27 in Transparency International's Corruption Perception Index has improved only modestly over the last ten years.

Although the nature and extent of corruption vary, it harms all EU Member States and the EU as a whole. It inflicts financial damage by lowering investment levels, hampering the fair operation of the internal market and reducing public finances. It causes social harm as organized crime groups use corruption to commit other serious crimes, such as trafficking in drugs and human beings. Moreover, if not addressed, corruption can undermine trust in democratic institutions and weaken the accountability of political leadership.

Over the last decade, some efforts have been made at international, EU and national level to reduce corruption. At EU level, the anti-corruption legal framework has developed by the adoption of legislation on corruption in the private sector and the accession of the EU to the United Nations Convention against Corruption (UNCAC). The Treaty on the Functioning of the European Union recognizes that corruption is a serious crime with a cross-border dimension which Member States are not fully equipped to tackle on their own. Anticorruption measures have, to some extent, been integrated within a range of EU policies.

On May 28, 2003, the Commission drew up the Communication COM (2003) 317 "On a Comprehensive EU Policy against Corruption", which included the principle elements of the future EU anti-corruption policy:

1) a strong political commitment at the highest level;

2) the implementation of existing anti-corruption instruments should be closely monitored and strengthened. The Commission recommends that the European Community adhere to the Council of Europe's conventions on corruption and participate in its monitoring mechanism, GRECO;

3) EU Member States should develop and improve investigative tools and allocate more specialized staff to the fight against corruption;

4) Member States and EU institutions and bodies should redouble their efforts to combat corruption damaging the financial interests of the European Community;

5) common integrity standards should be established for public administrations across the EU;

6) the efforts of the private sector to raise integrity and corporate responsibility should be supported;

7) the fight against political corruption and illicit financing of social partner entities and other interest groups should be stepped up;

8) corruption-related issues should be addressed in dialogues with acceding, candidate and other third countries;

9) the EU should continue to make the fight against corruption an integral part of its external and trade policy.

The annex to the Communication COM (2003) 317 "On a Comprehensive EU Policy against Corruption" includes **ten principles for improving the fight against corruption in acceding, candidate and other third countries,** namely:

1. To ensure credibility, a clear stance against corruption is essential from leaders and decision-makers. National anti-corruption strategies or programs, covering both preventive and repressive measures, should be drawn up and implemented. These strategies should be subject to broad consultation at all levels.

2. Current and future EU Members shall fully align with the EU acquis and ratify and implement all main international anti-corruption instruments.

3. Implementation of anti-corruption laws by competent anti-corruption bodies (i.e. well trained and specialized). The role of law enforcement bodies should be strengthened concerning not only corruption but also fraud, tax offences and money laundering.

4. Access to public office must be open to every citizen. Recruitment and promotion should be regulated by objective and merit-based criteria. Salaries and social rights must be adequate. Civil servants should be required to disclose their assets. Sensitive posts should be subject to rotation.

5. Integrity, accountability and transparency in public administration (judiciary, police, customs, tax administration, health sector, public procurement) should be raised through employing quality management tools and auditing and monitoring standards. Increased transparency is important in view of developing confidence between the citizens and public administration.

6. Codes of conduct in the public sector should be established and monitored.

7. Clear rules should be established in both the public and private sector on whistle blowing and reporting.

8. Public intolerance of corruption should be increased, through awareness raising campaigns in the media and training. The central message must be that corruption is not a tolerable phenomenon, but a criminal offence. Civil society has an important role to play in preventing and fighting the problem.

9. Clear and transparent rules on party financing, and external financial control of political parties, should be introduced to avoid covert links between politicians and (illicit) business interests. Political parties evidently have strong influence on decision-makers, but are often immune to anti-bribery laws.

10. Incentives should be developed for the private sector to refrain from corrupt practices such as codes of conduct or "white lists" for integer companies.

However, the implementation of the anti-corruption legal framework remains uneven among EU Member States and unsatisfactory overall. The EU anti-corruption legislation is not transposed in all Member States. Some countries have not ratified the most important international anti-corruption instruments. More importantly, even where anti-corruption institutions and legislation are in place its enforcement is often insufficient in practice.

This reflects a lack of firm political commitment on the part of leaders and decision-makers to combat corruption in all its forms – political corruption, corrupt activities committed by and with organized crime groups, private-to-private corruption and so-called "petty" corruption. There is thus an evident need to stimulate political will to fight corruption, and improve the coherence of anti-corruption policies and actions taken by Member States.

That is why the Commission will set up a new mechanism, the EU Anti-Corruption Report, to monitor and assess Member States' efforts against corruption, and consequently encourage more political engagement.

The EU should also put stronger focus on corruption in all relevant EU policies – internal as well as external. The Commission therefore proposed:

modernized EU rules on confiscation of criminal assets (2011);

a strategy to improve criminal financial investigations in Member States (2012);

In 2011 the Commission adopted the Action Plan on Crime Statistics Improvement and a Strategy to Combat Fraud affecting the Financial Interests of the EU.

The Commission will also work with EU agencies such as Europol, Eurojust and CEPOL, as well as with OLAF to step up judicial and police cooperation and improve training of law enforcement officials.

It will continue to prepare modernized EU rules on procurement and on accounting standards and statutory audit for EU companies.

In parallel, the Commission will put a stronger focus on anti-corruption issues within the EU enlargement process.

1.2.2. *The EU Anti-Corruption Report as the mechanism encouraging political participation in combating corruption*

Given the limitations of the existing international monitoring and evaluation mechanisms, a specific EU monitoring and assessment mechanism, the EU Anti-Corruption Report, should be established to prompt stronger political will in the Member States and enforcement of the existing legal and institutional tools.

Starting in 2013 the EU Anti-Corruption Report will be issued every two years.

The establishment of the EU Anti-Corruption Report is the Commission's response to the call from Member States, in the Stockholm Program, to "develop indicators, on the basis of existing systems and common criteria, to measure anti-corruption efforts within the Union", and from the European Parliament to monitor anti-corruption efforts in the Member States on a regular basis.

The establishment of the EU Anti-Corruption Report starts from the principle that although there is no "one-size-fits-all" solution to fighting corruption, corruption is a concern for all the EU Member States. Through periodical assessment and publication of objective fact-based reports, the Report will create an additional impetus for Member States to tackle corruption effectively, notably by implementing and enforcing internationally agreed anticorruption standards. The mechanism, applicable equally to all Member States, will provide a clearer overview of the existence and effectiveness of anti-corruption efforts in the EU, help identify specific causes of corruption, and thus provide grounds for sound preparation of future EU policy actions. Moreover, it will act as a "crisis alert" to mitigate the potential risks of deeply-rooted problems which could evolve into a crisis.

When preparing the EU Anti-Corruption Report the Commission will cooperate with existing monitoring and evaluation mechanisms to avoid additional administrative burdens for the Member States and duplication of efforts. It will draw on the minimum standards against corruption established by existing international instruments such as the Council of Europe's Criminal Law Convention on Corruption, Civil Law Convention on Corruption, Twenty guiding principles for the fight against corruption, the UNCAC and the OECD Anti-Bribery Convention.

Taking into account that almost all forms of corruption may have cross-border implications, the Report will not be limited to an exhaustive list of priority areas. Each EU Anti-Corruption Report will however focus on a number of cross-cutting issues of particular relevance at EU level, as well as selected issues specific to each Member State.

The Member States will be assessed against a number of indicators, based on the already existing standards in the respective fields and some newly developed in the process of preparing the Report.

New indicators will be developed where relevant standards are not yet laid down in an existing instrument or where higher standards are required at EU level. In the selection of existing and the development of new indicators, the Commission will consult competent anti-corruption authorities in the Member States.

The indicators may include: perceptions of corruption, respondents' behavior linked to corrupt activities, and criminal justice statistics, including on seizures and confiscations of the proceeds of corruption-related crime. The EU Anti-Corruption Report will also include a quantitative assessment of those indicators and a qualitative analysis of corruption trends and results.

EU participation in GRECO, although not fully responding to the EU's needs for periodic reporting on anti-corruption efforts across the EU, would create synergies between the two mechanisms. GRECO could, in particular, provide input to the EU monitoring mechanism in the form of comparative analyses of the existing GRECO evaluation and compliance reports on the EU Member States, and indication of key outstanding recommendations requiring additional follow-up.

1.2.3. *Better implementation of the EU anti-corruption instruments*

Judicial and police cooperation within the EU. In addition to stronger monitoring and implementation of existing legal instruments, anticorruption considerations should, as part of a comprehensive approach, be integrated into all relevant EU policies – internal as well as external. A stronger focus should be put on corruption, in particular, in such policy areas as law enforcement, judicial and police cooperation within the EU.

Member States should take all necessary steps to ensure the effective detection, prosecution and a stable track record of dissuasive penalties and recovery of criminally acquired assets in corruption cases. In this context, judicial and police cooperation between EU Member States, financial investigations, training of law enforcement personnel, and the protection of whistleblowers is of particular importance.

Under its 2010-2014 strategy, Europol is committed to providing increased support for law enforcement operations and function as the EU criminal information hub and EU centre for law enforcement expertise. The Commission urges Europol to step up its efforts to combat corruption as a facilitator for organized crime activity. This should include regular conducting of threat assessments.

Since 2004, Eurojust has been involved in a slightly increasing number of corruption cases. Although in 2010 these cases represented only 2% of its total workload, the growing number of Member States involved attests to an increasing need for judicial cooperation in corruption cases with a cross-border dimension. The Commission urges Eurojust to strengthen its efforts to facilitate the exchange of information among Member States' authorities on corruption cases with cross-border implications.

Finally, since 2008 the EU contact-point network against corruption (EACN) has brought together Member States' anti-corruption authorities, as well as the Commission, OLAF, Europol and Eurojust. The EACN is managed by the Austrian-led network European Partners against Corruption (EPAC).

The Commission will work with the EACN towards more concrete deliverables, stronger focus on operational issues of relevance for corruption investigators, and a clearer delimitation of the respective roles of EPAC and the EACN. The Commission considers preparing a proposal to modify the Council Decision establishing the EACN.

Financial investigations and asset recovery. The third Anti-Money Laundering Directive lists corruption as one of the predicate offences for money laundering. Evaluations conducted by the OECD's Working Group on Bribery suggest that very few foreign bribery cases are detected through the national anti-money laundering systems. The Commission stresses the need for further cooperation between the Financial Intelligence Units, specialized anti-corruption agencies and law enforcement bodies in Member States.

Member States should ensure that financial investigations are pursued effectively and consistently in corruption cases and that any potential link with organized crime and money laundering is always considered.

Protection of whistleblowers. Effective protection of whistleblowers against retaliation is a key element of anti-corruption policies. The relevant legal framework in the EU is uneven, creating difficulties in handling cases with a cross-border dimension.

The Commission will carry out an assessment of the protection of persons reporting financial crimes that will also cover protection of whistleblowers, and related data protection issues, as a basis for further action at EU level.

Training of law enforcement officials. The Commission will support the development of targeted training programs on corruption for law enforcement agencies through the European Police College (CEPOL). Those programs should cover specific aspects of handling corruption cases with cross-border implications, for example, gathering and exchanging of evidence, the link with financial investigations, and the link with investigations of organized crime offences.

Public procurement. Public expenditure on works, goods and services accounts for roughly 19% of EU GDP (2009). Almost a fifth of this expenditure falls within the scope of the EU Directives on public procurement (i.e. approx. €420 billion, or 3.6% of EU GDP). In January 2011, the Commission launched consultations on the modernization of the EU public procurement policy.

Cohesion policy to support administrative capacity building. The EU's cohesion policy supports the strengthening of institutional capacity in Member States to make public services and administrations more efficient.

Administrative capacity and good governance are included as main priorities in the 2007-2013 Community Strategic Guidelines for cohesion. A total of 3.5 billion Euros have been allocated under those guidelines to strengthen institutional capacity at national, regional and local level of which 2 billion Euros stem from the European Social Fund. The 2007-2013 European Social Fund regulation introduced a specific priority for strengthening administrative capacity in less developed regions and Member States. Such support for institutional capacity will have a positive impact on preventing corruption, by making public services and administrations more efficient and transparent. Some Member States have included measures to fight corruption in their operation programs. The Commission intends to continue support for the strengthening of institutional capacity and make it available to all Member States and regions.

Accounting standards and statutory audit for EU companies. The use of International Financial Reporting Standards for consolidated financial statements of companies listed on the EU's stock markets became mandatory in 2005. The procedures on statutory audit were harmonized, introducing a requirement for external quality assurance, provisions on public supervision, duties and independence of statutory auditors and the application of international standards. These measures increased the credibility, quality and transparency of financial reporting, reducing the risks of corruption.

The Commission conducted public consultations in 2010 on the audit policy lessons from the financial crisis. The results of the consultation will assist the Commission in deciding on future measures aimed at ensuring consolidated checks and control systems within EU companies to reduce the risk of corrupt practices. These may cover matters such as: clarifications of the role of auditors, governance and the independence of audit firms, supervision of auditors, creation of a single market for the provision of audit services, and the simplification of rules for SMEs (small and medium enterprises).

Prevention and combating political corruption. As political scandals have repeatedly shown, complex connections are sometimes developed between political actors, private undertakings, media, trade associations and foundations. These connections are driven by mutual benefits in influencing key political and economic decisions, putting democratic institutions and procedures at risk and rendering the detection of corrupt practices more difficult. Under the impetus of the GRECO monitoring process, some progress has been seen in the legal and institutional setting for the financing of political parties in several Member States. Unfortunately, the enforcement of transparency and supervision rules is still unsatisfactory in some Member States. The Commission calls upon the Member States, the national Parliaments and the European Parliament to ensure more transparency and allow effective supervision of the financing of political parties and other interest groups. The Commission is also committed to respecting its obligations to defend the general interest of the Union, in conformity with the obligations laid down by the Treaties, in its own Code of conduct and in other relevant rules.

The media have a key role in increasing transparency and accountability of political figures and are often a resourceful tool for fighting political corruption. The Commission urges Member States to take all necessary measures to ensure effective implementation of the existing legal framework guaranteeing the independence and freedom of the media, including on media funding. The Commission will support, through its existing programs, training of media to strengthen knowledge in specific areas relevant for the detection of corruption (e.g. money laundering, political party financing, banking, stock exchange markets). The Commission also supports in other ways action limiting political corruption, including through funding of civil society initiatives.

Stronger focus on corruption in EU external policies. The process of enlargement of the EU has been a key vehicle for major anti-corruption reforms in the candidate countries and potential candidates. The most recent accessions had a considerable impact on the actual weight of anti-corruption policies within the EU. They also showed that at the time of accession it was still very difficult to demonstrate a track record of implementation and the irreversibility of anti-corruption reforms. Moreover, following accession, efforts to fight corruption still had to be monitored.

The 2005 negotiating frameworks for Croatia and Turkey introduced a specific chapter covering a range of rule of law issues, including judicial reform and the fight against corruption. The renewed consensus on enlargement has further strengthened the focus on the rule of law.

Aware of the fact that, without a strong political will, investing EU funds in institution building alone cannot guarantee the success of anti-corruption policies, the Commission intensified in 2010 its dialogue on rule of law with the candidate countries and potential candidates. (The reinforced dialogue builds on the experience gained during the visa liberalization process. The action plans containing benchmarks to which countries had to conform in order to obtain visa liberalization proved to be an efficient tool to motivate and prioritize reform.)

Based on these tools, the Commission will continue to give high priority to the monitoring of anti-corruption policies and will enforce thorough scrutiny from the early stages of accession preparations with the aim of securing guarantees for the sustainability of reforms. The Commission will also promote close coordination of the international donors to avoid any overlapping and to better channel the resources invested.

Under the auspices of the European Neighborhood Policy, the High Representative and the Commission will promote reinforcing the capacity to fight corruption in the neighborhood countries as a key aspect of the support given. This is especially important given the recent events in North Africa, where uprisings against the regimes were also prompted by the urge to eradicate a culture of corruption in their countries.

Cooperation and development policies. The support for strengthening good governance and democratization granted by the EU as a part of cooperation and development policy also covers anti-corruption policies. The Commission follows in this context a partnership-based approach, engaging dialogue with partner countries' governments and civil society, EU Member States and other donors. While recognizing that without political will inside the country, outside support is unlikely to deliver results, the Commission considers that incentive-based approaches may prove their benefits.

The Commission intends to strengthen dialogue with partner countries on anti-fraud and anti-corruption issues and its support to capacity building, leading towards the adoption of national strategies to fight corruption in all its forms. During the programming period as well as throughout the implementation process particular attention will be paid to such strategies and their effective implementation.

In line with that objective, the Commission will promote greater use of the conditionality principle in the field of development to encourage compliance with minimum international anti-corruption standards as set out in UNCAC and other international and regional conventions these countries are party to.

In the light of the foregoing, it's necessary to focus on the following key points:

In terms of the European anti-corruption standards, particular importance is attached to the Council of Europe Resolution (97) 24 "On the Twenty Guiding Principles for the Fight against Corruption" (adopted by the Committee of Ministers on November 6, 1997, at the 101st session), which provides: "Firmly resolved to fight corruption by joining the efforts of our countries, it's necessary:

1. to take effective measures for the prevention of corruption and, in this connection, to raise public awareness and promoting ethical behavior;

2. to ensure coordinated criminalization 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;

7. to promote the specialization of persons or bodies in charge of fighting corruption and to provide them with appropriate means and training to perform their tasks;

8. to ensure that the fiscal legislation and the authorities in charge of implementing it contribute to combating corruption in an effective and coordinated manner, in particular by denying tax deductibility, under the law or in practice, for bribes or other expenses linked to corruption offences;

9. to ensure that the organization, 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 behavior 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 behavior of public officials;

14. to adopt appropriately transparent procedures for public procurement that promote fair competition and deter corruptors;

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;

18. to encourage research on corruption;

19. to ensure that in every aspect of the fight against corruption, the possible connections with organized crime and money laundering are taken into account;

20. to develop to the widest extent possible international co-operation in all areas of the fight against corruption."

In terms of EU integration particular importance is attached to the Communication from the Commission "On a Comprehensive EU Policy against Corruption" with annexed ten principles for improving the fight against corruption in acceding, candidate and other third countries.

1.3. *Specialized international bodies and EU institutions to monitor and combat corruption*

1.3.1. *Role of European Anti-Fraud Office (OLAF) in combating fraud and corruption. Monitoring mechanisms of Group of States against Corruption (GRECO)*

Now the European Union is a complex entity, which has no exact analog in the history of mankind. Features of the EU and the history of the European integration are extremely interesting in themselves. But in the context of the fight against economic fraud and corruption, associated with it, the EU experience is the most valuable.

However, towards the development of effective mechanisms to combat fraud and corruption, the EU faced not only success, but also outright failures. Familiarization with the latter will, firstly, help to avoid the predecessors' mistakes, and secondly, predict the possibility of cooperation in combating fraud and corruption at the EU level.

As is known, the EU has at its disposal vast financial resources obtained through taxation or directly from the EU member states. These funds, being vulnerable to fraud and corruption, attract attention of swindlers. That's why protection of the EU financial interests historically became one of the first criminal matters, which called for joint efforts of the member states.

Fraud against EU finances is the embezzlement of property, theft from the EU budget and funds, fraudulent misuse of funds or abuse of confidence. It causes serious damage to the European Social Fund, the European Financial Stability Facility, the European Financial Stabilization Mechanism and the financial interests of the EU as a whole.

Fraud is committed in various ways. Its objectives are: income obtained by criminal means, involving fraudulent payment instruments, as well as misuse of resources of the budget or EU funds.

The most serious types are: fraud related to exports and imports of goods, fraud related to the different ways of value added tax (VAT) evasion, fraud associated with interference in the internal market of the European Union.

The criminal encroachments are aimed at the revenues of the EU budget, including the five main elements:

1) contributions, bonuses, extra and compensation payments, as well as other charges levied on trade with third countries in the framework of the common agricultural policy;

2) customs duties levied on imports under the common customs tariff, similar customs duties levied on trade with third countries, as well as customs duties on the nomenclature of products of the European Coal and Steel Community;

3) fixed-rate portion of value-added tax (VAT), collected by Member States;

4) fixed-rate levy on gross national product (GNP) of the Member States transferred to the EU budget;

5) other revenue (taxes and deductions from EU staff remuneration, bank interest, third-country contributions to certain Community programs, fines etc.).

It is important to note that fraud related to VAT causes great damage not only to the national budget, but also the EU economy as a whole.

As the European integration process aimed initially at economic cooperation, the founding treaties created the basis for the economic security of the European Communities and the European Union. And the issues of combating economic fraud were for the first time raised within the scope of the European law since the signing of the Treaty establishing the European Economic Community (TEEC) in 1957, Article 209 (now Article 280) of which contained a number of provisions on combating fraud and other illegal activities affecting the financial interests of the Community. The anti-fraud provisions were further developed in the Treaty on European Union (TEU) signed in 1992.

Among the main objectives of the EU were prevention and fight against crime (article "B" of the original edition). Title VI of this Treaty contains provisions relating to judicial and police cooperation in criminal matters. And Article 29 (ex Article K-1) explained that this "objective shall be achieved by preventing and combating crime, organized or otherwise, in particular terrorism, trafficking in persons and offences against children, illicit drug trafficking and illicit arms trafficking, corruption and fraud..."

Changes to these basic documents in the Amsterdam Treaty and the Treaty of Nice did not affect the provisions related to fraud.

In spite of the attention attached in the founding treaties to the fight against fraud, which is impossible without punitive measures, the European Community as a supranational organization has limited competence in criminal matters.

Certain hopes to fill the gaps in the current system were put on the Treaty establishing a Constitution for Europe (TCE) not long ago. But due to refusal of some EU states to ratify the TCE, these plans could not be executed.

On December 13, 2007 the leaders of the 27 EU states signed a new framework agreement defining the main directions of the development of the European law and European integration in the coming decade – the Treaty of Lisbon. According to it, the Treaty on the Functioning of the European Union (TFEU), which replaces the acting TEEC, includes a new Chapter 6 "Combating Fraud". In accordance with Article 69B of the Treaty of Lisbon, the European Parliament and the Council may by means of directives establish minimum rules on the criminalization of certain types of crimes, including encroachments on the financial interests of the EU. In addition, Article 69D (paragraph 1a) of the Treaty of Lisbon provides a legal basis for Eurojust to initiate criminal investigations, particularly those relating to offences against the financial interests of the Union.

The first steps towards the creation of legal basis for anti-fraud cooperation were taken in the framework of international legal instruments. And almost immediately, in the late 1980-s, the national anti-fraud legislation of the EU Member States began to suffer from the impact of the European harmonization.

This process was based on the Convention on the Protection of the European Communities' Financial Interests adopted on July 26, 1995, which entered into force on October 17, 2002 (known as "Convention PIF" – from French Protection des Interets Financiers). The objective of the Convention PIF was to ensure conformity between the norms of the criminal law of the Member States by forming the minimum requirements for the criminal prosecution of fraudulent conduct.

Since the connection between fraud and other offences affecting the financial interests of the EU, especially corruption-related crimes, was obvious, the Convention PIF was supplemented by the Protocol on combating corruption on September 27, 1996. The Protocol distinguishes between passive and active corruption.

Passive corruption is defined as "the deliberate action of an official, who, directly or through an intermediary, requests or receives advantages of any kind whatsoever, for himself or for a third party, or accepts a promise of such an advantage, to act or refrain from acting in accordance with his duty or in the exercise of his functions in breach of his official duties in a way which damages or is likely to damage the European Communities' financial interests" (Article 2).

Active corruption is defined as "the deliberate action of whosoever promises or gives, directly or through an intermediary, an advantage of any kind whatsoever to an official for himself or for a third party for him to act or refrain from acting in accordance with his duty or in the exercise of his functions in breach of his official duties in a way which damages or is likely to damage the European Communities' financial interests" (Article 3).

The "advantage" is not only material objects (money, precious metals and other valuables, etc.), but also acts which are of direct or indirect interest to the official (cancellation or reduction of debt, work in favor of the official or a third party, etc.). The advantages may also include any intangible ("intellectual") benefits.

Taking into account the peculiarities of economic fraud, Convention PIF was supplemented by the Second Protocol on money laundering and criminal liability of legal persons, adopted on June 19, 1997. According to it, "money laundering" refers to a financial transaction scheme that aims to conceal the identity, source, and destination of illicitly-obtained money (Article 1).

Article 3 of this Protocol, ensures that a legal person is held liable for fraud, active corruption and money laundering.

Legal norms to combat fraud and other economic crimes against the financial interests of the EU are reflected also in other documents.

Extensive legal framework and the need to coordinate activities for protection of the financial interests of the European Union demanded the establishment of a special body.

In 1988, in order to counteract financial crimes the Commission established **Anti-Fraud Coordination Unit – UCLAF** (from French Unité de coordination de lutte anti-fraude – UCLAF), as a part of the Secretariat-General of the European Commission. The UCLAF's terms of reference covered collection of information on fraud, fight against corruption, as well as a number of other issues affecting financial interests of the EU.

However, regular audits conducted by the European Court of Auditors (ECA) in 1988 – 1998, proved that the activity of UCLAF to combat fraud was limited and not efficient.

Considering previous miscalculations the Commission adopted a decision to establish a more effective instrument to combat fraud by ensuring its functional independence from the institutions and bodies of the EU.

Such instrument is the European Anti-fraud Office (OLAF), established by the Decision of the Commission on April 28, 1999. It is an independent entity within the European Commission (Article 1).

Tasks of OLAF:

- strengthening the fight against fraud, corruption and any other illegal activity adversely affecting the Community's financial interests;
- providing the Commission's support in cooperating with the Member States in the area of the fight against fraud;
- preparation of legislative and regulatory initiatives of the Commission with the objective of fraud prevention;
- conducting administrative investigations (offenses and crimes committed inside OLAF), internal investigations (crimes committed by officials of the institutions and specialized agencies of the EU), external investigations (crimes committed by nationals of the Member States against the financial interests of the EU).

Structure of OLAF:

- Director-General;
- advisers of the Director-General;
- assistants of the Director-General;
- investigators and administrative staff, working in diverse units.
- OLAF is divided into four Directorates, which report directly to the Director-General.
- Directorates A and B perform operational and investigative activities.

Directorate A consists of four units: Unit A1 (internal investigations in the institutions and specialized agencies of the EU), Unit A2 (internal investigations in the institutions and specialized agencies of the EU, external investigations), Unit A3 (financial issues), Unit A4 (external subsidies).

Directorate B also consists of four units: Unit B1 (fight against fraud in the agricultural sector), Units B2 and B3 (combating customs fraud), Unit B4 (organizational issues).

Directorate C incorporates conceptualization of the policy work, preparation of legislation on combating fraud, corruption and other offences against the financial interests of the EU. Directorate C is organized into five units: Unit C1 (legal issues and legal counseling), Unit C2 (fraud prevention in the EU), Unit C3 (organization of mutual legal assistance in cases of financial crimes between law enforcement authorities of the Member States), Unit C4 (strategic analysis and planning), Unit C4 (protection of Euro).

Directorate D consists of eight units: Unit D1 (public relations), Unit D2 (standard-setting activities), Unit D3 (cooperation with institutions and specialized agencies of the EU), Unit D4 (development issues), Unit D5 (OLAF personnel development), Unit D6 (budget issues), Unit D7 (executive), Unit D8 (information support).

The legal framework of OLAF (in addition to the constitutive instruments) is formed of a number of documents. First of all, it is the Interinstitutional Agreement of May 25, 1999 between the European Parliament, the Council of the European Union and the Commission of the European Communities concerning internal investigations by the European Anti-fraud Office (OLAF). According to this act:

- all the institutions, bodies and agencies are required to cooperate fully with OLAF, and supply its agents with the necessary information;
- any OLAF official, who becomes aware of evidence which gives rise to a presumption of the existence of possible cases of fraud, corruption or dishonest behavior of EU officials while performing their professional duties, should initiate an internal investigation;
- any internal investigation should be reported to the Head of the corresponding EU body, institution or agency;
- the security office of the institution, body or agency shall assist OLAF in the practical conduct of internal investigations;
- OLAF exchanges information with the EU bodies, specialized agencies and institutions on the basis of complete confidentiality and non-disclosure of information till the end of the investigation; if, following an internal investigation, no case can be made out against a member, manager, official or servant of the institution (body, office or agency), against whom allegations have been made, the internal investigation concerning him shall be closed, with no further action taken, by decision of the Director-General, who shall inform the interested party in writing;
- any request from a national police or judicial authority regarding the waiver of the immunity from an official of the institution, body or agency concerning possible cases of fraud, corruption or any other illegal activity shall be transmitted to the Director-General for his opinion.

Procedural order of the investigations conducted by OLAF is set in the Parliament and Council Regulation (EC) No. 1073/1999 and Council Regulation (Euratom) No. 1074/1999 of 25 May 1999 on investigations carried out by the European Anti-fraud Office.

Basic principles of OLAF: OLAF carries out its tasks in accordance with the following basic principles derived from the above regulations: the principle of publicity of fight against fraud and other crimes affecting the financial interests of the European Union; the principle of the rule of law while conducting investigations; the principle of independence while conducting investigations; the principle of protection of fundamental rights and freedoms of a man and citizen while conducting investigations; the principle of mandatory external audit; the principle of confidentiality of data, the principle of justice. Let's focus on some of them.

As a service of the Commission, OLAF exercises its authority regarding external investigations. At the same time, OLAF enjoys financial and administrative autonomy ensuring its **functional independence.** However, there are certain aspects of the OLAF's work, in particular its legislative functions, which are closely linked directly to the Commission.

The functional independence of OLAF is currently provided by two mechanisms: the Director-General of OLAF and the Supervisory Committee.

On his own initiative, the Director-General is entitled to carry out independent investigations. In performance of his duties with regard to the opening and carrying out of investigations, he does not seek or take any instructions from any government, Union body or anybody else. If the Director-General considers that the Commission limits the independence of OLAF in a particular case, he has the right to appeal against the Commission's actions to the European Court of Justice.

The Director-General conducts internal control over administrative, internal and external investigations.

The Supervisory Committee is the only body that reinforces OLAF's independence by the regular monitoring of its investigative function, and refrains from interfering with the conduct of investigations in progress. The Committee is composed of five independent outside persons. The Director-General keeps the Supervisory Committee regularly informed of OLAF investigations. The Committee takes decisions on the basis of the request to the Director-General, its own initiative, or the results of the investigation, but not until it is closed. The Supervisory Committee annually reports to the Commission on the activities of OLAF. Then, the reports are submitted to the EU institutions.

The investigations are carried out with the full **respect for human rights and fundamental freedoms** as specified in the Council Regulations (EC) No. 1073/1999 and (Euratom) No. 1074/1999. This principle is guaranteed by the following: mandatory provision of legal assistance to the suspect (right to counsel); presumption of innocence; interrogating in one of the EU official languages chosen by the suspect; providing a copy of the interrogation for the interrogated person; non-disclosure of information obtained during the interrogation, etc. In addition, in the framework of investigations OLAF guarantees the fundamental rights of individuals and entities and seeks to make this a reality through the instructions to its employees.

The implementation of this principle is ensured not only by the proper work of OLAF staff, but also by the right to appeal against their actions and decisions to the European Court, the European Ombudsman and the Supervisory Committee. The Court tries on complaints only if the investigation is completed.

Principle of mandatory external control. The external control over the OLAF's activities is carried out by: the Supervisory Committee, the European Parliament, the Commission, the European Court of Auditors, the European Court of Justice, and the European Ombudsman.

Achieving objectives and targets of OLAF. In order to achieve its objectives and targets related to combating fraud and corruption, OLAF carries out administrative investigations (Article 2 of the Regulations No. 1073/1999 and No. 1074/1999), internal investigations (Article 4) and external investigations (Article 3). In most cases, the OLAF experts carry out external investigations, i.e. investigations of the offences committed in the EU Member States.

At the same time, taking into consideration the purpose of OLAF, internal investigations should be dominant. This statistical paradox has its clear explanation.

The European Anti-Fraud Office is empowered to conduct internal investigations against officials of all EU bodies, specialized agencies and institutions, including the European Parliament, the Council and the Commission, the European Central Bank and the European Investment Bank.

OLAF internal investigations are not limited solely to the EU bodies, specialized agencies and institutions. They are launched into the companies benefiting from the EU contracts or financed by the EU. Because of this, one internal investigation may be the ground for a number of external investigations, as the practice proves. OLAF investigators may carry out on-the-spot checks and inspections, examine documents and question witnesses. While carrying out such activities the information is to be reported as soon as possible to the competent authority of the Member State

within whose territory the check occurred.

Under these circumstances, in the framework of external investigations OLAF closely cooperates with the EU Member States. There are two forms of such cooperation: first, OLAF requests and receives permission to conduct investigations on a certain territory and, second, when the external investigation is completed and the fact of crime is established, OLAF informs a competent law enforcement agency of a particular state about the results and evidences collected for prosecution of guilty persons.

In fact, functions of OLAF are limited to independent investigations; but the materials obtained become a ground for criminal prosecution in accordance with the national law of the state, the citizen of which has committed fraud or other crimes affecting the financial interests of the EU.

OLAF's investigation is considered completed, only when the competent national court delivers final judgment on the case, which was the subject of the investigation. At the same time, national courts sometimes have problems with admissibility of evidence collected by OLAF investigators.

Admissibility of evidence indicates that: a) the origin of the data is known and it can be verified; b) the person providing information can apprehend it; c) the general standards of evidence and the rules of collecting and recording information of a certain kind are observed; d) the rules, regulating a certain process step and defining the powers of the person conducting the proceedings, are observed.

The constitutional and criminal procedure legislations of the most EU Member States consider evidences, obtained in violation of the law, to be inadmissible. Inadmissible evidences have no legal force and can not be adduced in support of an accusation.

Pursuant to these general rules, national courts reasonably demand that the evidences are gathered in accordance with the national legislation.

For this reason, the investigation of crimes on the territory of the Member States shall be within the exclusive competence of the relevant national law enforcement agencies.

With regard to the above mentioned, the Commission, however, empowering OLAF to conduct external investigations, was guided by the following considerations: first, the responsibility of each Member State is to exercise criminal jurisdiction over persons who are alleged to be responsible of fraud, corruption and other offences against the financial interests of the EU; second, fraud, corruption and other crimes against the financial interests of the EU must not go unpunished and their effective prosecution must be ensured by taking measures at the national level and by enhancing international cooperation; third, taking into account the organizational and financial characteristics, the EU needs a body that will complement the national law enforcement agencies and courts in the fight against fraud, corruption and other offences against the financial interests of the EU; fourth, given the organizational and financial characteristics, the EU needs a focal point, capable of providing full cooperation of the Member States among themselves and with the EU bodies, specialized agencies and institutions in investigations of fraud, corruption and other offences against the financial interests of the EU.

Because of this, the problem of admissibility of evidence, obtained by OLAF during external investigations, in practice can be solved by improving the interaction between OLAF investigators and competent law enforcement authorities of the Member State, where the investigation is conducted. Such interaction often results in the creation of investigation teams involving both OLAF investigators and investigators from national authorities, or in carrying out parallel investigations, when the external investigation conducted by OLAF is a kind of "trigger" for the domestic investigation.

Cooperation between OLAF and the EU institutions in the context of the third pillar. The European integration is aimed at the economic unification of Europe. The fight against crime is the so-called third pillar of the EU. Its formation was a result of establishing the EU criminal policy, when the Member States gradually sacrificed a part of their law enforcement functions to the European Union, but only in certain matters. This is a complex system that functions on the basis of numerous substantive and procedural rules by agencies acting at both European and national level. At present, such specialized agencies as the European Police Office (Europol) and the European agency dealing with judicial cooperation in criminal matters (Eurojust) function within the framework of the third pillar.

Europol is an international organization and EU agency, which, in accordance with Article 29.1 of the Europol Convention, has its own legal capacity. It comprises regular police officers, as well as national liaison officers, who protect the interests of the countries they represent in compliance with the current rules of Europol. Europol is a law enforcement agency, which coordinates operational and investigative activities carried out by the law enforcement agencies of the EU Member States; it collects and analyzes information and intelligence, facilitates exchange of information within the information system that links national units of the EU Member States and other cooperating countries. The objective of Europol is, within the framework of cooperation between the Member States, to improve the effectiveness and cooperation of the competent authorities in the Member States in preventing and combating dangerous forms of international organized crime.

The European agency dealing with judicial cooperation in criminal matters (Eurojust) was established in order to contribute to the strengthening of cooperation in criminal matters in the EU, namely: 1) to stimulate the coordination of investigations and prosecutions between competent authorities in the Member States, in particular by facilitating the execution of international mutual legal assistance; 2) to strengthen cooperation between the competent authorities of the Member States by appropriately organized mutual legal assistance in criminal matters and execution of extradition requests; 3) to enhance the effectiveness of the competent authorities within Member States when they are dealing with the investigation and prosecution of serious cross-border and organized crime. Eurojust, as opposed to Europol, is an EU body with the status of legal entity.

Analyzing the respective functions and responsibilities of the two bodies, we can state that Eurojust, on the basis of the analytical work carried out by Europol and working closely with the European Judicial network, promotes effective cooperation of the national authorities involved in criminal prosecution, facilitates the investigation of cross-border crimes and simplifies procedures for mutual legal assistance in criminal matters and extradition.

Thus, it is clear that Europol and Eurojust, with their status in the EU and powers, are the agencies with “external” competence, that is they provide the cooperation between the EU Member States in the interests primarily of the states, not the EU itself.

In contrast, OLAF, as a service of the Commission, acts, in the first place, in the interests of the EU, and only indirectly – in the interests of the EU Member States.

Despite the differences in the status and activity arrangement, OLAF, Europol and Eurojust direct their activities at crimes and criminality. This fact determined the need for close cooperation between them. In particular, in April 2003 OLAF and Eurojust signed a Memorandum of Understanding in order to coordinate the activities on the exchange of information about crimes, organization of consultations and joint conferences. With Europol OLAF cooperates within specific internal and external investigations.

Group of States against Corruption (GRECO). To date there is no mechanism in place monitoring the existence, and assessing the effectiveness, of anti-corruption policies at EU and Member State level in a coherent crosscutting manner. At international level, the main existing monitoring and

evaluation mechanisms are the Council of Europe Group of States against Corruption (GRECO), the OECD Working Group on Bribery, and the review mechanism of the UN Convention against Corruption (UNCAC). Those mechanisms provide an impetus for states parties to implement and enforce anti-corruption standards. However, they each have several features limiting their potential to address effectively the problems associated with corruption at EU level.

The most inclusive existing instrument relevant for the EU is GRECO, in as much as all Member States are participating. Through GRECO, the Council of Europe contributes to ensuring minimum standards in a pan-European legal area. However, given the limited visibility of the intergovernmental GRECO evaluation process and its follow-up mechanism, it has, so far, not generated the necessary political will in the Member States to tackle corruption effectively.

Furthermore, GRECO monitors compliance with a spectrum of anti-corruption standards established by the Council of Europe and accordingly focuses less on specific areas of the EU legislation, such as public procurement. The GRECO system, moreover, does not allow for comparative analysis and hence the identification of corruption trends in the EU, nor does it actively stimulate the exchange of best practices and peer learning.

GRECO, established by Resolution (99) 5 of the Committee of Ministers of the Council of Europe on May 1, 1999, is important for effective anti-corruption cooperation among member states of the Council of Europe.

The Group of States against Corruption was established not on the basis of an international treaty and, thus, has no international legal personality in the strict sense of the term. This is a body of the Council of Europe in charge of the anti-corruption policy.

The Statute of the GRECO is a so-called partial agreement, according to the terminology used in the Council of Europe. Such agreements are adopted by a limited number of member states, resulted in the creation of a group of states within this international organization. On the basis of partial agreements were also established: the Pompidou Group (body combating drug abuse and illicit drug trafficking), the Venice Commission (Council of Europe's advisory body on matters of constitutional law).

The Statute of the GRECO declares that it shall be established in order to "improve the capacity of its members to fight corruption by following up, through a dynamic process of mutual evaluation and peer pressure, compliance with their undertakings in this field". In order to achieve this objective, GRECO monitors the implementation of international legal instruments to be adopted in pursuance of the Program of Action against Corruption, as well as Twenty Guiding Principles for the Fight against Corruption.

The Statute of the GRECO resembles a foundation agreement of an international organization. In particular, it provides for the following:

- each member shall appoint a delegation to the GRECO consisting of not more than two representatives, who shall enjoy the privileges and immunities of the Protocol to the General Agreement on Privileges and Immunities of the Council of Europe;

- the GRECO shall hold at least two plenary meetings a year and may decide to set up working parties whenever necessary;

- there shall be a Bureau composed of the President and the Vice-President and five other persons elected by the GRECO; the Bureau shall prepare the preliminary draft annual program of activities, organize country visits on the basis of the decisions taken by the GRECO, prepare the agenda for the meetings of the GRECO;

- the budget of the GRECO shall be financed through the annual compulsory contributions of its members;

- the Statutory Committee, composed of the representatives on the Committee of Ministers of the Member States of the Council of Europe which are also members of the GRECO, is the governing body authorized to solve financial and control issues (adoption of the budget, determining the members' compulsory contributions to the budget, monitoring the implementation of the Twenty Guiding Principles for the Fight against Corruption);

- the Secretariat of the Council of Europe is entrusted with the administrative and organizational matters.

The main element in the GRECO's anti-corruption work is the preparation of evaluation reports on corruption in each of its members and measures taken by the states to combat it. The evaluation is divided in rounds. An evaluation round is a period of time determined by the GRECO, during which an evaluation procedure is conducted to assess the compliance of members with selected provisions contained in the Guiding Principles and in other international legal instruments.

Each member shall ensure, according to the Statute, that its authorities cooperate with GRECO, to the fullest possible extent, in the evaluation procedure and preparation of the evaluation reports. The draft report, prepared by the experts on the visit to a Member State, is submitted to the GRECO's plenary meeting, at which it is debated and adopted. Evaluation reports shall be confidential unless otherwise decided by the state.

As noted above, GRECO is not an international organization in the context of the international law. Therefore, the adopted reports do not contain any legal sanctions against the state. It contains only recommendations for the improvement of the national anti-corruption legislation and law enforcement, as well as an appeal to the government to submit within a period of 18 months a report on the implementation of the recommendations given (situation report).

Initially, the GRECO was established by 17 states. Currently, the total number of members increased to 47. With the exception of San Marino, it comprises 46 Member States of the Council of Europe and the United States.

Two evaluation rounds, conducted from 2000 to 2002 and from 2003 to 2006, are completed. The first round of evaluation reports on the state of the law in the GRECO Member States concerned the implementation of certain provisions of the Twenty Guiding Principles for the Fight against Corruption (the national institutional mechanism to combat corruption was verified; the scope of the officials immunity from prosecution for corruption was studied).

The second round was also associated with the implementation of certain provisions of the Twenty Guiding Principles for the Fight against Corruption, and a number of provisions of the Council of Europe Criminal Law Convention on Corruption (identification and confiscation of the proceeds of corruption, anti-corruption policy in the public sector, fiscal legislation on the fight against corruption; link of corruption with organized crime and money laundering).

Reports prepared within the current third round, which began on January 1, 2007, focus on two aspects: implementation of the Criminal Law Convention on Corruption in respect of the criminalization of corruption, and transparency of political parties funding as determined by one of the principles included in the Twenty principles for the Fight against Corruption.

It should be noted, that all the reports on the results of the first two rounds are open and available on the English website of the Council of Europe in the section "Group of States against Corruption".

1.3.2. *National specialized anti-corruption bodies in the EU*

The first specialized anti-corruption bodies appeared a long time ago, before the establishment of the Singapore's and Hong Kong commissions in the 1950s and 1970s. But it is the example of these two agencies that gave rise to the popular image of the successful, independent multi-purpose anti-corruption agency. However, there are many more types of anti-corruption bodies which exist and operate in various countries.

As already discussed, the question of corruption gained international importance in the late 1990s, and was accompanied by the growing debate about the role of specialized anti-corruption institutions. This process has been closely linked with the process of political democratization and economic liberalization in many parts of the world, including Eastern Europe, Asia, Latin America and Africa. It is also related to the efforts of building the rule of law and good governance in many post-authoritarian and post-conflict environments, as economic and political transitions offer fertile ground for corruption. Responding to this challenge, various anti-corruption bodies, agencies, commissions and committees have mushroomed throughout the last decade, often established in an ad hoc manner without a comprehensive strategy, adequate resources and personnel; and sometimes aimed primarily at appeasing the electorate and the donor community. Not surprisingly, today there are only a few specialized anti-corruption institutions in Western Europe, while most transition and developing countries have one or many – most of them with questionable performance profile. Considering the multitude of anti-corruption institutions worldwide, their various functions and in particular the arguments about their actual performance, it is difficult to identify all main patterns and models. However, some trends can be established based on different purposes of anti-corruption institutions (viewed through their functions).

International standards do not imply that there is a single best model for a specialized anti-corruption institution. The international standards, while requiring the establishment of specialized bodies or persons in the field of prevention and law enforcement, do not directly advocate for institutional specialization at the level of courts. Furthermore, there is no strict requirement to establish an institutional entity to combat corruption through investigation and prosecution. Strictly speaking, establishment of a specialized department with a sufficient number of staff trained in combating corruption within existing structures meets the requirements of international treaties. It is the responsibility of a state to find the most effective and suitable institutional solution adapted to the local context, level of corruption and existing national institutional and legal framework.

A comparative overview of different types of specialized institutions encompasses a multitude of approaches and solutions. However, one can distinguish between three main approaches corresponding to the following main functions of specialized institutions:

- multi-purpose agencies with law enforcement powers and preventive functions;
- law enforcement agencies, departments and/or units;
- preventive, policy development and co-ordination institutions.

The first model is possibly the only one that could be defines as an "anti-corruption agency" as it combines in one institution a multifaceted approach of prevention, investigation and education. For this reason, a multi-purpose single-agency model has attracted most visibility and triggered discussions in the international arena. Normally, when literature and reports refer to a specialized anti-corruption agency it is this model that they have in mind.

Institutions belonging to this type perform the following tasks: conducting investigations, anti-corruption policy development, analytical work, corruption prevention, cooperation with civil society, collection and analysis of information, monitoring of the anti-corruption program implementation. Notably, in most cases, prosecution remains a separate function to preserve the checks and balances within the system (given that such agencies are already vested with broad powers and are relatively independent).

This model functions in Lithuania (Special Investigation Service), Latvia (Corruption Prevention and Combating Bureau), and Australia (Independent Commission against Corruption).

The law enforcement model takes different forms of specialization in the field of investigation and prosecution or the combination of the two. Sometimes the law enforcement model also possesses some important elements of preventive, co-ordination and research functions. What distinguishes the latter from the first model is the level of independence as it is normally placed within the existing police or prosecutorial hierarchy.

The law enforcement model takes different forms of specialization:

1) detection and investigation bodies;

2) prosecution bodies;

3) institutions combining anti-corruption detection, investigation and prosecution functions in one body.

This is perhaps the most common model applied in Western Europe. Examples of such model include: Norway (Norwegian National Authority for Investigation and Prosecution of Economic and Environmental Crime), Belgium (Central Office for the Repression of Corruption), Spain (Special Prosecutors Office for the Repression of Economic Offences Related Corruption), Croatia (Office for the Prevention and Suppression of Corruption and Organized Crime), Romania (National Anti-Corruption Directorate), and Hungary (Central Prosecutorial Investigation Office). This model could also apply to internal investigation bodies with a narrow jurisdiction to detect and investigate corruption within the law enforcement bodies. Two good examples of such bodies include Germany (Department of Internal Investigations) and the United Kingdom (Metropolitan Police / Anti-corruption Command).

The last model from the above list is the most diverse one and covers a variety of institutions with various degrees of independence and organizational structure. Within this model additional sub-categories could be identified: 1) services responsible for conducting and facilitating research in the phenomena of corruption, reviewing and preparing relevant legislation, assessing the risk of corruption, being the focal point for international co-operation as well as proving a link with the civil society; 2) control institutions with responsibilities related to the prevention of the conflict of interest and the declaration of assets; 3) commissions tasked with monitoring and co-ordination of the implementation and update of the national and local anti-corruption strategic documents and action plans.

This model includes institutions that have one or more corruption prevention functions: research in the phenomena of corruption; identification of factors contributing to corruption; monitoring and co-ordination of the implementation of the national and local anti-corruption strategies and action plans; reviewing and preparing relevant legislation; monitoring the conflict of interest rules and declaration of assets requirement for public officials; elaboration and implementation of codes of ethics; assisting in the anti-corruption training for officials; issuing guidance and providing advise on issues related to government ethics; facilitating international co-operation and co-operation with the civil society.

Many such institutions do not even have terms “corruption”, “integrity” or “ethics” in their name (e.g. National Audit Office, Ombudsman, Inspectorates of Government, Public Service Commission).

Examples of such institutions include France (Central Service for the Prevention of Corruption), the former Yugoslav Republic of Macedonia (State Commission for Prevention of Corruption), Albania (Anti-corruption Monitoring Group), Malta (Permanent Commission against Corruption), Serbia and Montenegro (Anti-corruption Agency), and Bulgaria (Commission for the Co-ordination of Activities for Combating Corruption).

Theme 2/A. NATIONAL ANTI-CORRUPTION INSTRUMENTS OF THE REPUBLIC OF MOLDOVA

2/A.1. *National anti-corruption policy and legislation*

2/A.1.1. *National anti-corruption strategy*

Every state performs its own functions, combining the main objectives and areas of activity. Some of the functions of a state, e.g. national security, defence and public order are traditional and still remain typical of the modern society. Over the centuries, the content of these functions changed, but even in the ultramodern society their value retains. Also, there are relatively new functions that emerged in the late XIX - early XX centuries. For example, social functions, i.e. to ensure compulsory education, free health care, social protection, compulsory social insurance, environmental protection, etc. These functions have also become rather typical of a modern state. Surely, any state has a number of other tasks. It depends on the historical traditions, national characteristics and the social order in the country. But the common feature in the development of every state, without exception, is corruption of the state apparatus, although, the systemic, global corruption is still considered to be inherent in the developing countries and countries with economies in transition.

Today, however, not a single country can consider itself completely secure or "insured" against corruption, as in the period of the world globalization corruption is no longer a problem of a certain state, but a global challenge. And this trend is increasingly recognized.

There are at least three obvious arguments to prove that corruption is dangerous for all, but not only developing countries.

The first argument. Economic globalization leads to globalization of corruption. The interdependence of economies, including the financial markets of developed and some developing countries, on the one hand, allows free movement of capital, goods and services, but, on the other hand, significantly increases the risk of extensive destruction of the global economic system in case of the collapse of at least one of the major markets.

The second argument. One of the main threats to the international security is terrorism. But terrorism is rampant largely because of minor and major corrupt transactions. A terrorist, as well as a corruptionist has "no homeland". They have only personal goals, although the terrorists' leaders formulate them as "ideological". Merging of terrorism with corruption is an explosive mix that could blow up the national and international security.

The third argument. High level of corruption becomes a convenient excuse for political speculations and easily leads to a totalitarian rule. In a dictatorships and total control corruption is not reduced, but only modified. Firstly, public awareness of the corruption extent is obscured by secrecy of dictatorships, and secondly, even if the society is aware of corruption, it does not affect its scale, because democratic institutions are no longer active. The establishment of such regimes is dangerous not only for developing countries, but also for their neighbors and even the global community.

Human progress has led to a drastic increase in the corruption hazard to the entire world. But progress must also protect from the threats, which it produces. The new reality requires a fresh look at the available means, which the society can oppose to the threat of corruption.

Corruption, if not permanently addressed, has a tendency to expand. That's why it has become quite natural for any country to pursue an anti-corruption policy. Implementing an anti-corruption policy, the

state and society can reveal shortcomings of the police and judicial mechanisms, in order to improve them and, most importantly, to minimize corruption in the law enforcement bodies.

Previously, crime control function (in a general sense – law enforcement) included also combating corruption, but today anti-corruption policy in many countries has become an independent function of the state. It is necessary even for the states with a relatively low level of corruption, and even more so for the developing countries implementing economic reforms after years of absence of private property rights and competitive environment.

Definition and content of anti-corruption policy. At present, corruption affects such important spheres of life as economy and politics. It has also penetrated into privatization of state property, financing, crediting, banking, distribution of funds, implementation of land reform. Also, corruption affects political processes, namely, elections to legislative bodies and activities of these bodies; reshuffle in the state and municipal authorities. In the public conscience corruption, unfortunately, is increasingly excused and even approved, as it is believed to help in tackling any problem. At the level of petty corruption, a bribe almost always guarantees the desirable outcome, and corruption is an integral part of the social life. It's difficult to overcome corruption, but to reduce its level to a certain minimum is quite possible. In order to achieve this, the government, business and society must unite their efforts in all the strategic areas, enhancing the liability (enforcement), improving the management (prevention of corruption), raising the legal and moral culture of the citizens (education). Only then, as Confucius said, virtue and austerity would dominate the society, "the people would be respectful, loyal and inspired". So, it's necessary to competently approach the creation of a strong and effective mechanism to fight against corruption at all the government levels. First of all, a set of measures, based on the legal principles, to effectively combat corruption in government, should be developed.

Anti-corruption policy, of course, is much broader than just a fight against a particular official, mired in bribery and corruption. It includes measures aimed primarily at changing public attitudes towards corruption by creating an atmosphere of corruption rejection. And in this case, the consistent anti-corruption policies should promote confidence and respect of our population to the state government. What are the obstacles to the implementation of the anti-corruption policy? They are the following:

- high-ranking officials may be involved in corrupt practices;
- a number of officials are not interested in changing the situation;
- the power is dominated by old stereotypes, supporting simplified approaches to solving problems, such as combating corruption.

Anti-corruption policy is the development and ongoing implementation of versatile and consistent measures in the legal framework of a certain state in order to eliminate the causes and conditions leading to and fuelling corruption in different spheres of life.

Development of anti-corruption policy begins with defining the key areas of its implementation. They are characteristic for any state, even those, where the corruption level at the moment is not threatening. Another thing is the content of the specific measures that fit into each of the areas. And it is not a case of "one size fits all". The content of anti-corruption policy should be adjusted not only while carrying out certain measures, but also taking into account the results of studies based on the scientific approach, in particular, after a careful review of the corruption causes; "sectors" of public life most affected by corruption; motivation of corrupt behavior; accurate assessment of direct and indirect economic losses and so on.

To better understand a particular phenomenon or process, it is necessary to consider constituents of this phenomenon (process). This particularly applies to the new categories, such as anti-corruption policy, introduced into theory and practice. The elements of an anti-corruption policy can be classified according to several criteria.

Frequency of anti-corruption measures – according to this criterion anti-corruption policy is divided into one-time and permanent measures.

One-time measures can be carried out in any segment of public and social life. They are taken depending on the political system of a certain state, the level of corruption, the state of law, etc. In other words, one-time measures are always individual and concern a particular country. At the same time, it is clear that the study of their effectiveness impacts on the determination of permanent measures, the search for new (next) one-time measures, and the enrichment of anti-corruption experience in other countries. Thus, any one-time measure is excluded from the anti-corruption policy when it is implemented. The implementation of a one-time measure results in, for example, the adoption of an appropriate regulation, or the completion of the organizational restructuring. Another thing is when after the adoption of, for example, some law as a one-time measure the situation in this corruption sector does not change. In this case, it is necessary to analyze the causes of its inefficiency, and then the measure should be adjusted or substituted.

Permanent measures include:

a) development of a document containing the main directions of the anti-corruption policy for a certain period;

b) development of a document specifying and structuring the anti-corruption program;

c) monitoring and evaluation of the implementation of anti-corruption programs and plans with further adjustment;

d) functioning of a specialized anti-corruption body (if established);

e) activities of law enforcement agencies to detect, investigate and combat corruption;

f) legal prosecution for acts of corruption;

g) assessment of corruption (in the territorial, sectoral and functional perspectives), implying statistical, sociological and other methods;

h) monitoring of government institutions in terms of their effectiveness in combating corruption;

i) anti-corruption education and training.

Permanent measures are universal, i.e. they do not depend on the scale of corruption, political and economic structure of the state.

Stages of an anti-corruption policy involve a sequence of steps and the content of the measures taken. According to this criterion, an anti-corruption policy can be subdivided into the following constituents:

a) development of an anti-corruption strategy;

b) planning of anti-corruption measures;

c) forecasting and assessment of corruption, analysis of its development tendencies;

d) development of anti-corruption legislation;

e) expertise of draft legal acts and subordinate regulations;

f) monitoring of the implementation of anti-corruption policy and assessment of corruption;

g) accountability of public authorities in order to assess the effectiveness of their anti-corruption activities.

Areas of anti-corruption policy implementation. Classification, based on this criterion is pivotal, as it indicates whether the state adequately realizes what changes must be introduced into its structure and functioning in order to reduce corruption. The main areas of anti-corruption policies are:

- adjustment of legislation;
- streamlining of the structure and functions of the executive;
- change in the principles of public service and control over the property status of the authorities;
- enabling of the effective control over the distribution and spending of budget funds;
- strengthening of the judiciary;
- improvement of the law enforcement and intelligence activities;
- coordination of anti-corruption policy.

Anti-corruption policy should be supplemented and adjusted in accordance with the ongoing assessment of corruption (in the sectoral and functional perspectives), the in-depth study of its causes and the motivation of corrupt behavior.

In fact, this means that state authorities constantly reflect on the creation of conditions to curb corruption. This problem can be solved only in one way – development of a comprehensive anti-corruption strategy.

For a long period of time anti-corruption policy was not mentioned in the international legal instruments which referred only to some of its elements. Many years later, this strategy was set out in an international legal instrument, Article 5 of the UN Convention against Corruption, which provides:

1. Each State Party shall, in accordance with the fundamental principles of its legal system, develop and implement or maintain effective, coordinated anti-corruption policies that promote the participation of society and reflect the principles of the rule of law, proper management of public affairs and public property, integrity, transparency and accountability.

2. Each State Party shall endeavor to establish and promote effective practices aimed at the prevention of corruption.

3. Each State Party shall endeavor to periodically evaluate relevant legal instruments and administrative measures with a view to determining their adequacy to prevent and fight corruption.

4. States Parties shall, as appropriate and in accordance with the fundamental principles of their legal system, collaborate with each other and with relevant international and regional organizations in promoting and developing the measures referred to in this article. That collaboration may include participation in international programs and projects aimed at the prevention of corruption.

Omitting juridical terminology, this article binds the States Parties to the Convention to do the following in accordance with the fundamental principles of their legal systems:

- to ensure not only adoption, but also the implementation of preventive anti-corruption programs;
- the programs must be effective and coordinated;
- the society should be promoted to participate in their implementation;
- the main principles of anti-corruption programs: they are adopted and implemented in accordance with the rule of law; proper management of public affairs and public property, integrity, transparency and accountability;
- practices aimed at effective prevention of corruption are as important as the anti-corruption policy;
- it's important to periodically evaluate anti-corruption measures with a view to determining their adequacy to prevent and fight corruption;
- international cooperation is an important element of a corruption prevention program.

The above conditions must be fulfilled by using any existing or a new anti-corruption strategy in order to ensure compliance with the UN Convention. They should serve as a guide in the preparation of the new instruments and improvement of the old ones.

Anti-corruption strategy. Anti-corruption strategy is a political document, which contains the analysis of the problems, determines objectives and key activities (e.g. prevention and prosecution of corruption, education of the population), and develops the tools for the implementation of the strategy. The strategy may be reinforced by an action plan, including specific measures for implementation, allocation of responsibilities, work schedules and monitoring procedures. The strategy and the action plan, as the documents reflecting the national policy, are, as a rule, approved by the Parliament, the President or the Prime Minister.

The basic principles of a national anti-corruption policy are as follows:

- anti-corruption strategy should be based on the broad interpretation of corruption;
- anti-corruption strategy should take full account of all the international anti-corruption obligations of the state (Conventions and other documents);
- development of an anti-corruption strategy should be based on the assessment of corruption in the country;
- anti-corruption strategy should focus on minimizing the damage caused by corruption to the state's policy, economy and social services;
- to design an effective and successful anti-corruption strategy, it's necessary to assess the country's resources (institutional, human and material) to combat corruption;
- the main task of the national anti-corruption policy at the present stage should be the development of a comprehensive long-term program to combat corruption;
- identification of priorities in combating corruption; defining specific activities, appointment of responsible bodies and persons, setting deadlines; creation of the monitoring system and control over the implementation of anti-corruption measures; coordination of anti-corruption efforts of all the branches of power; evaluation of current legislation;

- activities of an anti-corruption program should include: prevention, investigation and law enforcement, public education and public participation, control and monitoring, international cooperation.

Anti-corruption policy of the Republic of Moldova

The importance attributed to the phenomenon of corruption was highlighted through extensive mentioning in the bilateral agreements with the European Union as well as in the documents concerning the cooperation with the Council of Europe, UN, NATO and other international bodies. The majority of foreign evaluation reports, concerning implementation of democratic reforms in the Republic of Moldova, contain recommendations regarding the need to enhance and streamline the anti-corruption efforts, and all the government programs include chapters dedicated to prevention and combating corruption. The established priorities were reflected in the National Strategy for Preventing and Combating Corruption, endorsed by the Parliament Decision No. 421-XV on December 16, 2004, which was implemented according to the consecutive action plans for 2005, 2006, 2007-2009 and 2010. In the period of the Strategy implementation, the government benefited from considerable foreign assistance for carrying out anti-corruption programs.

Within the framework of the Preliminary Plan, the U.S. Government granted USD 24.7 million for promoting reforms to reduce corruption in the following areas: justice, health care, fiscal administration, customs and internal affairs authorities, as well as optimizing the activity of the Center for Combating Economic Crimes and Corruption (CCECC).

Another important anti-corruption project was the Joint Project of the European Commission and the Council of Europe against corruption, money laundering and financing of terrorism in the Republic of Moldova (MOLICO) totaling €3.5 million, a section of which was meant to support the implementation of the National Strategy for Preventing and Combating Corruption.

The Strategy implementation has succeeded in: elaboration and update of the anti-corruption legal framework; launching the anti-corruption expertise of draft regulatory acts; launching the process of corruption risks evaluation in the majority of public institutions; strengthening the partnership between the state institutions and the civil society; promoting international cooperation in this area.

Despite all this, the respective progress did not lead to proper achievement of the goal and objectives of the Strategy, necessitating the development of a new policy document based on the identification of institutional risks and needs.

However, findings of some researches and reports on corruption in the Republic of Moldova prove that this phenomenon keeps undermining the political stability in the country, confidence of the society in the political and judicial systems, the rule of law, economic development, promotion of foreign investment and European integration.

The Corruption Perception Index calculated annually by the Transparency International (TI) shows that the country population and the international community perceive the Republic of Moldova as a country with high level of corruption. Over the last 12 years, this index for the Republic of Moldova, on a scale of 0 to 10, where lower indices indicate a wider spread of corruption, was registered at the level between 2.1 and 3.3.

According to the survey conducted by the Institute of Marketing and Polls (IMAS-Inc Chisinau), 75% of the citizens consider that all or the majority of officials are corrupt. The specificity of the phenomenon of corruption in the Republic of Moldova is its prevalence in the social sphere.

Conclusions of national and international reports and studies reveal that the implemented anti-corruption measures did not give results expected by the citizens, outlining the following problems and sectors vulnerable to corruption: lack of a consistent anti-corruption legal framework, coherent and adjusted to the international standards; lack of efficient mechanisms of law enforcement; reduced use of administrative instruments for prevention and combating corruption; low level of confidence of the population in the law enforcement agencies and the judiciary; lack of transparency in the activities of the state and political institutions; lack of transparency in public procurement; limited budgetary resources to ensure the proper law enforcement and the judiciary; insufficient anti-corruption education and training of public officials and population; absence of sector studies which would reveal the magnitude of corruption.

The anti-corruption objective is included in various documents.

1. The 2009-2011 Program for Stabilization and Economic Rehabilitation of the Republic of Moldova, approved by the Government Decision No. 790 on December 1, 2009, allowed unblocking of foreign funding and expanding of cooperation with foreign donors.

2. The 2011-2014 Activity Program of the Government of the Republic of Moldova "European Integration: Liberty, Democracy, and Welfare" defines as a priority strengthening of the national integrity and fight against corruption, establishing the following governance objectives:

- creating an efficient legal and institutional framework for preventing and combating corruption in the public sector;
- optimizing the public procurement;
- establishing mechanisms of cooperation between public authorities, civil society and development partners to reduce corruption.

In such conditions, when the political will to combat corruption remains firmly stated, anti-corruption efforts should reach a new level, based on accumulated experience and continuity of institutional reforms.

The next important anti-corruption instrument is the National Anti-Corruption Strategy for 2011-2015, approved by the Parliament of the Republic of Moldova on July 21, 2011.

The key elements of the Strategy are the goal, general and specific objectives, expected results and priority action plan.

The goal of the Strategy is to reduce corruption in public and private sectors.

The general objectives of the Strategy are as follows:

1) transforming corruption from a low-risk activity with benefits into unprofitable and high-risk activity;

2) contributing to creation of "zero tolerance" environment towards corruption.

The specific objectives of the Strategy are as follows:

1) permanent adjustment of anti-corruption efforts to the new tendencies and realities of corruption;

2) imposing sanctions on the persons involved in corrupt activities, including those with legal immunity; deprivation of the right to hold specific posts or engage in specific activities, in addition to the main punishment; confiscation of property to ensure reparation of damages, caused by corruption and related offences;

3) increasing probity and credibility of central and local public authorities, law enforcement and judicial authorities involved in combating corruption, particularly the National Anti-Corruption Center (NAC), prosecution, judicial instances; creation of favorable environment for honest business;

4) raising public awareness on the issues of corruption and its illicit character; public denunciation of corruption cases and informing the competent bodies.

The expected results of the Strategy implementation are as follows:

1) the corruption tendencies are revealed through an integrated analysis of the public perception of corruption, corruption-prone areas, and anti-corruption official statistics;

2) the national regulatory framework is adapted to the international anti-corruption standards;

3) the national anticorruption legislation is functional and applicable for prevention and efficient fight against corruption;

4) the activity of institutions and organizations from public and private sectors is transparent and ethical, public officials are appointed and promoted on a competitive basis; the administration is aware of the corruption risks in the institutions and organizations, involved in prevention and combating corruption;

5) NAC representatives, prosecutors and judges are independent of political influence, properly trained, financially insured in order to act professionally, with dignity and integrity;

6) the capacity of the Accounts Chamber as the state's supreme audit institution is consolidated; the audit activity impact is increased; accountability for the management of public finances; the functions of control over the use of public resources, economic and financial activities are strictly separated; functioning of the National Anti-Corruption Commission;

7) the public perception of the need to offer illegal remuneration is reduced;

8) the citizens' fear to address directly to the law enforcement bodies is overcome;

9) journalistic investigations are encouraged; law enforcement authorities initiate criminal proceedings based on the results of journalistic investigations; joint anti-corruption activities of the authorities and civil society.

The priority action plan on the implementation of the Strategy is divided into four components: research, legislative, institutional, education and public communication components.

A. Research component

The in-depth knowledge of the background, forms, circumstances which determine rooting, transformation, extension or reduction of various forms of corruption – this is one of the most important prerequisites of prevention and efficient control of corruption. On that ground, the research component comprises the priority measures to be taken in order to ensure the Strategy's success:

1) development, presentation and publication of the polls on the perception and occurrence of corruption;

2) analysis, research and topical study activities on corruption and the related fields;

3) elaboration and publication of anti-corruption reports of the law enforcement, prosecution and justice authorities, as well as the reports prepared by the public authorities on the implementation of the anti-corruption measures stipulated by the policy documents.

The results of the anti-corruption activity must be generalized, thoroughly analyzed and published, so that the society could have a correct and balanced impression of these actions efficiency. Absence of promulgated data, or presenting them in a manner, which may mislead or contain contradictory data from different authorities, intensifies social distrust and makes it difficult to carry out independent studies on the corruption phenomenon. In order to change the situation, the law enforcement authorities involved in the fight against corruption must apply unified terminology and methodology and decide over a set of efficiency indicators applicable to the anti-corruption activity in order to reflect this information. Taking into account the urgency of the corruption issues and rightful public interest in the matters concerning its prevention, not only the penal prosecution authorities, but also the judicial authorities must regularly provide the society with more information about the persons found guilty or not guilty in corruption cases, as well as the punishment applied. Further on, separate statistics must be provided on these categories of offences.

B. Legislative component includes:

1) Compliance of the national legislation with the international anti-corruption standards and requirements.

The failure to adjust the national legislation to the international anti-corruption standards equals to the liability of the public authorities for commitments taken to Moldovan citizens and the international community. In order to improve the situation, the assessment of the inconsistency in the legislation as well as the development of appropriate draft normative acts is needed. An efficient filter to prevent new inconsistencies in the legislation is deemed to be the anti-corruption expertise carried out by NAC and the civil society, which due to its important role, shall be further sustained and promoted;

2) improvement of the anti-corruption legislation and the mechanisms of its functioning, including by means of parliamentary control.

Lately, the Moldovan anti-corruption legislative framework has been considerably extended and important laws have been adopted, e.g. Law No. 16-XVI “On Conflict of Interests”, adopted on February 15, 2008; Law No. 25-XVI “On the Code of Conduct for Public Officials”, adopted on February 22, 2008; Law No. 90-XVI “On Prevention and Combating Corruption”, adopted on April 25, 2008; Law No. 239-XVI “On Transparency in Decision-Making”, adopted on November 13, 2008; Law No. 271-XVI “On the Control of Public Office Holders and Candidates to Public Vacancies”, adopted on December 18, 2008, etc.

Although these laws were much anticipated, they showed no effect in the first years after adoption, mainly due to the lack of a clear application mechanism;

3) adjustment of the legislation to the reasonable need to increase the efficiency of the activity carried out by the law enforcement and control authorities.

In order to increase the efficiency of the anti-corruption authorities, and to exercise control in the related fields, the needs of these institutions as well as public interests and human rights must be taken into account. Such needs include: examining the efficiency of the procedures of lifting the immunity of judges and deputies in case of corruption offences, the eventual amendment proposals in this regard; clarification of criminal responsibility for the inadequate asset declaration; extensive application of operative measures during the investigation of corruption offences.

C. Institutional component

In order to improve the image and increase credibility of institutions and organizations, it is necessary to take measures for consolidation of the anti-corruption capacity among the employees of the state institutions and improvement of the efficiency of the law enforcement and control authorities, involved in prevention and combating corruption:

creation and functioning of the internal audit units;

self-assessment of corruption risks, elaboration and application of the institutional integrity plans;

meeting the recruitment requirements and promoting employees on a competitive basis;

avoiding conflict of interest and management of conflict of interest which appeared in the public institution, declaring personal interests;

compliance with the procedures of verifying the holders and candidates to public office.

Within the **local public authorities,** apart from the above mentioned measures, there shall be carried out activities to raise awareness and train public officials regarding their responsibilities related to extension and update of the regulatory anti-corruption framework.

In order to prevent corruption **in the political sector,** it is necessary to promote and ensure transparency of the activities and financing of the political parties; to optimize the control over financing of the political parties and election campaigns; to clearly define and apply efficient, proportional and discouraging sanctions for all the infringements of the rules of financing of political parties and election campaigns.

Control authorities play an important role in prevention and combating corruption and their effective activity regulates the channeling of payments to the National Public Budget (Accounts Chamber, State Main Fiscal Inspectorate and Customs Service) and the authorities empowered to control asset declarations, as well as personal interest declarations. Another important specialized agency meant to contribute to the implementation of the policy on the conflict of interests is the National Anti-corruption Commission.

The important measures undertaken for consolidation of the capacities of the control authorities are as follows:

to ensure the mechanism of evaluating the results of the audit carried out by the Accounts Chamber, to intensify the public finance management by means of assessing the internal audit systems and internal audit in the public institutions conducted by the Accounts Chamber;

to increase the efficiency of the property and interest declarations for the public officials and their control, to establish and ensure efficient functioning of the National Anti-corruption Commission.

D. Education and public communication component

Changes in mentality of individuals and the entire society from tolerating and concealing corruption towards the mentality of denial of corruption and ensuring its disclosure are crucial for successful reduction of this phenomenon. These changes are possible only in case of the application of educational and information measures.

Development of intolerance towards corruption requires from the civil society and the state authorities to join their efforts in carrying out anticorruption awareness campaigns, organizing anti-corruption trainings for pupils, students, as well as public officials.

It is also necessary to create a mechanism of ensuring the confidentiality of the persons who report about corruption acts in order to help them overcome the fear for revenge. In this respect, there should be undertaken measures for protecting whistleblowers reporting to the competent authorities on the potential acts of corruption as well as related offences or corrupt behavior.

The mechanism of the implementation of the Strategy is ensured by the appointment of responsible persons to monitor the implementation that insures organization, coordination, monitoring, reporting and planning respectively.

The Strategy implementation is observed by:

- heads of the institutions responsible for the implementation of the action plans;
- the Parliamentary commission;
- the monitoring group;
- the Secretariat of the monitoring group.

The **permanent parliamentary commission** responsible for the national security, defence and rule of law, including the anti-corruption sphere, will coordinate at the general level the process of the Strategy implementation as well as other anti-corruption instruments and will ensure the parliamentary control over the anti-corruption activities of the institutions performed in line with their competences.

The monitoring group consists of the representatives of the public authorities, civil society and private sector. The monitoring group comprises:

- a member of the Parliamentary Committee on national security, defense and public order;
- Advisor to the President of the Republic of Moldova on defense and security;
- Secretary General of the Government of the Republic of Moldova;
- one representative from Accounts Chamber;
- Deputy Director of the Intelligence and Security Service;
- Prosecutor from the Anti-Corruption Prosecution;
- Head of the GRECO delegation of the Republic of Moldova;
- one representative of the Superior Council of Magistracy;
- one representative from the National Bank;
- Deputy Director of NAC;
- Deputy Minister of Justice;

- Deputy Minister of Finance;
- 2 representatives of the Local authorities' association;
- 5 representatives of the Anti-Corruption Alliance;
- one representative from the Chamber of Commerce and Industry, and from the Businessmen Association of Moldova.

The monitoring group at public meetings shall review and verify the information provided by the public authorities and institutions on the realization of the Action Plan for the implementation of the Anti-Corruption Strategy. It also approves quarterly and annual monitoring reports.

2/A.1.2. *National legal framework of the Republic of Moldova to prevent and combat corruption*

The main objectives of the Moldovan lawmakers are the harmonization of the national legislation with the international legal norms and standards, the definition of a unified approach to understanding the essence of corruption, variety of its manifestations, the legislative regulation of legal liability for the acts of corruption.

Thus, the adoption of a new anti-corruption legislation is the starting point in the process of preventing and combating corruption.

But after the adoption of the anti-corruption legislation, it is not less important to provide an effective mechanism for the implementation of these laws.

The main anti-corruption laws enacted by the Parliament of the Republic of Moldova on the basis of the commitments under the international conventions, agreements and in accordance with the international anti-corruption standards are as follows:

1. Law No. 90-XVI of 25.04.2008 "On Prevention and Combating Corruption".

The purpose of the Law is to identify measures to prevent and combat corruption, to protect the fundamental rights and freedoms of the citizens, public interests and national security, as well as measures to eliminate the consequences of acts of corruption.

The main measures to prevent corruption, stipulated by the Law are: arrangement of the public authorities' and public officials' activity; anti-corruption examination of draft legislation and draft government regulations; institutional assessment of the risks of corruption; procedure of budgeting and management of public finances; the system of public procurement; participation of the civil society in prevention and combating corruption, access to information for decision-making; cooperation between the private sector and public authorities; measures to prevent the legalization of illicit proceeds; politics and electoral process.

The law establishes the authority competent to execute this law, authorities exercising the powers of prevention and combating corruption, other bodies and persons authorized to act in the field of prevention and fight against corruption.

Another section of the Law provides for liability for acts of corruption; other forms of liability; lists the facts of corrupt behavior; stipulates honest reports about acts of corruption and acts related to corruption, the facts of corrupt behavior, non-compliance with the rules of the asset declaration and breach of the statutory duty on the conflict of interests; guarantees the performance of official duties, state legal and social protection.

2. Law No. 271-XVI of 18.12.2008 "On the Control of Public Office Holders and Candidates to Public Vacancies".

The law defines the principles, objectives, procedures, forms and methods of verifying information about the citizens of the Republic of Moldova in public office or aspiring to public office.

The main objectives, set forth in the Law, of verifying the persons holding public office, and candidates for public office are:

a) prevention and combating corruption in the government bodies;

b) determining whether the holders of public office, and candidates for public office, meet the requirements for admission to public office and whether the legal limits are observed;

c) prevention, detection and elimination of risk factors;

d) establishing the reliability of information reported by the persons in public office, and candidates for public office in the documents submitted for recruitment into government service.

The law regulates the following: the body carrying out the inspection; persons subject to verification; duty to inform; risk factors; procedure and methods of verification; the initiation and declaration of verification; methods and duration of verification; additional examination; presentation of the results of verification; decision on compatibility/ incompatibility with the interests of the public office; hearing of a person holding a public office or a candidate for public office; removal from office; appeal against the actions of the authority conducting the inspection; storage of the inspection materials and other documents.

3. Law No. 25-XVI of 22.02.2008 "On the Code of Conduct for Public Officials".

The Code of Conduct for Public Officials regulates the behavior of a public servant while performing his professional duties; defines the standards of conduct in the public service and informing citizens about the proper conduct of public servants to deliver quality public services, to ensure effective management of the public interests, to promote prevention and eradication of corruption in public administration, to create an atmosphere of trust in the public authorities.

According to this Law, the basic norms of conduct of public officials relate to: access to information; use of public resources; behavior in the framework of international relations; receiving gifts and other benefits; conflict of interests; responsibilities of high rank public servants.

4. Law No. 16-XVI of 15.02.2008 "On Conflict of Interests".

The Law regulates incompatibility and restrictions concerning persons, occupying responsible state or other positions, provided by this Law; resolution of conflict of interest, and also the procedure for submitting declarations on conflict of interest.

The provisions of the Law establish the list of subjects to declare personal interests; basic principles of management and resolution of conflict of interest: impartial and objective service to the public

interest; transparency and public oversight; personal responsibility and personal example; methods of conflict of interest identification; responsibilities of the persons to whom the Law applies; managerial responsibilities of a head of a public institution; management of conflict of interest and its resolution; legal consequences of the acts, issued, taken, or committed in violation of the legal provisions on conflict of interest; process of declaring personal interests; basic incompatibilities and limitations: limitations associated with the termination of activities; limitations related to conclusion of commercial contracts; restrictions on gifts and other benefits; restrictions on advertising.

5. Law No. 239-XVI of 13.11.2008 "On Transparency in Decision-Making".

The Law establishes the norms to ensure transparency of decision-making within the central and local public institutions, other public authorities, and regulates the relations of these bodies with the citizens, associations, established by the law, and other parties, participating in the decision-making process.

Transparency of the decision development process: steps to ensure transparency; initiation of decision development; access to draft decisions; consultation with interested parties; acceptance and consideration of recommendations.

Transparency of the decision-making process: participation in public meetings; expeditious decision-making; informing the society about the decisions taken; reports on the transparency of decision-making.

6. Law No. 1264-XV of 19.07.2002 "On Declaring and Control over the Income and Assets of State Officials, Judges, Prosecutors, Civil Servants and some Managers".

The Law establishes mandatory asset declarations for state officials, judges, prosecutors, civil servants and some managers.

The purpose of the Law is to define measures for prevention and fight against unjustified enrichment of state officials, judges, prosecutors, civil servants and some managers.

The main aspects provided by the law: subjects of asset declarations; objects to be declared; mandatory declaration; asset declaration; deadline for the declaration submission; persons responsible for the collection of declarations; verification of declarations to formal requirements; verification of income and assets; confidentiality of information; transparency of declarations; responsibility for the violation of this Law.

7. Law No. 158-XVI of 4.07.2008 "On the Public Office and the Status of a Civil Servant".

The purpose of the Law is to ensure stable, professional, impartial, transparent and effective public service in the interest of the society and the state. The law defines the concept of public office, the status of a civil servant, legal relationship between civil servants and public authorities.

The Law establishes the scope of application, the basic principles of public service; the classification of civil service positions; classes of employees in the civil service; rights and obligations of a civil servant; incompatibilities and limitations; admission to the public service; assessment of professional achievements of civil servants; professional growth of civil servants; remuneration of labor and social protection of a civil servant; changing and suspension of the service relationship; liability of a civil servant; termination of the service relationship.

8. Law No. 190-XVI of 26.07.2007 "On Preventing and Combating Money Laundering and Financing of Terrorism".

The Law establishes measures for prevention and fight against money laundering and financing of terrorism. The purpose of the Law is to protect rights and lawful interests of individuals, legal entities and the state.

The Law regulates the basic concepts in the field of prevention and combating money laundering and financing of terrorism; measures to prevent money laundering and financing of terrorism; the competence of the bodies authorized to enforce the law; the competence of the Office for Prevention and Combating Money Laundering.

9. Law No. 982-XIV of 11.05.2000 "On Access to Information".

The Law establishes the basic principles of the state policy concerning the access to official information; conditions, methods and the procedure of access to official information; official information; official information with restricted access; access to personal information; access to the information stored in the Archive Fund of the Republic of Moldova; subjects of this Law; the relationship between information providers and individuals and/or legal entities in the process of realization of the constitutional right of access to information; rights of the persons requesting information; obligations of information providers to ensure access to official information; mechanism to protect the right of access to information; providing official information; denial of access to information, protection of the right of access to information.

10. Law N. 294-XVI of 21.12.2007 "On Political Parties".

The Law regulates the general rules and principles for the establishment and functioning of political parties; restrictions on the activities of political parties; attributes of political parties; state support for political parties; registration of political parties; assets of political parties; sources of financing of political parties; financing of political parties from the state budget; transparency of information on the financing of election campaigns; reorganization and termination of the activities of political parties.

11. The Criminal Code of the Republic of Moldova.

The recommendations provided by the United Nations Convention against Corruption in Chapter III, "Criminalization and law enforcement" and by the Council of Europe Criminal Law Convention on Corruption, were reflected in the Law on Prevention and Combating Corruption and in different chapters of the Criminal Code of the Republic of Moldova. The Law on Prevention and Combating Corruption establishes criminal liability of individuals and legal entities for acts of corruption and acts related to corruption.

Acts of corruption are the following offences stipulated by the Criminal Code:

Chapter XV. Crimes committed by officials.

Article 324. Passive Corruption.

Article 325. Active Corruption.

Article 326. Influence Peddling.

Chapter XVI. Crimes committed by persons administering commercial, social, or other nongovernmental organizations.

Article 333. Taking Bribes.

Article 334. Giving Bribes.

Other offences related to corruption are provided for in the following chapters of the Criminal Code:

Chapter XV. Crimes committed by officials.

Article 327. Abuse of Power or Abuse of Official Position.

Article 328. Excess of Power or Excess of Official Authority.

Article 332. Forgery of Public Documents.

Chapter XVI. Crimes committed by persons administering commercial, social, or other nongovernmental organizations.

Article 335. Abuse of Official Positions.

Article 335. Falsification of accounting records.

Chapter V. Crimes against political, labor and other constitutional rights of citizens.

Article 181. Hindering the Free Exercise of Election Rights or the Activities of Electoral Bodies.

Article 182. Falsification of Voting Results.

Chapter VI. Crimes against property.

Article 191. Appropriation of Another Person's Property.

Article 196. Causing Material Damage through Deception or Abuse of Trust.

Article 197. Deliberate Destruction or Damaging of Goods.

Chapter X. Economic Crimes.

Article 243. Money Laundering.

Article 256. Receipt of an Illegal Remuneration for the Performance of Public Service.

12. The Contravention Code of the Republic of Moldova N. 218-XVI from 24.10.2008.

The Code establishes administrative responsibility for administrative offences, defined in the Law on Prevention and Combating Corruption as corrupt behavior and acts related to corruption.

Chapter XVI. Offences related to activities of public authorities.

Article 312. Misuse of power or one's official status.

Article 313. Abuse of power.

Article 313. Protectionism.

Article 313. Failure to declare a conflict of interest.

Article 313. Excess of power with respect to permits.

Article 314. Concealing acts of corruption or protectionism or avoiding taking necessary measures.

Article 314. Failure to protect the civil servant.

Article 315. Receiving an illegal reward or financial profit.

Article 319. Failure to execute the obligations stipulated in the Execution Code.

Article 330. Failure to submit statistics in due time or submitting erroneous statistics.

2/A.2. *In-house anti-corruption regulations*

2/A.2.1. *Customs Service of the Republic of Moldova*

The Customs Service of the Republic of Moldova pays special attention to the fight against corruption, its administration is working hard to eradicate corruption among customs officials.

In this regard, the administration of the Customs Service developed and brought into action a set of in-house regulations concerning the implementation of a necessary mechanism to prevent and combat corruption in customs. But the main legal anti-corruption act influencing the organization and operation of the Customs Service of the Republic of Moldova is the **Decision of Government of the Republic of Moldova No. 456 of 27.07.2009 On Approval of the Code of Ethics of a Customs Office Employee.**

The Code of Ethics of a customs officer establishes mandatory standards of professional ethics and aims at regulating the basic principles of behavior to avoid situations that could affect the reputation of a customs officer in particular and the customs authorities as a whole; it also stimulates the public to actively assist the customs authorities in performing their duties.

The purpose of the Code is to ensure provision of quality services and information to the public about the rules of conduct of a customs officer, and customs control at the highest professional level.

The fundamental principles of the customs service are equity, quality, confidentiality, impartiality, independence, moral integrity, legality, loyalty and professionalism. In the same context, the Code provides for the professional values of a customs officer, such as experience and competence, team spirit and tradition.

The Customs Service, as a member of the World Customs Organization, adopted a number of constructive practices, including corruption prevention, which are used by customs officers.

Thus, to fulfill anti-corruption tasks a customs officer must be honest while performing his official duties and communicate with people met in the course of his service duties in accordance with the rules of a civilized society; be loyal to the institution in which he works; perform his duties conscientiously and

responsibly; be objective and impartial in all circumstances; resist the influence of private interests and political pressure in the course of his official duties; strengthen public confidence in the integrity, impartiality and efficiency of the customs service, be balanced and non-discriminatory, respecting the rights and dignity of citizens; participate in prevention of offences, corruption, trafficking of goods and valuables, and other illegal activities; be independent in decision-making, resist the influence of persons or entities from the customs and other institutions, especially in a situation which could lead to benefitting of a person or a group of people; avoid such behavior (private or official), which could make him vulnerable to undue influence on behalf of another person; reject any attempt or act of corruption or illegal activity and report them to superiors.

At the same time, a customs officer is obliged to observe the principle of the rule of law; to establish professional relationships based on responsibility, loyalty, equality, mutual respect, cooperation and professional support; to perform service tasks within his competencies and assigned duties, and not to consider applications, which do not fall within his competence, if he was not charged to do it by a superior, and not to interfere with settling such claims.

The customs officer, authorized to supervise or control the work of other employees of the customs service, shall take the necessary measures to prevent the involvement of the staff in corrupt practices related to service duties. In this context a senior officer should draw attention of the subordinates to the application of laws and regulations, ensure adequate anti-corruption training, consider financial difficulties or other difficulties, which employees may face, besides, he himself should be an example of honesty.

Notably, a separate chapter of the Code of Ethics specifies a customs officer's reaction to the proposal of unwarranted benefits. Thus, if a customs officer is offered an unwarranted benefit, in order to ensure his safety he should take the following measures:

- to refuse the unwarranted benefit;
- to identify the person who made the offer;
- to avoid prolonged contacts, despite the fact that knowing the motif of the offer may be used as evidence;
- to find witnesses, for example, colleagues;
- to make a written official report on this attempt within an appropriate time frame;
- to report this precedent to the superior officer or directly to the authorized law enforcement body.

A customs officer should not yield (or give an impression that he yields) to any situation, in which he will have to provide benefits for an individual or an organization. In addition, his behavior, both public and private, should not make him vulnerable to improper or undue influence by another person.

Also, the administration of the Customs Service developed the Order of 03.04.2012 N. 126-o regarding the consolidation of conduct norms within the Customs Service. The Order was designed to introduce anti-corruption policies and to ensure accomplishment of tasks of the Customs Service of the Republic of Moldova in respect of prevention and combating corruption within the customs authorities. According to this in-house regulation, customs officers, who are in direct contact with economic agents and individuals, are prohibited to use cell phones and cash while performing their service duties.

At the same time, in order to avoid infringement of the customs officials' rights, the above Order suggests that a customs officer may have at his disposal a certain amount of money for the daily personal needs. It should be noted that in the Customs Service this sum of money is not strictly defined as far as customs officers work throughout the country and the daily cash needs directly depend on the place of service.

To ensure continuous communication with the customs officers performing official duties, as an exception to the general rule, the chief officer of the shift is allowed to use a cell phone if necessary.

2/A.2.2. *Border Police Department of the Republic of Moldova*

The activity of the Border Police of the Republic of Moldova is governed by anti-corruption laws and regulations, as well as in-house acts developed on the basis of national and international anti-corruption standards, in order to implement the anti-corruption policy. The in-house regulations of the Border Police concern the implementation of internal measures to prevent and combat corruption.

1. Order of the Border Police Department of 25.01.2013 No. 22 on Approval of Instructions Related to the Organization of Activities on Criminal Prosecutions in the Border Police Department of the Ministry of Internal Affairs.

Paragraph 23 of Supplement 1 states: "In order to avoid corruption and protectionism among subordinates, the chief of the criminal investigation body or his deputy shall:

- authorize secondments of subordinates outside the workplace during working hours only with prior permission and if the need is justified; verify activities carried out during the secondment;
- oversee that the meetings of prosecution officers with parties involved are conducted exclusively in the office premises, with the exception of cases when the prosecution actions should be performed outside the operating room of the criminal prosecution;
- draw prosecution officers' attention to inadmissibility of private meetings with the parties to the legal proceeding and interested parties, constantly checking compliance with this ban;
- immediately propose the prosecutor to suspend the prosecution officer from the criminal proceedings if there are grounds for disqualification, complaints regarding his impartiality, violations of legislation or infringements of procedural guarantee of the parties;
- exclude any personal interest or conflict of interest while performing service duties, ensuring strict compliance with the procedural framework;
- develop and promote among subordinates respect for the law, dedication to service and impartiality in the course of criminal proceedings;
- identify weaknesses of subordinates and possible risks that could cause corruption;
- consider candidates for the staff and promotion, taking into account moral qualities and paying special attention to the aptitude for corrupt acts or protectionism;
- conduct an immediate internal investigation every time when a prosecution officer is involved in any activity that could trigger or transform into a corrupt act or protectionism."

Paragraph 107 of Supplement 1 states: "The Internal Security Division of the Border Police Department, if necessary, submits recitals to the Anti-Corruption Prosecutor's Office and the National Anti-Corruption Centre."

2. Order of the Chief of the Border Police Department of 25.01.2013 No. 26 on Approval of the Regulations on Continuous Professional Development of the Border Police Personnel.

"Continuous professional development of the border police officers contributes to achieving the following objectives: to raise officers' awareness of need to follow the conduct standards, to avoid conflicts of interest and eliminate corruption."

3. Order of the Chief of the Border Police Department of 12.10.2012 No. 86 On Approval of the Internal Rules of the Border Police.

"Continuous professional development of the border police officers contributes to achieving the following objectives: to raise officers' awareness of need to follow the conduct standards, to avoid conflicts of interest and eliminate corruption."

4. Order of the Border Police Department of 16.11.2012 No. 130 On Approval of the Practical Guide on Border Control for Border Officers.

"A border police officer shall inform the immediate superior and the competent authorities about the acts of corruption committed by other border police officers, which he has learned."

2/A.3. *Competence of the national anti-corruption bodies*

2/A.3.1. *Bodies responsible for prevention and combating corruption*

To ensure effective implementation of anti-corruption policy it is necessary to clearly define the responsibilities of different agencies. The UN Convention against Corruption and the Council of Europe Criminal Law Convention on Corruption oblige each State Party to ensure availability of specialized bodies or persons responsible for combating corruption through law enforcement.

It should be noted that the provisions of the UN Convention against Corruption and the Council of Europe Criminal Law Convention on Corruption are binding. The former provides for the establishment of such institutions in the field of criminal prosecution, as well as in the area of corruption prevention (including the functions of training and raise of public awareness). Thus, the States Parties shall ensure the availability of:

- specialized institutions to prevent corruption;
- specialized institutions or persons entrusted with the fight against corruption through law enforcement.

Preventing Corruption covers a wide range of problems: policy development, research, monitoring and coordination, training and public awareness; prevention of corruption in public administration (prevention of corruption in the system of employment in the public administration bodies; introduction of codes of ethics and legislation on conflict of interest; prevention of corruption through financial control; measures to combat corruption in public procurement and in other public sectors; prevention of

political corruption, etc.). These functions are often distributed among a large number of government departments, but in some countries of Eastern Europe and Central Asia there is a tendency towards centralization of certain anti-corruption functions in one agency.

In many countries, the police and public prosecution bodies play a key role in combating corruption, other states involve specialized independent law enforcement agencies to fulfill anti-corruption tasks. Several countries use the multi-purpose agencies, which combine prevention and law enforcement powers. Although in different countries a variety of special institutional models can be applied, it is essential to ensure the proper distribution of all the basic anti-corruption functions among the specialized agencies. It is also necessary to ensure that these different anti-corruption bodies meet the international standards: anti-corruption specialization, independence from undue interference in the activities and the availability of necessary resources. Finally, it is important to coordinate the activities of various agencies involved in the fight against corruption.

The National Anti-Corruption Center. In the Republic of Moldova, according to Article 13 of the Law on Prevention and Combating Corruption, the specialized body empowered to prevent and combat acts of corruption and corrupt behavior is the National Anti-Corruption Center, the functions of which include:

a) adoption of measures to prevent, detect and combat corruption; conducting investigations and prosecution of acts of corruption;

b) collection and analysis of information about the facts of corrupt behavior or acts of corruption; cooperation and exchange of information with the public authorities; reporting to the competent authorities on the causes and conditions of corruption offences;

c) prevention of corruption, anti-corruption education of citizens, active cooperation with the civil society in order to promote anti-corruption mass culture;

d) providing training and retraining;

e) protection and preservation of information constituting a state, commercial and banking secret, and other classified information protected by the law, which became known in the course of service duties;

f) maintaining relations with similar foreign services;

g) development of proposals for bringing the regulations in line with the international anti-corruption legislation.

Article 14 of the above Law sets a list of bodies and persons authorized to prevent and combat corruption through the implementation of policies and practices in this area within the jurisdiction established by the legislation: the Parliament, the President of the Republic of Moldova, the Government, the Prosecutor's Office, the Information and Security Service, Audit Chamber, other specialized central government bodies and local authorities, the civil society.

Establishment of a specialized body to prevent and combat corruption in the Republic of Moldova is caused, above all, by the need to develop an effective state structure with the main goal to fight against economic crimes and corruption. Prevention of such crimes is a priority task for the law enforcement bodies. Another important aspect is the need to optimize the structure of the supervisory bodies and to intensify their activity. Judging by the experience of the previous years, the problem of economic offences has not been solved, as a number of complexities arose, such as: duplication of functions by various state institutions, on the one hand, and poor interaction, on the other hand.

Each supervisory body had its own competences, a system of subordination and hierarchy. At the same time, among the CIS countries, only in the Republic of Moldova supervisory bodies were not authorized to conduct prosecution. The specialized agency to combat corruption and economic crimes was established due to the European integration standards, requiring the creation of a specialized anti-corruption agency. With the adoption of the Law on the Centre for Combating Economic Crimes and Corruption, in Moldova was established an agency with a complex system of economic crimes detection, starting with obtaining and documenting operational information, and finishing by drawing up the inspection reports, institution of a criminal investigation, criminal prosecution and submission of a matter to court. The center was established in 2002 through the merger of the Office of Financial and Economic Police, the Anti-Corruption Department of the Interior, the Financial Guard and the Department of Fiscal Inspection and Audit of the Ministry of Finance.

Since June 6, 2002 in the Republic of Moldova there functioned a law enforcement agency, specialized in issues dealing with financial, economic and tax crimes and corruption – the Center for Combating Economic Crimes and Corruption.

On May 25, 2012 the Parliament of the Republic of Moldova adopted Law No. 120 amending and supplementing certain laws, according to which since October 1, 2012 the Centre for Combating Economic Crimes and Corruption was reorganized into the **National Anti-Corruption Center** (hereinafter – the Center), a specialized body to prevent and combat corruption, corruption related offences and corrupt behavior.

The legal bases for the activities of the Center are the Constitution of the Republic of Moldova, Law No. 1104-XV of 06.06.2002 “On Instituting Center for Combating Economic Crimes and Corruption”, as well as other regulatory acts and international agreements to which Moldova is a party.

The objectives of the Center are as follows:

a) prevention, detection, investigation and suppression of acts of corruption, corruption related offences and corrupt behavior;

b) counteracting corruption and protectionism;

c) prevention of money laundering and financing of terrorism and fight against it in accordance with Law No. 190-XVI of 26.07.2007 “On Prevention and Combating Money Laundering and Financing of Terrorism”;

d) carrying out an anti-corruption expertise of draft legislation and draft government regulations, and other legislative initiatives, submitted to the Parliament for approval, in order to establish their compliance with the national anti-corruption policy;

e) assessment of corruption risks in public authorities and public institutions through training and counseling, monitoring and analysis of data relating to the assessment of corruption risks, as well as coordinating the development and implementation of anti-corruption plans.

The objectives pursued by the Center are comprehensive and can not be modified or amended unless in virtue of the law itself.

In order to achieve objectives the Center shall proceed as follows:

- carry out investigations in accordance with the legislation;
- take measures on prevention and combating corruption, corruption related offences and corrupt

behavior, referred to its competence, including measures on carrying out anti-corruption expertise of draft legislation and draft governmental acts and other legislative initiatives, submitted to the Parliament for approval, following the principles, criteria and procedures of legal expertise;

- conduct prosecution of offences, suppression of which falls within its competence;
- carry out proceedings on administrative violations referred to its competence;
- take measures on reparation of damages, caused to the state by offences, suppression of which is referred to the competence of the Centre;
- receive and register statements, messages, petitions and other information about offences and check them in accordance with the established rules;
- ensure safety and security of information constituting a state, banking, commercial and other secret protected by the law, which the employees of the Center reveal while performing tasks entrusted to the Centre. This information may be transferred to other public authorities, in accordance with the law;
- annually, till March 31, submit a report on its activities to the Parliament and the Government. The Annual Report is published on the official webpage of the Center one month before submitting it to the Parliament and the Government. If necessary, the Parliament or the Government may request additional reports on the activities of the Centre.

With the scope of fulfilling entrusted objectives and obligations the Center enjoys the rights as follows:

- to conduct investigations in accordance with Law No. 59 of 29.03.2012 “On Operative Investigation Activity”;
- to conduct legal prosecution in accordance with the Criminal Procedure Code;
- to dispose pre-trial detention centre for conducting investigation in accordance with the law;
- to draw up statements on offences referred to its competence;
- to request, with permission of the head of a specialized unit, and receive from public authorities, individuals and entities documents, written evidence, information and data necessary to perform duties on prevention and analysis of acts of corruption, as well as to review properly registered statements or reports on offences and crimes referred to its competence;
- to conduct forensic and other expertise, as well as research referred to its competence; to request from public authorities, public enterprises, organizations and institutions to attract professionals and experts for conducting audits or examinations, covering some specific issues;
- to participate in the development and improvement of legislation on prevention and combating acts of corruption, corruption related offences and corrupt behavior;
- to use mass media with the scope of establishing circumstances of offences and searching for persons escaping from inquest, investigation and prosecution.

The Center is a unitary, centralized and hierarchical body, headed by Director, composed of central and regional offices, and independent in developing action programs and exercising its functions.

The management of the Center is carried out by the Collegium, composed of: the director, deputy directors, heads of the Centre's departments (with a management status), the prosecutor of the Anti-Corruption Prosecutor's Office, the chairman of the National Integrity Commission, a representative of the relevant parliamentary committee, who is also a member of the opposition party, a representative appointed by the government, a union representative of the Centre, a representative of the civil society, selected by the parliamentary committee on a competitive basis, a representative of the Civil Council.

Recent amendments to the Law on the National Anti-Corruption Center introduced changes at the national level, regarding the conditions of employment and service in the Centre.

Applicants for admission to the Centre shall undergo special inspection, testing of psychological abilities to perform duties and polygraph testing, in accordance with the provisions of Law No. 269-XVI of 12.12.2008 "On Application of Polygraph Testing".

One of the employment requirements is a mandatory fingerprint registration in accordance with the law. Successful candidates are employed only after a written consent for:

- professional integrity testing, monitoring of lifestyle in accordance with the provisions of Article 14 of the Law on the Centre;
- periodic testing of psychological abilities required to perform service duties;
- polygraph testing in the course of periodic or random checks of service activities in accordance with the provisions of Law No. 269-XVI of 12.12.2008 "On Application of Polygraph Testing".

Professional integrity testing is a method of periodic monitoring of the employees' compliance with professional standards and checking their behavior, as well as identification, assessment and remediation of deficiencies and risks that may urge employees to commit acts of corruption or corrupt behavior and corruption related crimes or to allow undue influence on the service activity consisting in the creation of virtual situations, which imitate real ones, in order to reveal possible reactions and behavior.

Professional integrity testing is conducted by the Information and Security service with the prosecutor's permission.

Monitoring of the employee's lifestyle is conducted by the Internal Security Division of the Center in order to determine compliance of:

- the employee's living standard with the rate of remuneration of his work and the work of the persons he lives with;
- the employee's behavior with the good behavior requirements, established by the Code of Conduct for an employee of the Center, approved by the Parliament.

By initial appointment and annually thereafter, an employee must file an asset declaration to the Centre in accordance with the law.

The Anti-Corruption Prosecutor's Office specializes in combating corruption crimes and exercises its powers throughout the country. On behalf of the state the prosecutor of the Anti-Corruption Prosecutor's Office conducts criminal proceedings of the crimes falling within his jurisdiction.

As part of a criminal procedure the prosecutor of the Anti-Corruption Prosecutor's Office exercises the following competences:

1) opens a criminal proceeding, orders to conduct prosecution in accordance with the Criminal Procedure Code, refuses or terminates a criminal prosecution;

2) conducts criminal prosecution, performing the functions of a prosecuting authority;

3) personally supervises the prosecution and controls the legality of the criminal proceedings, decides to exclude from the case evidences obtained in accordance with the provisions of Article 94 (paragraph 1) of the Criminal Procedure Code;

4) calls up from criminal prosecution bodies records of proceedings, documents, procedural statements, materials and other information on the corruption offences and persons in criminal cases, which he supervises, and orders to merge or separate cases, if required;

5) checks the quality of the evidence, oversees that each crime shall be solved, every criminal shall be punished and no person shall be prosecuted without sound evidences of his committing a crime;

6) ensures compliance with reasonable terms of each criminal case prosecution;

7) annuls illegal and unjustified decisions of criminal prosecution bodies;

8) evokes, if there are grounds, a case from a criminal prosecution officer and continues himself to prosecute it or refers the case to the head of the prosecuting authority for the appointment of another officer to prosecute this case;

9) entrusts a group of criminal prosecution officers with a criminal prosecution;

10) allows an officer to recuse himself and suspends officers from prosecution;

11) decides on pre-trial restrictions, their changes and repeals, with exception of preventive detention, house arrest, provisional release and driving license suspension;

12) controls the lawfulness of a person's detention;

13) gives written instructions on criminal proceedings and special investigative measures to search for criminal offenders;

14) issues arrest warrants, decides on seizure of objects and documents and other criminal prosecution actions in accordance with the requirements of the Criminal Procedure Code;

15) refers to the court with a request for authorization of: arrests; extension of the detention period; temporary release of a detained or arrested person; examination, issue, inspection or seizure of mail; tapping of telephone and other conversations; suspension of the accused person; surveillance, including surveillance by electronic means; exhumation; surveillance of premises by means of video and audio recordings; installation of indoor technical means for video and audio recordings; examination of the information messages addressed to the suspect; placement of the person in a medical facility for examination; other actions of a criminal proceeding, which require permission of a judge;

16) may be present at any prosecution action or conduct it personally;

17) seeks the participation of a judge in some criminal prosecution actions if the law provides for his mandatory participation;

18) returns a criminal case to the prosecuting authority with his written instructions;

19) dismisses the officer for violations of the law while conducting the criminal prosecution;

20) refers to the appropriate authority with a request to waive immunity of individuals in order to bring them to justice;

21) terminates prosecutions and criminal proceedings; orders to withdraw a person from criminal prosecution in cases provided for by the law;

22) indicts and questions the accused;

23) gives the parties an opportunity to familiarize with the case in accordance with this Code;

24) draws up an indictment in a criminal case and hands its copy to the accused; submits the criminal case file to the competent court;

25) requests from prosecuting authorities and investigative bodies to eliminate violations of the law.

In criminal proceedings, the prosecutor presents the case against an offender to the court on behalf of the state and produces evidences gathered by the criminal prosecution body.

The National Integrity Commission. The authority having jurisdiction only in the area of corruption prevention is the National Integrity Commission (hereinafter – the Commission), established in accordance with Law No. 180 of 19.12.2011 "On National Integrity Commission".

The Commission is an autonomous public authority, independent of other public authorities, individuals and legal entities, that shall exercise the powers assigned to it by Law No. 1264-XV of 19.07.2002 "On Declaring and Control over the Income and Assets of State Officials, Judges, Prosecutors, Civil Servants and some Managers" and Law No. 16-XVI "On Conflict of Interests".

The mission of the Commission is to implement the mechanism of verification and control over declarations of income and assets, as well as declarations of personal interests, that are to be submitted by public officials, judges, prosecutors and other civil servants, and the mechanism of conflict of interest settlement.

The Commission carries out the following tasks:

- verifies declarations of income and assets and declarations of personal interests;
- asserts apparent discrepancies between the income declared and the property received during the same period, which can not be justified, and informs the criminal prosecution and fiscal authorities;
- refers to the authorities, which according to Law No. 16-XVI of 15.02.2008 are competent to verify the information provided in the declarations, with a request to validate the information, provided in the declarations of personal interest;
- reveals non-compliance with the legal provisions on conflict of interest and incompatibilities and appeals to the relevant authorities to bring the individuals to disciplinary action or, as the case may be, to terminate their mandate, employment or service relationship;

- appeals to the court, if one of the persons, subject to the legal provisions on conflict of interest, is proved to have issued / accepted an administrative act, made a transaction, decided or participated in decision-making in violation of the legal provisions on conflict of interest, to annul these acts;

- publishes all the declarations of income and assets, as well as declarations of personal interests on its website and provides their continuous availability, except for the information referred to in paragraphs 2 and 3 of Article 13 of Law No. 1264-XV of 19.07.2002;

- states and reports on the offences relating to the violations of the rules of declaring income and assets, as well as personal interests; reports on default inquiries of the Commission.

The organization and functioning of the Commission. The Commission is a collegial body consisting of 5 members assigned by the Parliament for a mandate of 5 years. A member of the Commission can not carry out his mandate for more than one term.

The Commission carries out its activities at regular weekly meetings, or, if necessary, at special meetings convened on the initiative of the Chairman or at least two members of the Commission, which are held in the state language and are open. The Chairman of the Commission may order a closed meeting if necessary to save the state, commercial or other secret protected by the law.

In discharging its functions to control income and assets, conflict of interest and incompatibilities, the Commission adopts regulations and approves initiation of control procedures.

The statements, drawn up by the Commission, must contain the date and place of its adoption; the name of the institution which adopted it; the names of the members present at the meeting, at which the statement was adopted; the name and other identification data of the person under control, his comments and clarifications; the names and positions of the persons witnessing the statement or representing the person under control, their comments and explanations; detailed description of the revealed facts and the arguments on which the statement is based.

The Commission shall monitor income and assets, incompatibilities and conflict of interest on its own initiative or at the request of interested persons or legal entities.

The Commission initiates monitoring if the declaration was not submitted within 30 working days from the deadline; it also checks the information published in the media. It is empowered to request from all the involved public authorities and institutions, individuals or entities necessary documents and information for monitoring, as well as to request from the competent authorities the validation of the data given in the declaration. Upon a reasonable request of the Commission, heads of the involved public authorities and institutions, individuals and entities are obliged to inform the Commission and produce confirming data, information, reports and documents in hard copy or in electronic format, which can contribute to the resolution of the case, during the period of up to 15 working days. If the comparison of the data contained in the declaration and information in the received additional documents proves that there is an obvious discrepancy between the income received while being in office and the property acquired during the reported period, the Commission:

a) suspends the monitoring and appeals to the prosecuting authorities to check or find evidences of a criminal offence;

b) refers to the fiscal authorities to determine tax liabilities in accordance with the law.

If the verification of the declarations and additional documents doesn't prove any evident discrepancies between submitted declarations and the actual incomes or assets received or appropriated during the reported period, or if the revealed discrepancies can be justified, the Commission decides to close the case.

The statement of a conflict of interest or incompatibility is drawn up as a result of monitoring carried out by the Commission and indicates that the person under control issued / accepted an administrative act, made a transaction, decided or participated in the decision in violation of the legal provisions on conflict of interest, or that he was or is incompatible. In such cases, the Commission refers to the competent court for the annulment of the issued / accepted administrative act, the transaction or the decision taken in violation of the legal provisions on conflict of interest.

Actions carried out by the Commission in the course of the verification are not public, except for the final statement.

2/A.3.2. *Cooperation and coordination of national anti-corruption bodies*

International legal instruments define the following functions in respect of prevention and combating corruption: prosecution of corruption crimes, measures to prevent corruption, education and training, coordination of anti-corruption work of different bodies, monitoring of implementation of national anti-corruption programs, research and analysis of the corruption level in the country.

These functions correspond to the following tasks on prevention and combating corruption: receiving and consideration of complaints against officials; collecting data related to corruption; analysis of the crime situation, operational and investigative activities and conducting preliminary investigations; criminal prosecution; application of administrative liability; conducting research, analysis and assistance in the field of corruption prevention; consulting on ethics; analysis of compliance with legislation; consideration of asset declarations of public officials; providing information, conducting educational and awareness-raising activities; international cooperation and assistance, etc.

These tasks may be performed by a single institution or be distributed among several anti-corruption bodies.

Investigation and prosecution powers are the primary mechanisms for application of anti-corruption laws, particularly in the sphere of criminal justice. This task is usually fulfilled by specialized institutions within the existing system of state bodies – the National Anti-Corruption Center and the Anti-Corruption Prosecutor's Office.

Corruption prevention functions cover all aspects of public governance, they are so numerous and varied that can not be managed by a single authority. As follows from the UN Convention against Corruption, as well as the national legislation, preventive functions include: prevention of conflict of interest in public service, verification of asset declarations of public officials, ensuring integrity and transparency of public service, prevention of money laundering and financial control over the expenditure of public funds. In the Republic of Moldova these functions are performed by: the Parliament, the Government, the National Anti-Corruption Centre, the Public Prosecutor's Office, the Information and Security Service, the Audit Chamber, the National Integrity Commission, central specialized bodies of public administration, local public authorities and the civil society.

Also, all public authorities periodically evaluate legal instruments and administrative measures to determine their adequacy to prevent and combat corruption and organize within their competence:

internal control in order to check whether civil servants, high rank officials and other persons providing public services meet the requirements of legislation on corruption prevention;

obtaining information from various sources (meetings with citizens, anonymous letters, hotlines, e-mails, etc.) on acts of corruption or corrupt behavior committed by public officials, administrative consideration of this information and taking appropriate measures, including passing the relevant materials to the specialized body.

Also, public authorities on a quarterly basis submit to the National Anti-Corruption Center information on the measures taken, including joint projects with other agencies, as well as suggestions concerning the current situation improvement.

The public authorities, NGOs and other representatives of the civil society perform, jointly or separately, tasks concerning corruption prevention by means of exchange of information and experts, examination and identification of corruption causes, staff training, systematic public awareness campaigns, preparation and dissemination of promotional materials, relating to corruption risks, implementation of socio-economic initiatives and other activities in this sphere.

There are a number of other tasks that are usually distributed among many state institutions and require special attention. These tasks include development of educational programs for professional anti-corruption trainings, organization of public awareness campaigns, cooperation with the media, civil society and business community, international cooperation.

Coordination, monitoring and research of corruption – these are three additional functions considered as important components of the comprehensive national strategy to combat corruption, and it's quite necessary to designate a specialized agency responsible for their performance.

Coordination is required at two levels – coordination of the anti-corruption policy and coordination of the measures to implement it. Monitoring and evaluation of the anti-corruption plans implementation and assessment of the corruption level – these are the most important support functions necessary to develop an effective policy and to ensure its implementation.

In addition, to coordinate the implementation of activities between various departments and to prepare regular reports on the implementation of comprehensive anti-corruption strategies, programs or action plans, a multidisciplinary coordination mechanism is required. Such mechanism should function at a rather high governmental level in order to exercise its authority through various state institutions. Ideally, it should also include representatives of the civil society. In the Republic of Moldova, this mechanism is provided by two main bodies:

Permanent parliamentary commission responsible for the national security, defence and public order, which carries out the overall coordination of the implementation of the Strategy and other anti-corruption instruments and provides parliamentary oversight over the activities of agencies and institutions responsible for the implementation of anti-corruption measures within their competence;

Monitoring group formed of representatives of the public authorities, civil society and private sector, which monitors and analyzes the Action Plan for the implementation of the Anti-Corruption Strategy.

2/A.4. *International cooperation against corruption*

If national corruption is caused by more general problems in the country, then corruption generated at the international level is associated with imperfection of international cooperation. Therefore, efforts should be made towards the improvement of interaction mechanisms. This work shall be carried out in the following areas.

1. Legal measures include:

- approximation of the legal framework concerning the state involvement in the economy;
- accession to international agreements on extradition;
- agreements with the partner countries for economic affairs to refuse corruption as a means of competition up to the legislative recognition of the relevant principles;
- introduction of the international accounting standards;
- imposing discriminatory measures on businessmen from the countries, the legislation of which does not preclude bribery.

2. Law enforcement measures may include:

- mending of international exchange of information (in particular – about firms involved in bribery);
- unifying standards of evidence on corruption (it is necessary, for example, while requesting for extradition of persons subject to prosecution);
- bilateral and multilateral agreements on joint operational activities;
- agreements on mutual assistance related to extradition of persons subject to prosecution, interrogation of witnesses, access to bank accounts and their attachment.
- These measures are aimed at significant reduction of the risk of criminal capitals movement as well as the movement of their respective owners to other countries.

3. Partnership assistance:

- training of the personnel engaged in the fight against corruption;
- assistance in the development of anti-corruption programs;
- assistance in the development and implementation of promotional measures.

At the international level in order to successfully carry out the measures aimed at combating cross-border organized crime, illegal migration and human trafficking, international terrorism, smuggling, drug trafficking, etc., as well as fight against corruption among the personnel and implementation of anti-corruption practices, **the Border Police Department of the Ministry of Internal Affairs of the Republic of Moldova (Border Guard Service of the Republic of Moldova) has signed a number of international agreements:**

1. Agreement on cooperation between the Border Guard Service of the Republic of Moldova and the Police and Border Guard Board of the Republic of Estonia, signed in Chisinau on 16.11.2010.

2. Cooperation plan for 2013-2014 between the Border Police Department of the Ministry of Internal Affairs of the Republic of Moldova and the Border Guard Division of the Department of Police and Border Guard of the Republic of Estonia, signed in Tallinn on 29.11.2012.

3. Protocol between the Border Guard Service of the Republic of Moldova and the General Inspectorate of Border Police of the Ministry of Administration and Interior of Romania on consolidation of cooperation at central and local levels, signed in Iasi on 29.11.2011.

4. Protocol on cooperation between the Border Guard Service of the Republic of Moldova and the Supreme Commander-in-Chief of the Border Guard of the Republic of Poland concerning the fight against organized crime and other violations, signed in Kronschenko on 20.09.2011.

5. Agreement on border cooperation between the Border Guard Service of the Republic of Moldova and the Ministry of Internal Affairs of Georgia, signed in Chisinau on 13.06.2011.

6. Agreement on cooperation between the Border Guard Service of the Republic of Moldova and the State Border Guard Service of the Republic of Lithuania, signed in Riga on 26.08.2005.

7. Agreement on cooperation between the Border Guard Service of the Republic of Moldova and the State Border Guard Service of the Ministry of Internal Affairs of the Republic of Lithuania, signed in Vilnius on 19.10.2007.

8. Protocol between the Border Guard Service of the Republic of Moldova and the Border Guard Service of the Republic of Hungary, signed in Balatonalmadi on 23.05.2007.

9. Protocol between the Border Guard Service of the Republic of Moldova and the Administration of the State Border Guard Service of Ukraine on cooperation of operation bodies, signed in Chisinau on 22.04.2005.

The Customs Service of the Republic of Moldova has also signed various anti-corruption conventions and agreements, at both the international and regional level, on cooperation in customs matters.

Multilateral agreements:

1. Convention establishing a Customs Cooperation Council (Brussels, 15.12.1950);

2. International Convention on Mutual Administrative Assistance for Prevention, Investigation and Repression of Customs Offences (Nairobi, 9.06.1977);

3. International Convention on the Harmonized Commodity Description and Coding System (Brussels, 14.06.1983).

The EU Economic Commission for Europe:

UN International Convention on the Harmonization of Frontier Controls of Goods, adopted in Geneva on 21.10.1982 (the Republic of Moldova joined it by Law No. 215-XVI of 23.10.2008), came into force on 03.03.2009.

European Union:

1. Protocol on mutual assistance between administrative authorities in customs matters to the Partnership and Cooperation Agreement between the European Communities and their Member States, of the one part, and the Republic of Moldova, of the other part (Brussels, 28.11.1994);

2. Protocol on Amendments to the Agreement on Exemption from Customs Fees, Taxes and Issuance of a Special Permit for Transportation of Normative Documents, Standards, Measuring Devices and Reference Materials, Transported with the Purpose of Inspection and Metrological Certification dated February 10, 1995 (Ashgabat, 22.11.2007);

3. Agreement on Exemption from Customs Duties, Taxes and Issuance of Special Permits for Transportation Normative Documents, Standards, Measuring Devices and Reference Materials, Transported for Verification and Metrological Attestation Purpose (Almaty, 10.02.1995).

Regional Cooperation Council:

Agreement on Cooperation to Prevent and Combat Trans-Border Crime (Bucharest, 26.05.1999).

Commonwealth of Independent States (CIS):

1. Agreement on Cooperation and Mutual Assistance in Customs Matters (Moscow, 15.04.1994);

2. Agreement on Cooperation between the Customs Services in Interception and Return of Illegally Imported and Exported Cultural Values (Moscow, 15.04.1994);

3. Decision on the Regulation Concerning the Returning Procedure of Illegally Imported and Exported Cultural Values (Bishkek, 9.10.1997);

4. Agreement on Transit Procedure Through the Territories of the CIS Member States (Minsk, 4.06.1999);

5. Protocol on Cooperation between the Customs Services of the Commonwealth of Independent States in the Implementation of Post-Customs Control (Petropavlovsk-Kamchatsky, 05.09.2012).

Organization for Democracy and Economic Development - GUAM (Georgia, Ukraine, Azerbaijan, Moldova):

1. Memorandum of Understanding between GUAM Member States on Trade and Transport Facilitation (Yalta, 4.07.2003);

2. Decision on approval of the GUAM Regional Strategy and Action Plan for Implementation of the Trade and Transport Facilitation Project (Istanbul, 28.06.2004).

Bilateral international treaties:

Ukraine:

1. Intergovernmental Agreement on the Organization of Joint Control in the Moldo-Ukrainian State Border Crossing Points (Chisinau, 11.03.1997);

2. Interdepartmental Agreement on Cooperation for Combating Smuggling and Customs Offences (Chisinau, 20.03.1993);

3. Interdepartmental Protocol concerning the Organization of Preliminary Information Exchange on Goods and Means of Transport, Crossing the State Border of the Republic of Moldova and Ukraine (Brussels, 21.11.2006);

Romania:

Intergovernmental Agreement on Customs Cooperation and Mutual Administrative Assistance for Prevention, Investigation and Repression of Customs Offences (Bucharest, 24.04.2000).

One of the latest agreements on cooperation was signed on May 15, 2013 between the Customs Service and OLAF – the agency which investigates fraud against the EU budget, acts of corruption and other offences within the European institutions and develops anti-fraud policy of the European Commission.

Thus, the **anti-corruption legislation of the Republic of Moldova includes:**

1. Criminal Law Convention on Corruption (Strasbourg, 27.11.1999), ratified by Law No. 428-XV of 30.10.2003.

2. Criminal Code of the Republic of Moldova No. 985 of 18.04.2002.

3. Criminal Procedure Code No. 122 of 14.03.2003.

4. Law No. 90-XVI of 25.05.2008 “On Prevention and Combating Corruption Act”.

5. Law No. 16-XVI of 15.02.2008 “On Conflict of Interests”.

6. Law No. 25-XVI of 22.02.2008 “On the Code of Conduct for Public Officials”.

7. Law No. 239-XVI of 13.11.2008 “On Transparency in Decision-Making”.

8. Law No. 271-XVI of 18.12.2008 “On Control of Public Office Holders and Candidates to Public Vacancies”.

9. Law No. 104-XV of 06.06.2002 “On the National Anti-Corruption Center”.

10. Law No. 180 of 19.12.2011”On National Integrity Commission”.

11. Law No. 199 of 16.07.2010 “On Public Officials Status”.

12. Law No. 269-XVI of 12.12.2008 “On Application of Polygraph Testing”.

13. Law No. 59 of 29.03.2012 “On Special Investigation Activity”.

14. Law No. 133 of 08.07.2011 “On Personal Data Protection”.

15. Decision of the Parliament of the Republic of Moldova No. 421-XV of 16.12.2004 “On Approving the National Strategy for Prevention and Combating Corruption and Action Plan for the Implementation of the National Strategy for Prevention and Combating Corruption”.

16. Decision of the Parliament of the Republic of Moldova No. 154 of 21.07.2011 “On Approval the 2011-2015 National Anti-Corruption Strategy”.

17. Decision of the Parliament of the Republic of Moldova No. 232 of 25.10.2012 "On the Institutional Strengthening Strategy of the National Anti-Corruption Center".

18. Decision of the Government of the Republic of Moldova No. 32 of 11.01.2007 "On Approval of the Action Plan on Implementation of the Preliminary Plan of the Republic of Moldova within the Millennium Challenges USA Program".

19. Decision of the Government of the Republic of Moldova No. 456 of 27.07.2009 "On Approval of the Code of Ethics of a Customs Office Employee".

Theme 2/B. National anti-corruption instruments of Ukraine

2/B.1. *National anti-corruption policy and legislation*

"One of the current concerns that threaten the national security and public stability of Ukraine is the spread of state corruption and bribery including the overlap of business, politics and organized crime" (paragraph 9, Article 7of the Law of Ukraine "On National Security").

These days corruption is the phenomenon that threatens the national security and the constitutional order of Ukraine.

This phenomenon affects virtually every aspect of the social life: economics, politics, social and legal spheres, management, social awareness, and international relations. Corrupt ties actually destroy legal, ethical relationships between people and gradually become the norm of behavior.

Corruption undoubtedly can be recognized as one of the most burning social and political problems of our time. The solution to this problem is an extremely urgent and high priority matter for Ukraine.

Now the state has created conditions for the eradication of corruption and not just declared intention to prevent and combat corruption, but also the top officials expressed their will to fully reform anti-corruption legislation, as well as the entire state anti-corruption policy.

An important step in this direction was the establishment of the **National Anti-Corruption Committee (Decree of the President of Ukraine No. 890/2011 of 01.09.2011 "Issues of the National Anti-Corruption Committee" amended by Decrees No. 201 of 16.03.2012 and No. 362 of 30.05.2012).**

2/B.1.1. *National anti-corruption strategy*

Vigorous activity of the Anti-Corruption Committee resulted in the development and adoption of a number of anti-corruption laws and regulations.

In order to improve the legal and institutional framework of prevention and combating corruption the President of Ukraine signed **Decree No. 1001/2011 of 21.10.2011 on approval of the National Anti-Corruption Strategy for 2011-2015.** This decree is aimed not only at improving the effectiveness of preventing and combating corruption.

The expected results of this legal act are as follows:

- development of the national legislation in the context of compliance with the international anti-corruption standards;
- reduction of corruption in law enforcement agencies, other state institutions and local self-government bodies;
- reducing the scope of shadow economy;
- promotion of active public approach to preventing and combating corruption.

However, the analysis of the situation (Chapter 2 of the Strategy) has proved that in addition to the measures taken, it is necessary to legally regulate such matters as: streamlining administrative procedures for public services, prosecution of legal entities (if their authorized representatives commit acts of corruption), improvement of the confiscation system and prosecution of those, who enjoy immunity, for acts of corruption.

This document is based on the results of studies and identifies the range of reasons for emergence and spread of corruption in Ukraine, namely:

- lack of integrity of officials authorized to perform state functions;
- inadequate administrative procedures;
- wide discretionary powers of the state authorities;
- disparity between the remuneration of public officials and the delegated authorities;
- unfavorable business conditions and availability of economic benefits to certain categories of entrepreneurs;
- a series of effective measures to bring the perpetrators of corruption offences to justice;
- tolerance and absence of critical public attitude towards corruption;
- public perception of corruption as a means of achieving the desired result.

Spread of corruption in the state and failure to take appropriate measures cause serious damage not only to the system of government, corruption leads also to discrediting of the law as a universal regulator of social relations and turns it into a means of personal gain that could lead to such consequences as:

- decline in the credibility of government and state institutions;
- delay in modernization and development of the national economy, distortion of competition, price increase due to inclusion of bribes as a necessary component of the price formula for goods and services;
- deterioration of the investment attractiveness of the country;
- threat to the state security.

Main directions of the National Anti-Corruption Strategy. To implement the National Anti-Corruption Strategy it is necessary to coordinate actions of the state and local authorities, namely:

1) reformation of public administration and administrative procedures:

- completing delineation of public authorities' responsibilities in the sphere of administrative services and enforcement (inspection);
- application of innovative technologies that enhance the objectivity and ensure the transparency of decision-making by public authorities, including the acceleration of electronic document management and digital signature at the state and local levels;
- expanding the application of the "tacit consent" principle when issuing approvals, certificates, permits, etc.;
- providing administrative services solely by public authorities and public institutions;
- defining at the legislative level an exhaustive list of administrative services, whether paid or free-of-charge, as well as reasonable (adequate) deadlines for providing such services;
- eliminating the practice of splitting administrative services into separate paid services;
- prohibiting government bodies and local authorities to provide paid economic services;
- rejection of territorial monopoly in the provision of administrative services and creation of alternative opportunities for choosing a body for administrative services;

2) reducing the administrative burden on businesses, preventing shadow economy:

- significant reduction in the number of licenses and permits in business, maximum simplification and shortening of licensing procedures;
- elimination of technical barriers to the introduction of a single window facility, maximum computerization of documents;
- limiting the number of inspections conducted by the tax and supervisory authorities;
- preventing undue pressure on entrepreneurs on behalf of the law enforcement and state supervisory bodies;

3) ensuring integrity in the state institutions and local government bodies:

- systemic improvement of civil service, service at local authorities, particularly regarding the procedures for competitive recruitment of candidates for positions (mechanisms to determine the winner), HR placement, career at national and local public authorities;
- defining at the legislative level ethical conduct principles for persons authorized to perform functions of the state or local authorities, and mechanism of resolving conflicts of interest in their activities, to be based on the Model Code of Conduct for public officials of the Council of Europe Member States, with account of other international legal standards in the area;
- optimization of the ratio level of the basic (fixed) salary depending on the complexity of the work and the level of responsibility of the certain position and the additional salary (bonuses), which is paid to management's discretion after the in-depth evaluation of the activities;

4) improvement of access of individuals, legal entities and citizens' associations without legal personality to information about the activities of the state and local government institutions:

- further formation of an effective mechanism of access of individuals, legal entities and citizens' associations without legal personality to information about the activities of the state and local government institutions, their officials and employees;
- intensification of information exchange between the citizens' associations, the media, the state institutions and the local government bodies;
- ensuring transparency in the work of the state and local authorities;

5) improved use of the budgetary resources and state property:

- enhancement of external, independent audit with respect to control over the use of local budgets;
- completing the inventory of the state-owned enterprises and organizations, developing the Unified Register of State Property;
- improvement of the legislation on public procurement and introduction of external audit to ensure transparency of procurement process;
- improving the system of control over the use of the public property in order to prevent hidden income earned by public officials or with their assistance by other individuals or groups;
- creation of an effective mechanism to make transparent the securities market and deals with securities;
- monitoring effectiveness of the state budget use, conducted by the Accounting Chamber in the framework of the national programs of economic, scientific, technological, social and cultural development and protection of the environment;
- improving the mechanisms for public involvement in the control over the legality and effectiveness of the state property and budget use;
- optimization of financing of political parties and election campaigns by establishing clear rules for their funding, and ensuring effective independent monitoring of such funding;

6) **improvement of anti-corruption expertise** by implementing a multi-level assessment of corruption risks in the legislation: at the level of a legal act development (as a formalized self-assessment), at the level of the Ministry of Justice of Ukraine (the official anti-corruption expertise of a draft legal act), at the level of the public expertise which is provided by the transparent procedure of law drafting and public access to the information;

7) **public support for the government's actions to prevent and combat corruption:**

- assisting the media in covering the anti-corruption measures taken by the state and local authorities;
- determining procedures for periodic reporting by public authorities responsible for implementation of the state anti-corruption policy on the status of corruption prevention and combating;

8) **improving the system of specially authorized entities in the field of combating corruption:**

- analysis of the activities of the specially authorized entities in the field of combating corruption and taking measures to improve the efficiency of their work;
- developing a unified practice for law enforcement and judicial authorities in cases related to corruption;
- introducing specialization for prosecutors and investigators in crimes committed by personnel on duty related to provision of public functions;
- development of cooperation between the law enforcement agencies, NGOs and the media;

9) **improved qualification of judges, prosecutors and law enforcement officers:** development and implementation of ongoing training of professional judges and candidates for professional judges, law enforcement officers and prosecutors on application of the new anti-corruption legislation.

10) prevention of corruption in law enforcement:

- institutional reform of the agencies conducting inquiries, pre-trial investigations and prosecution;
- improvement of professional qualification and training of the law enforcement personnel engaged in combating corruption;
- determining criteria to assess efficiency of law enforcement agencies on the basis of outcome quality rather than in quantitative terms;
- development and introduction of measures to ensure effective and objective oversight of prosecution over the law enforcement agencies;

11) **strengthening of responsibility for acts of corruption:**

- establishing liability of legal persons for corruption offences committed by their authorized agents;
- improving the system of forfeiture;
- review of procedure for granting consent to criminal prosecution, detention or arrest of persons enjoying immunity if they are caught in the very act of committing a serious crime (in flagrante delicto), including corruption;

- development of a mechanism for compensation of damage or injury caused by corruption offences committed by individuals and legal persons;

- development of a mechanism for citizens' protection in case of corruption offences detection, taking measures to halt corrupt activities and immediate reporting on them;

12) reducing corruption in the private sector:

- formation of anti-corruption legal awareness of citizens through the implementation of social and educational programs, introduction of anti-corruption education in secondary, vocational and higher educational institutions, regardless of ownership;

- ensuring transparency of the activities of public organizations and legal entities in private law;

- establishing internal controls and prevention (detection) of corruption offences in the private sector;

13) reducing corruption in the corruption risk areas, in particular, law enforcement, health, land, education, taxation, customs areas, as well as public procurement and public service:

- improving the legislative framework of the relevant areas of public relations;

- increasing wages and social welfare of employees;

- professional development and rigid selection of the staff;

- reducing the number of formal procedures;

14) enhancing international cooperation in preventing and combating corruption:

- bringing the anti-corruption policy of Ukraine into line with the international standards of prevention and combating corruption;

- preparing and signing interstate bilateral and multilateral agreements on cooperation in prevention and combating corruption;

- deepening cooperation with partner intelligence services and law enforcement agencies in combating corruption;

- introducing in Ukraine the best anti-corruption practices of foreign countries, especially in relation to the development of the system of whistle-blower protection;

- building up the image of Ukraine as a state that actively counteracts corruption, and getting international support for these activities.

Implementation of the National Anti-Corruption Strategy for 2011-2015 aims at bringing Ukraine to the international anti-corruption standards. This refers to the development of national legislation in the context of the global anti-corruption standards set by the UN Convention against Corruption, the Criminal Law Convention on Corruption and the Additional Protocol thereto – according to the recommendations of GRECO and other international institutions.

In order to implement the National Anti-Corruption Strategy, by **Resolution No. 1240 of 28.11.2011 the Cabinet of Ministers of Ukraine approved the State Program for Preventing and Combating Corruption for the period of 2011-2015.**

It is structured as the National Anti-Corruption Strategy and contains the list of activities, the amount and sources of financing, expected results, indicators, timelines, responsible persons, as well as partners to implement it.

It is assumed that the implementation of the State Program will make it possible to:

- continue the process of developing legislation in view of global anti-corruption standards;
- efficiently enforce anti-corruption legislation by national authorities and local governments;
- create an efficient system of combating corruption in all areas of the state and local authorities' activities and at all levels;
- ensure openness and public awareness regarding the implementation of measures to prevent and combat corruption;
- form intolerant, negative attitude in the society to corruption as a socially dangerous phenomenon;
- strengthen cooperation of citizens associations with the state and local authorities in the areas of shaping and implementing the state anti-corruption policy, ensuring the civil society's support for anti-corruption activities undertaken by the state.

In general, the tasks of the State Program can be divided into three groups:

- measures aimed at eliminating factors leading to corruption;
- measures to reform the system of the state bodies entrusted with the functions of combating corruption and reforming the legislation on liability for corruption offences;
- measures to encourage the civil society, particularly the media, non-governmental organizations, academic and research institutions to participate in prevention and combating corruption, and to foster cooperation of Ukraine at the international level in the field of anti-corruption policy.

Sociological and scientific studies on causes and magnitude of corruption in Ukraine, conducted in the past few years and the results of which form the basis of the State Program, clearly indicate that the sphere of administrative services remains the most corruption-prone.

So, the State Program focuses mainly on the measures to reform the system of public administration and administrative procedures. First of all, it is development and adoption of legal acts, the most significant of which is the Code of Administrative Procedures.

In addition, it is necessary to conduct functional reviews of public authorities, resulted in reports and proposals for amendments to legislation, in order to eliminate combination of inspection functions and functions to provide administrative services within one agency. It is also planned to work out appropriate changes to the legislation aiming to finally end the practice of splitting administrative services into separate paid services.

Elimination of territorial monopoly when providing administrative services – another important condition for overcoming corruption in relations between public agencies and citizens. Therefore, the State Program provides for further opening of the centers for administrative services that have proved to be an effective element of the system of administrative services in Kyiv, Vinnytsia, Luhansk, Ivano-Frankivsk, where citizens in the same premises can get services of various administrative bodies, as well as public administrators and registrars. Such centers simplify the procedure of administrative

services, including issuance of permits and state registration of business entities, speed up their provision, and prevent any acts of corruption by public officials. At the same time there is also an intention to create consulting rooms and a single call-center to provide administrative services, as well as to introduce the so-called "electronic queue" using e-mail to render administrative services.

Special attention should be paid to the plans, approved by the State Program, to expand the scope of the "tacit consent" principle – the European principle, according to which an entrepreneur has the right to conduct business if the relevant documents are submitted in full and in due course, even if the official for whatever reason delays issuing permits.

These measures, together with adoption of a "single window" system at the state and local levels, as well as introduction of the Unified State Register of real estate titles, will significantly reduce the administrative burden on entrepreneurs and prevent shadow economy, which is one of the key tasks of the National Anti-Corruption Strategy. In addition, it is planned to develop proposals to simplify the procedure of registration and liquidation of legal entities, to abolish the registration fee for the state registration of a legal entity, to reduce the number of inspections of economic entities by the tax and other government supervisory bodies.

In matters of improving the use of the state property and budget funds, the executive and the legislature shall focus on establishment of the Unified Register of State Property, improvement of legislation on public procurement and introduction of external audit system.

Another important aspect to combat corruption is to ensure integrity in public service and service in local government.

First, it is a systemic improvement of civil service, service in local authorities, particularly regarding the procedures for competitive recruitment of candidates for positions (mechanisms to determine the winner), HR placement, career at national and local public authorities.

Second, defining at the legislative level ethical conduct principles for persons authorized to perform functions of the state or local authorities, and mechanism of resolving conflicts of interest in their activities, to be based on the Model Code of Conduct for public officials of the Council of Europe member countries, with account of other international legal standards in the area.

Considerable attention is paid to the issues of coordination and control over activities of specially authorized anti-corruption bodies, along with solution of such problems as introduction of specialization for prosecutors and investigators in crimes related to civil service and professional activities related to provision of public services.

It is planned to continue active international cooperation in preventing and combating corruption within such organizations as GRECO, UN, OECD, Europol and Eurojust.

The State Program stipulates a number of activities aimed at education and training of persons, authorized to perform functions of the state or local authorities, representatives of the private sector, NGOs and ordinary citizens. This direction in the State Program is allocated to a separate section "Building public support for efforts of public authorities to prevent and combat corruption".

A separate item of the State Program stipulates introduction of a system of monitoring the impact of anti-corruption legislation on the status of corruption in the state and preparation of respective legislative amendments involving civil society (non-governmental) organizations

Special attention should be paid to measures aimed at forming an anti-corruption legal awareness of citizens, which are to be implemented on an ongoing basis. That is implementation of measures aimed at

raising awareness of different groups of population on personal inclusion of citizens in preventing and detecting corruption, as well as introduction of programs and case studies on combating corruption at secondary, vocational and higher education institutions, involvement of NGOs in sociological studies on prevention and combating corruption.

The program aims at achieving the declared objectives, namely:

- to continue the process of developing legislation in view of global anti-corruption standards set forth in the United Nations Convention against Corruption, the Criminal Law Convention on Corruption, the Additional Protocol to the Criminal Law Convention on Corruption, the Civil Law Convention on Corruption, recommendations of the Group of States against Corruption (GRECO), and other international institutions;
- to improve efficiency of the system to prevent and combat corruption;
- to reduce the level of corruption in the law enforcement system, other national and local authorities;
- to reduce the scope of shadow economy;
- to promote active public approach to preventing and combating corruption.

2/B.1.2. *National legal framework to prevent and combat corruption*

Revision of the package of anti-corruption laws by the National Anti-Corruption Committee, bringing the disputable points in accordance with the norms of the Constitution of Ukraine, taking into account the suggestions made by the Group of States against Corruption of the Council of Europe (GRECO), and qualifications set out by the Constitutional Court of Ukraine in Decision No. 21-рп/2010 of 06.10.2010 (the case of corruption offences and enforcement of anti-corruption laws), as well as suggestions of the experts and the public have resulted in the **adoption of Law No. 3206 -VI of 7.04.2011 "On Principles of Preventing and Combating Corruption".**

Its main tasks are to bring the Ukrainian legislation into line with international legal norms and standards, which cover all the aspects of prevention and combating corruption, as well as to define a unified approach to understanding the essence of corruption, variety of its manifestations and legislative regulation of legal liability for corruption.

The Law of Ukraine "On Principles of Preventing and Combating Corruption":

- defines basic principles to prevent and combat corruption;
- determines the range of subjects liable for corruption offences, as well as clarifies and specifies the terms to refer individuals to the number of such subjects;
- provides for introduction of effective mechanisms, rules and regulations, aimed at prevention of corruption and elimination of causes and conditions giving rise to it;
- takes into account the suggestions made by the Group of States against Corruption of the Council of Europe (GRECO), the Constitutional Court of Ukraine, experts and the public;
- adapts some of the provisions of the UN Convention against Corruption, the Council of Europe Criminal Law Convention on Corruption and Additional Protocol thereto;

- clearly defines the range of subjects to coordinate and control anti-corruption activities;
- limits persons liable for corruption offences in relation to abuse of authority, employment of immediate family members, positions overlapping and receiving gifts;
- sets restrictions on persons who ceased activities related to performing state functions;
- establishes the schedule and procedure for conducting a special verification of persons applying for positions in the state or local government bodies;
- introduces a new procedure for financial control, mandatory declaration of both revenues and expenditures, setting deadlines for submitting declarations and publishing declarations on the financial status, income and expenses of officials in official editions;
- establishes personal liability of officials authorized to perform state functions concerning prevention of conflicts of interest;
- introduces anti-corruption expertise of draft legal acts, including the acts under consideration of the President of Ukraine, the Verkhovna Rada of Ukraine and the Cabinet of Ministers of Ukraine, in order to prevent corruption at the stage of development of any legal act;
- prohibits obtaining gratuitous services and property by the state and local authorities from individuals and legal entities, except the cases stipulated by the law or applicable international treaties of Ukraine;
- gives the right to citizens' associations and individuals to participate in anti-corruption activities, including through the implementation of public control over observance of the laws aimed at preventing and combating corruption;
- introduces informing the public on measures aimed at preventing and combating corruption;
- creates conditions for elimination of the breeding ground for corruption as a phenomenon and formation of the negative public attitude to corruption;
- implements mechanisms to detect corruption, establishes the types of liability for corruption offences and defines procedure for prosecution of guilty persons;
- introduces the procedure of saving information on the persons brought to liability for corruption offences in the Unified State Register of persons who committed corruption offences;
- establishes effective measures to ensure full restoration of the violated rights of the state and other individuals who have suffered from acts of corruption through confiscation and recovery of illegally acquired assets by the state in a legal procedure.

Among the above-mentioned characteristics of the Law it is necessary to dwell on the following innovations:

1. Expansion and specification of the range of individuals who may be subjects of liability for corruption offences.

1.1. The Law clearly defines the range of subjects liable for corruption offences (Article 4 of the Law).

Thus, the Head of the state included in this list the Chairman, Vice Chairman, section secretaries of the Council of Justice, members of the Council of Justice and members of the Central Election Commission.

The Law clearly defines the list of those who can be prosecuted for corruption, as well as those who are subject to restrictions, and that will help to avoid further disputes about the spread of anti-corruption provisions to a certain group of people.

1.2. The law also sets limits (abuse of authority, receiving gifts, employment of immediate relatives, financial control) for officials and legal entities, which are paid from the state or local budgets.

This strengthened liability of the mentioned persons for the legality of the decisions, which they take.

This provision is a prerequisite for prevention of illegal inactivity of these individuals and will help to control spending of public funds and preservation of state and municipal property.

1.3. The Law introduces a provision that defines a conflict of interest in public service and procedure to settle it (Article 14).

This provision was included in the Law due to the recognition of the fact that in the society there should be no doubt about the honesty (virtue) of the public service.

In the process of decision-making or carrying out administrative duties by public officials, there should be excluded any private interest.

A candidate for the public service must subordinate his personal interest to the public interest. He should be ready to give up his private interests in favor of the public ones, as it is stipulated by the purpose and objectives of the public service as a whole.

Therefore, a situation, in which the personal interest of a public servant may affect the objectivity of the performance of his official duties and functions, and in which there is a possibility of the conflict between the personal interest of a public servant and the legitimate interests of citizens, organizations, society and the state, is unacceptable.

That is why the Law provides that the person, authorized to perform the functions of the state, shall take measures to avoid any potential conflict of interest. This person shall also inform his direct supervisor (if available) or authority, entrusted with carrying out special audit of this person, about personal interests or circumstances that can lead to default or improper performance of his duties.

Thus, this rule provides the objectivity of the person authorized to perform state functions, his professional duties and functions, avoiding any private interest.

1.4. In addition, the Law protects the right to freedom of entrepreneurial activities, guaranteed by the Constitution, and excludes individuals-entrepreneurs from the list of those who can be prosecuted for corruption.

As these persons have nothing to do with the public service and are not financed by the state or local budget, they shall be excluded from the list of subjects, whose activity is limited by the anti-corruption legislation.

1.5. The Law also specifies the conditions under which the members of the district / territorial election commissions, as well as assistants-consultants for people's deputies of Ukraine working on a pro bono basis may be subject to restrictions imposed by the anti-corruption legislation.

It should be borne in mind, that these individuals do not perform their duties on a permanent basis. That is, they are not in employment relationships with electoral commissions and are not among the staff of the Verkhovna Rada of Ukraine or the executive office of the local governments. Therefore, they can not fall within the restrictions concerning secondary employment.

Thus, the restrictions, stipulated by the Law of Ukraine "On Principles of Preventing and Combating Corruption", apply to the members of district / territorial election commissions, as well as assistants-consultants for people's deputies of Ukraine working on a pro bono basis only when they perform their functions.

2. Specification of entities carrying out activities to prevent and combat corruption.

The Law clearly defines the range of subjects to implement measures on prevention and combating corruption.

These include: the President of Ukraine, the Verkhovna Rada of Ukraine, the Cabinet of Ministers of Ukraine, as well as public authorities within the powers defined by the law.

In this case, a specifically authorized anti-corruption body coordinates activities of the executive authorities to implement the anti-corruption strategy, determined by the President of Ukraine. Such body is established by the President of Ukraine.

Decree of the President of Ukraine No. 964/2011 of 5.10.2011 on Priority Measures to Implement the Law of Ukraine "On Principles of Preventing and Combating Corruption" temporarily entrusts the Ministry of Justice of Ukraine with the functions of a specially authorized anti-corruption body.

Activities of law enforcement agencies are coordinated by the Prosecutor General of Ukraine and subordinate specialized prosecutors.

Thus, the Law provides a clear and structured system of interaction between the state authorities and law enforcement agencies in preventing and combating corruption.

3. Prohibition of financing of the state and local authorities by individuals and legal entities.

The Law provides that public authorities and local governments are prohibited to receive from individuals and legal persons property and services free of charge (Article 17).

Exceptions to this rule can be established only by the law and international treaties of Ukraine concluded in accordance with the law.

4. Imposing restrictions on gifts (donations).

This Law clearly defines the legal status of a gift (donation). In addition, it prescribes an exhaustive list of cases when receiving a gift is prohibited.

Thus, according to Article 718 of the Civil Code, among gifts may be movables, including money and securities, as well as immovable property, property rights, which the donor owns or will own in the future.

The proposed rule prohibits, inter alia, gifts from individuals and legal persons for the decisions taken in their best interests, as well as gifts from subordinates. The ban also extends to all cases of receiving a gift in connection with the use of official powers and related opportunities.

It is allowed to receive a gift, the value of which does not exceed 50 percent of the minimum wage. The restrictions on the gift's value do not apply to the gifts presented by close persons, or in the case of publicly available discounts on goods and services, public winnings, prizes, awards and bonuses.

This approach seems to be justified, because depriving close relatives of the possibility to give presents would violate the constitutional norms. And the right to use publicly available discounts in shops or in provision of services (taxi, dry-cleaner's, etc.) has nothing to do with the public official's use of powers and related opportunities.

Gifts, received by the persons authorized to perform state functions, as gifts to the state or local authorities are, respectively, the state or municipal property.

Thus, all the gifts received by officials should be transferred to the state or local government bodies.

Resolution of the Cabinet of Ministers of Ukraine No. 1195 of 16.11.2011 establishes the procedure of assignation of gifts received as gifts to the state, the Autonomous Republic of Crimea, local community, state or municipal institutions or organizations.

In case of violation of this rule, the official's action may be regarded as misappropriation of the state property and the official is prosecuted in accordance with the law.

5. Introduction of strict limits on employment of immediate family members.

The Law provides that an official must not supervise or be subordinate to immediate family members.

If there are circumstances violating these requirements, the relevant persons and persons close to them are required to eliminate these circumstances within fifteen days.

If these circumstances are not voluntarily removed on time, the relevant persons and / or persons close to them within a month are to be transferred to another position, excluding direct subordination.

If the transfer is not possible, the person in subordination, shall be released from the position.

However, the Law provides for the cases when the restriction is not applied.

This rule does not extend to the people's assessors and jurors. Also, this right is not applied to persons who are elected to office or directly subordinate to close persons elected to office. Among exceptions to this rule are also those working in rural and mountainous areas. This is due to the fact that the social and natural conditions do not allow meeting all the requirements and limitations. Typically, in such localities population consists of families, and to follow the rules in such cases is impossible.

6. Clarification of the procedure of special examination.

The Law provides clear and simple rules for the special background check on a person applying for a position related to the functions of the state or local authorities.

Thus, it shall be verified whether the person has ever been brought to justice, or whether any administrative penalties has been imposed on the person for corruption offences.

The accuracy of the information about the financial status, revenues, expenses and corporate rights is also subject to verification.

Health status, education, scientific degree, academic rank and professional development are checked additionally.

Decree of the President of Ukraine No. 33/2012 of 25.01.2012 approves the Organization of a special information audit regarding persons who apply for positions related to the functions of the state or local authorities.

It should be noted that now, when the Decree of the President entered into force, the special verification has become one of the most effective anti-corruption mechanisms, allowing to accept honest, professional and experienced workers for employment in the public service.

7. Obligation to provide information.

The Law prohibits denying information, provision of which is required by law, to individuals or legal entities, providing false information or not in full (Article 16 of the Law).

This provision guarantees the right of everyone to have access to public information, which is in the possession of the state and local authorities.

In this case, concealment of such information or a part of it will be considered as violation. Persons responsible for it can be held liable for the corruption offence.

8. Clear definition of financial control over revenues and expenditures.

According to the Law, persons, authorized to perform state functions, must until April 1, at the place of work (service) give information not only about their property, income, financial obligations, but also about expenditures.

This norm is designed to check whether officials have real sources of income and whether they are able to legally acquire property and maintain it. Excess of expenditure over income may become a ground for the intense focus by law enforcement bodies on the activities of such official.

In addition, when a person, authorized to perform state functions, opens a foreign currency account in a non-resident bank, he is obliged, within ten days, to inform in writing the tax authority at the place of residence, indicating the account number and location of the non-resident bank.

Resolution of the Cabinet of Ministers of Ukraine No. 16 of 11.01.2012 approves the procedure for document storage and use of the data specified in the declaration on property, income, expenses and financial obligations, and data concerning currency account opening in a non-resident bank.

Resolution of the Cabinet of Ministers of Ukraine No. 64 of 8.02.2012 approves the procedure of producing of forms for declarations on property, income, expenses and financial obligations.

Thus, the real monitoring of income and expenses of officials has begun, which is a real step to overcoming corruption.

9. Introduction of the behavior requirements for the persons authorized to perform state functions.

The Law also provides for the possibility of establishing requirements for the behavior of the persons authorized to perform the functions of the state or local governments. Thus, the Law stipulates additional legislative recognition of the rules of officials' conduct, including ethics of relations, polite and considerate treatment of citizens, respect for their dignity and beliefs.

This norm is consistent with the provisions of Article 8 of the UN Convention against Corruption, which provides that in order to combat corruption, each State Party shall promote integrity, honesty and responsibility among its public officials, in accordance with the fundamental principles of its legal system.

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

The implementation of these measures shall contribute to increasing public confidence in the government for the partnership between citizens and officials.

10. Introduction of anti-corruption expertise of draft legal acts.

The Law provides for the implementation of mandatory anti-corruption expertise of draft legal acts by the Ministry of Justice of Ukraine. The expertise shall ensure identification of the provisions that can contribute to corruption offences.

In order to identify in draft legal acts provisions that can contribute to corruption or facilitate perpetration of corruption offences and to develop recommendations for their elimination, the **Ministry of Justice of Ukraine by its Resolution No. 1380/5 of 23.06.2010 approved "Methodology of Anti-Corruption Expertise of Draft Legal Acts".**

The expertise shall be applied to the draft laws of Ukraine and acts of the President of Ukraine, other legal acts and regulations developed by the Cabinet of Ministers of Ukraine, ministries and other bodies of the central executive power.

To ensure public control, individuals, associations of citizens and legal entities can initiate a public anti-corruption expertise of draft legal acts. Thus, the Law establishes preconditions for corruption prevention at the stage of legal acts development.

11. Introduction of strict mechanism of prosecution for corruption offences and addressing their consequences.

The Law introduces clear grounds, mechanism and types of enforcement measures that can be applied to a person who committed a corruption offence.

First of all, it provides for the opportunity to bring such person to criminal, administrative, civil or disciplinary liability, depending on the nature of the offence (Article 21).

Information about persons, prosecuted for corruption offences, within three days from the date of the court decision entering into force, bringing to civil liability or disciplinary proceedings, is recorded in the Unified State Register of persons who have committed corruption offences. The Register is formed and maintained by the Ministry of Justice of Ukraine.

Resolution of the Ministry of Justice of Ukraine No. 39/5 of 11.01.2012 approves the "Regulation on the Unified State Register of Persons who Committed Corruption Offences".

The regulation on the Unified State Register establishes the order, according to which the Unified State Register of persons who committed corruption offences is formed and maintained. The Register is an electronic database containing information on perpetrators of corruption offences.

The Register provides a single record of perpetrators of corruption offences and those, who was brought to criminal, administrative or civil liability for corruption offences. The information about the person shall be included in the Register upon a court decision that has entered into force or an order imposing a disciplinary sanction for a corruption offence.

The Ministry of Justice has the right of access to information and the right to withdraw or amend the information in the Register.

The Register shall contain the following information about individuals: place of work, position at the time of committing a corruption offence; article of the Criminal Code or the Administrative Code, according to which the person was brought to liability. Formal components of a corruption offence: date, when the court decision imposing the penalty for a corruption offence enters into force; date, court decision number, court case number, name of the court, which takes decision on the person's responsibility for a corruption offence; details of the decision to impose a disciplinary penalty; reasons and date of expiry, expunging of criminal records or disciplinary action, etc.

The information from the Register is subject to the Law of Ukraine "On Protection of Personal Data".

Thus, the information from the Registry is provided on request of the state or local authorities in order to conduct a special verification of information about persons applying for positions related to the functions of the state or local governments. Also, the information is provided to the law enforcement authorities if it is needed for criminal or administrative proceedings.

In addition, the information contained in the Register shall be used for the analysis of public policies and positions with corruption risks.

It should be noted, that on 01.07.2011 entered into force **Law of Ukraine No. 3207-VI of 7.04.2011 "On Amendments to Certain Legislative Acts of Ukraine Concerning Responsibility for Corruption".** It introduces a number of changes related to anti-corruption aspects of criminal, administrative and disciplinary responsibility.

Law of Ukraine No. 4711-VI of 17.05.2012 "On Amendments to Certain Laws of Ukraine Following the Adoption of the Law of Ukraine "On Principles of Preventing and Combating Corruption".

This Law amends the Labor Code of Ukraine, the Laws of Ukraine: "On Militia", "On Prosecutor's Office", "On Security Service of Ukraine", "On Civil Service", "On the State Border Guard Service of Ukraine", "On Status of Peoples' Deputy of Ukraine", "On Service in Local Government", "On Judicial System and Status of Judges", "On the Cabinet of Ministers of Ukraine" and other regulations of the Verkhovna Rada, the Resolution of the Verkhovna Rada "On Approval of the Regulation on Assistant Consultant of People's Deputy of Ukraine" and certain disciplinary statutes .

The changes are aimed at harmonizing the provisions of the current legislation relating to:

- conducting a special verification of persons applying for positions related to the functions of the state or local authorities;
- submitting declarations of assets, income, expenses and financial obligations by public officials;
- imposing limits for employment (service) to public authorities or local self-government bodies on persons previously convicted of crimes or those, on whom an administrative penalty for corruption offences was imposed within the last year;
- imposing restrictions on the work of immediate relatives, requirements to prevent conflicts of interest and termination of employment of persons prosecuted for corruption.

In particular, the Law of Ukraine "On the State Border Guard Service of Ukraine" is amended as follows:

1. Article 14 reads as follows:

Personnel of the State Border Guard Service of Ukraine.

The personnel of the State Border Guard Service of Ukraine consists of the military and civil employees.

Persons, applying for the service in the State Border Guard Service of Ukraine, with their written consent are verified in accordance with the Law of Ukraine "On Principles of Preventing and Combating Corruption".

Persons, applying for the State Border Guard Service of Ukraine, before being appointed to the corresponding position, submit in the place of the future service the declaration of property, income, expenses and financial obligations in the form and order established by the Law of Ukraine "On Principles of Preventing and Combating Corruption". They also must inform the commanders of the body or unit, in which they plan to work, about immediate relatives working in this body or unit.

Persons previously convicted (unless the conviction was expunged) or those, on whom an administrative penalty for corruption offences was imposed within the last year, can not serve in the State Border Guard Service of Ukraine.

Staffing of the State Border Guard Service of Ukraine with servicemen and their military service shall be performed under the Law of Ukraine "On Military Duty and Military Service". Authorized officials of the State Border Guard Service of Ukraine shall carry out preliminary examination of recruitment structure and select them at military commissariats.

Employment relations between employees of the State Border Guard Service of Ukraine shall be regulated by the laws on labor, state service and concluded labor agreements (contracts). The list of the personnel positions of the State Border Guard Service of Ukraine involved in the operational activity is determined by the Head of the State Border Guard Service of Ukraine.

The military personnel of the State Border Guard Service of Ukraine, except conscripts, is subject to other requirements and limitations established by the Law of Ukraine "On Principles of Preventing and Combating Corruption".

The military personnel of the State Border Guard Service of Ukraine, except conscripts, must annually, until April 1, at the place of service submit declaration on their property, income, expenditures and financial obligations in the form and order established by the Law of Ukraine "On Principles of Preventing and Combating Corruption".

Officials of the State Border Guard Service of Ukraine (except military personnel), prosecuted for committing a crime or administrative corruption offence, are dismissed within three days from the date, when the State Border Guard Service of Ukraine receives copies of relevant court decisions.

The servicemen of the State Border Guard Service of Ukraine, prosecuted for committing a crime or administrative corruption offence, are subject to dismissal from service.

2. The Law is supplemented by Article 14-1 as follows:

Resolving conflict of interest.

If a conflict of interest arises while performing official duties, servicemen of the State Border Guard Service of Ukraine shall immediately report this to their commander. The immediate commander shall take all necessary measures to prevent conflicts of interest. He can entrust another officer with the task, perform the task personally or take other measures provided by law.

Note: the term "conflict of interest" is used in the meaning provided by the Law of Ukraine "On Principles of Preventing and Combating Corruption".

An important step in the implementation of anti-corruption policy of the state is the adoption of Law of Ukraine No. 4722-VI of 17.05.2012 "On Rules of Ethical Conduct".

This Law is based on Article 13 of the Law of Ukraine "On Principles of Preventing and Combating Corruption", which determines that general requirements regarding the conduct of persons authorized to perform the functions of the state or local authorities, which they are obliged to follow while performing their official duties, grounds and procedure for bringing them to justice for the non-compliance with such requirements shall be established by law.

In addition, the National Anti-Corruption Strategy for 2011 - 2015 (Section V, paragraph 3b) stipulates that the principles of ethical conduct of persons authorized to perform the functions of the state or local authorities should be based on the provisions of the Model Code of Conduct for Public Officials of the Council of Europe Member States.

The issues related to ethical conduct of public officials are set out in the international anti-corruption standards:

- ten principles of Twenty Guiding Anti-Corruption Principles of the Council of Europe;
- Article 8 of the UN Convention against Corruption;
- international code of conduct for public officials.

These questions are also raised in recommendation XXII of the Group of States against Corruption (GRECO) and the 16th recommendations of the Istanbul Anti-Corruption Action Plan of the Anti-Corruption Network for Eastern Europe and Central Asia of the Organization for Economic Cooperation and Development.

This Law defines the rules governing the conduct of persons, authorized to perform the functions of the state or local authorities, in the exercise of official duties and procedure to bring them to justice for violation of such rules.

To achieve this goal the Law specifies rules of conduct for the persons, authorized to perform the functions of the state or local authorities, based on the following principles:

- legality;
- priority of interests;
- political neutrality;

- tolerance;
- impartiality;
- competence;
- promotion of public's trust in the state and local authorities;
- confidentiality;
- refraining from carrying out illegal assignments or orders;
- avoiding conflict of interest;
- prevention of undue gains or gifts (donations);
- declaration of assets, income, expenses and financial obligations.

From now on, persons authorized to perform the functions of the state or local authorities must treat citizens impartially and objectively, take their political and religious views of with respect and patience.

Persons performing state functions shall carry out their official functions and instructions of the bodies and persons, to whom they report, objectively, impartially, competently, timely, effectively and with understanding.

For violation of the rules of ethical behavior a person, authorized to perform the functions of the state, may be subject to disciplinary, administrative, and criminal liability.

In addition, the Parliament has defined the rules of state officials conduct, in the event that they are offered an undue benefit or a gift (donation).

It has been established, that these officials shall immediately decline the offer, identify if possible the person who made the proposal, find witnesses, inter alia among colleagues, and notify the incident to their supervisor or the collegial body.

Article 14. Refraining from carrying out illegal assignments or orders.

1. Persons authorized to perform state functions, in spite of personal interests, shall refrain from performing supervisor's assignments or orders, if they are inconsistent with legislation or threaten legally protected rights, freedoms and interests of individuals, legal persons, state or public interests.

2. Persons authorized to perform state functions independently evaluate legitimacy of the supervisor's assignments or orders and possible harm, caused by the implementation of such assignments or orders.

3. If a person authorized to perform the functions of the state considers that the assignments or orders, which he has to carry out, are unlawful or threaten legally protected rights, freedoms and interests, he must immediately in writing inform the head of the body, in which he works.

Article 16. Prevention of an undue benefit or gift (donation).

1. Persons authorized to perform state functions in the event that they are offered undue benefits or gifts (donations), despite their personal interests, shall immediately take the following measures:

   - decline the offer;
   - identify the person who made the proposal, if possible;
   - find witnesses, inter alia among colleagues, if possible;
   - notify the incident to the supervisor or/and one of the authorized anti-corruption bodies defined by the Law of Ukraine "On Principles of Preventing and Combating Corruption".

2. It is prohibited to receive an undue benefit or a gift (donation) in order to use it later as evidence.

3. If a person authorized to perform state functions finds an undue benefit or a gift (donation) left in his office or transferred otherwise, he shall immediately, but no later than within one working day, inform his immediate supervisor about this fact in writing.

4. If an undue benefit or gift (donation) is detected, an act is drawn up and signed by the person authorized to perform the functions of the state or local authorities, who revealed an undue advantage or gift (donation), and his immediate supervisor.

If an undue benefit or gift (donation) is detected by the person authorized to perform the functions of the state or local authorities, who is the head of the body, the act on detection of the undue advantage or gift (donation) is signed by this person and his deputy.

5. Items considered as undue benefits, gifts (donations) are stored in the body or agency before they are passed to the authorities.

6. The provisions of this Article shall not apply to cases of receiving gifts (donations) in the circumstances stipulated by Article 8 of the Law of Ukraine "On Principles of Preventing and Combating Corruption".

2/B.2. *In-house anti-corruption regulations*

2/B.2.1. *Anti-corruption regulations of the State Border Guard Service of Ukraine*

In order to implement the Law of Ukraine "On Principles of Preventing and Combating Corruption", the National Anti-Corruption Strategy and the State Program on Preventing and Combating Corruption for 2011-2015, more than 10 laws and regulations on prevention and combating corruption offences are adopted by the border agency. Among them:

- Program on Prevention and Combating Corruption in the State Border Guard Service of Ukraine for 2011-2015 (Order of the Administration of the State Border Guard Service No. 1010 of 21.12.2011 "On Approval of the Program to Prevent and Combat Corruption in the State Border Guard Service of Ukraine for 2011-2015");

- Plan for Prevention and Combating Corruption in the State Border Guard Service of Ukraine for the current year;

- Action Plan to Ensure Law and Order and Prevent Crimes in the State Border Guard Service of Ukraine for the current year. These plans are developed for the current year and approved by the orders of the Administration of the State Border Guard Service of Ukraine;

- Action Plan of the Internal Security Office of the Personnel Department of the Administration of the State Border Guard Service of Ukraine for the first (second) half of the current year.

In 2012 the following mechanisms were introduced:

- implementation of the special inspection regarding the persons applying for positions in the State Border Guard Service of Ukraine (Order of the Administration of the State Border Guard Service of Ukraine No. 195 of 23.03.2012 "On Measures to Ensure the Special Examination");

- declaration of income, assets, expenses and financial obligations for the previous year (Order of the Administration of the State Border Guard Service of Ukraine No. 241 of 11.04.2012 "On Approval of the Instruction on Reception and Storage of the Declarations on Property, Income, Expenses and Financial Obligations Submitted by the Personnel of the State Border Guard Service of Ukraine" registered by the Ministry of Justice of Ukraine on 27.01.2012, No. 652/20965);

- transfer of gifts received as gifts for the State Border Guard Service of Ukraine (Order of the Administration of the State Border Guard Service of Ukraine No. 1064 of 29.12.2011 "On Commissions to Receive and Assess the Value of Gifts Received as Gifts to the State Border Guard Service of Ukraine").

Strict requirements for personal discipline, ethics and service discipline of the personnel have been set.

In order to fulfill paragraph 10 of the National Plan for Implementation of the Action Plan on EU Visa Liberalization for Ukraine, approved by Decree of the President of Ukraine No. 494 of 22.04.2011, and to enhance cooperation and responsibility in the area of border management and corruption prevention was developed and adopted Joint Order (Ministry of Internal Affairs of Ukraine, Ministry of Foreign Affairs of Ukraine, Ministry of Finance of Ukraine, Administration of the State Border Guard Service of Ukraine, Main Department of Civil Service of Ukraine) No. 330/151/809/434/146 of 5.07.2011 "On Approval of Conduct Code of the Personnel, whose Functional Duties Include Border Management", registered in the Ministry of Justice of Ukraine on 27.07.2011, No. 922/19660.

The Code sets out general rules of good conduct for the personnel, whose functional duties include border management, and determines moral and ethical principles, compliance with which shall guarantee high quality and efficiency of professional activities.

The provisions of this Code are common and used by military personnel, civil servants, employees of the Ministry of Internal Affairs of Ukraine, Ministry of Foreign Affairs of Ukraine, State Customs Service of Ukraine, State Migration Service of Ukraine, State Border Guard Service of Ukraine, whose functional duties include border management.

Order of the Administration of the State Border Guard Service of Ukraine No. 509 of 07.09.2011 "On Implementation of the General Order" provides that the entire personnel shall study the Code and take tests, it also defines the requirements for irreproachable implementation of the Code by the personnel of the State Border Guard Service of Ukraine.

The Administration of the State Border Guard Service of Ukraine has developed a system of activities that are an integral part of anti-corruption measures in the framework of the implementation of the Conduct Code of the personnel, whose functional duties include border management.

Before the appointment, the military and civil personnel of the State Border Guard Service of Ukraine study the Code, what is recorded in their personal files.

Personnel's compliance with the rules of the Code is taken into consideration during annual assessment, certification, enrollment in the reserve, appointment to a new position, providing testimonials or references.

In order to raise effectiveness of anti-corruption component of the HR management, to improve their personal responsibility and service discipline, the manual "Rules of the Personnel of the State Border Guard Service of Ukraine in Order to Prevent Corruption" has been developed. After the adoption of the Law of Ukraine "On Principles of Preventing and Combating Corruption", the manual was reviewed, supplemented and approved by Order of the Administration of the State Border Guard Service of Ukraine No. 780 of 19.10.2011 and published in the second edition. With international financial assistance, eight thousand copies of the manual for the personnel of the State Border Guard Service of Ukraine "Professional Ethics and Corruption Prevention" were published.

According to this order:

- the manual is to be discussed at the workshops with all the categories of the personnel;
- while instructing border details heads of the border units check the knowledge of the conduct rules on corruption prevention.

The aim of the manual is to inform the personnel of the State Border Guard Service of Ukraine about potentially dangerous situations, in which they may be unwittingly involved in corruption activities, to remind about performance of duties in good faith, compliance with legal and ethical standards, to inform about possible acts of corruption and consequences of such acts, and also about transfer of gifts.

The Administration of the State Border Guard Service of Ukraine has developed a number of requirements for the border units officials serving at the checkpoints to ensure the rule of law, transparency and respect for human dignity in the organization and conducting of border control, approved by Order of the Administration of the State Border Guard Service of Ukraine No. 141 of 29.02.2012 "On Approval of the Departmental Standards of Border Control Culture".

Standards of border control are developed for a wide range of users: from inspectors to the command of the State Border Guard Service of Ukraine.

Departmental standards of border control culture – a set of requirements of the border agency for the culture of communication, appearance, papers verification, vehicle inspection and the workplace of a border guard.

In addition were determined:

procedures to prevent offences in professional activity of military and civil personnel of the State Border Guard Service of Ukraine (Order of the Administration of the State Border Guard Service of Ukraine No. 235 of 27.03.2006 "On Approval of Instruction on Ensuring by Internal Security Units of Crime Prevention in Professional Activity of Military and Civil Personnel of the State Border Guard Service of Ukraine", registered in the Ministry of Justice of Ukraine on 13.04.2006, No. 438/12312);

procedure to ensure conditions for professional development and promotion of the military personnel of the State Border Guard Service of Ukraine, improvement of the order of planned replacement for positions with established term limits (Order of the Administration of the State Border Guard Service of Ukraine No. 720 of 29.09.2011 "On Approval of List of Military Positions of the State Border Guard Service of Ukraine with Established Term Limits of Office and Order of Planned Replacement of Military Personnel of the State Border Guard Service of Ukraine who Hold Positions with Established Term Limits", registered in the Ministry of Justice of Ukraine on 14.10.2011, No. 1190/19928);

functioning of the service "Trust" in the State Border Guard Service of Ukraine, as well as reception, recording and reporting of information messages sent by phone and e-mail to the service "Trust", and control over response (Order of the Administration of the State Border Guard Service of Ukraine No. 297 of 27.04.2007 (as amended by Order No. 30 of 14.04.2009) "On Approval of Instruction on Functioning of the Service "Trust" in the State Border Guard Service of Ukraine").

2/B.2.2. *Anti-corruption regulations of the State Customs Service of Ukraine*

Legal standards, defined by in-house regulations of the State Customs Service of Ukraine, have different focus. So, Order of the State Customs Service of Ukraine No. 380 of 24.05.2004 "On Approval of Provisions on Crime Prevention in Professional Activity of Personnel of the State Customs Service of Ukraine" defines the concept of "crime prevention in the Customs Service of Ukraine", specifies objects of crime prevention and its types. The Order distinguishes between such methods of individual prevention as persuasion and law enforcement. In particular, it specifies that law enforcement is used only in the event that prevention goal can not be achieved by persuasion. This method consists in application of disciplinary punishment to a person, who is subject to crime prevention measures, as well as initiation of bringing perpetrators to other types of liability prescribed by law.

Taking into account complexity of the corruption phenomenon, Joint Order No. 124/936/139/199/250 of 23.03.2009 establishes the procedure for the information exchange between the structural units of the Ministry of Internal Affairs of Ukraine, the Security Service of Ukraine, the State Tax Administration of Ukraine, the State Border Guard Service of Ukraine in efforts to identify and combat corruption in law enforcement.

"Conduct Code of Officials of the State Customs Service of Ukraine", approved by Order of the State Customs Service of Ukraine No. 1097 of 16.11.2009, is the document of moral and ethical content. The Code is developed in accordance with the Disciplinary Regulation of the Customs Service of Ukraine and establishes general requirements for the ethical behavior of the Customs Service officials, which they should meet during and out of duty.

The Code is developed with regard to the general rules of conduct for civil servants approved by the appropriate order of the Main Department of the Civil Service of Ukraine.

The purpose of the Code is:

- to ensure high standards of conduct and ethics of customs officials;
- to inform individuals and legal entities about the behavior standards, which they can expect from the officials of the Customs Service;
- to prevent corruption;
- to extend public's impact on the assessment and quality of the Customs Service activities;
- to form the positive image of the Customs Service and the reputation of its officials;
- to strengthen the authority of the Customs Service of Ukraine and its credibility.

The organization and conducting of internal investigations and official inspections in the Customs Service of Ukraine, including detection of corruption offences, are provided for in Order of the State Customs Service of Ukraine No. 918 of 13.08.2010, which approves a relevant Instruction.

Order of the State Customs Service of Ukraine No. 135 of 24.02.2011 "On Strengthening Measures to Prevent Corruption in the State Customs Service of Ukraine" stipulates some restrictions to be followed by the officials who serve at the state border checkpoints. In particular, this Order specifies the rules of storage and use of personal cash and mobile phones belonging to customs officials.

The competence of the departments of the State Customs Service of Ukraine in prevention of corruption is determined by Order of the State Customs Service of Ukraine No. 740 of 24.12.2012 "On Provisions of Internal Security of the State Customs Service of Ukraine and Senior Inspector's Job Description on Internal Customs Security Issues".

2/B.3. *Competence of the national anti-corruption bodies*

The National Anti-Corruption Committee of Ukraine, established on September 1, 2011, is a consultative and advisory body under the President of Ukraine. He heads the Committee and approves its staff upon the proposal of the executive secretary, whose functions are performed by the Minister of Justice. It is envisaged that the meetings of the Committee shall be open and that the Committee shall regularly inform the public about its activities. Thus, the openness shall be ensured "by creating conditions for the presence of the media at the meetings", the publicity – "by posting information on the activities of the Committee", as well as other materials on the official website of the President of Ukraine.

The main tasks of the Committee: system analysis of combating corruption in Ukraine, effectiveness of the anti-corruption strategy, and measures taken to prevent and combat corruption; development of anti-corruption measures, in particular those, aimed at harmonization of legislation and elimination of existing contradictions; preparation of initiatives to simplify licensing and other procedures concerning small and medium-sized businesses and elimination of causes of violations in this area; development, on the basis of domestic and international experience, and recommendations of the leading world organizations, of draft legal acts in matters of strengthening the fight against corruption. The Committee will monitor the status of the implementation of anti-corruption legislation; participate in the preparation of anti-corruption bills submitted by the President of Ukraine to the

Verkhovna Rada; prepare proposals to the draft legislation concerning prevention and combating corruption; participate in drafting of regulations and orders of the President of Ukraine on prevention and combating corruption; participate in preparation of addresses of the President of Ukraine to the nation, annual and extraordinary addresses to the Verkhovna Rada of Ukraine concerning the internal and external state of Ukraine in matters of prevention and combating corruption; organize the study of public opinion on the issues considered by the Committee; provide coverage of the Committee's activities in the media.

The Committee has the following rights: to request and receive in due course from state agencies, local governments, enterprises, institutions, organizations and associations of citizens information, materials and documents necessary to perform the tasks assigned to it; to involve, according to the established procedure, officials of state bodies, local authorities, employees of enterprises, institutions and organizations, leading Ukrainian and foreign scholars and experts, including experts from international organizations and representatives of citizens' associations in the work of the Committee; to establish working groups, including temporary, on particular matters of the Committee; to invite to its meetings employees of state agencies, local governments, representatives of enterprises, institutions, organizations and associations of citizens, and to involve the invitees in the discussion of relevant issues; to initiate public discussion of draft laws and decrees of the President of Ukraine on the anti-corruption policy; to organize and conduct conferences, roundtable discussions and meetings on matters within its competence.

Article 5 of the Law of Ukraine "On Principles of Preventing and Combating Corruption" defines subjects who apply measures to prevent and combat corruption, namely:

1. The President of Ukraine, the Verkhovna Rada of Ukraine, and the public prosecutor's offices of Ukraine shall apply measures to prevent and combat corruption within the limits of powers stipulated by the Constitution of Ukraine.

2. Bodies of state authority shall apply measures to prevent and combat corruption, or take part in the implementation thereof within the framework of powers stipulated by laws and other normative-legal acts adopted on the basis of laws.

3. The Cabinet of Ministers of Ukraine shall direct and coordinate the activities of executive bodies pertaining to prevention and combating corruption in accordance with the Constitution and laws of Ukraine and the President of Ukraine's acts.

4. Coordination of the implementation by executive bodies of the anti-corruption strategy as determined by the President of Ukraine shall be conducted by a specially authorized body on matters of anti-corruption policy that shall be convened by the President of Ukraine and shall operate in conformance with the requirements established by law.

In order to ensure the unconditional implementation of the Law of Ukraine "On Principles of Preventing and Combating Corruption", in accordance with part 2 of Article 102, paragraphs 1, 17 of part 1 of Article 106 of the Constitution, Decree of the President of Ukraine No. 964/2011 of 5.10.2011 on Priority Measures to Implement the Law of Ukraine "On Principles of Preventing and Combating Corruption" temporarily entrusts the Ministry of Justice of Ukraine with functions of a specially authorized anti-corruption body.

5. Specially authorized subjects shall directly apply measures, within the limits of their competence, aimed at detecting, stopping, and investigating corruption offences (hereinafter "specially authorized subjects in the sphere of counteracting corruption").

Specially authorized subjects in the sphere of counteracting corruption are: public prosecutor's offices; special units of the Ministry of Internal Affairs of Ukraine charged with the task of combating organized crime; the Tax Militia; subdivisions charged with combating corruption and organized crime of the Security Service of Ukraine and of the Military Law and Order Service in the Armed Forces of Ukraine, unless otherwise stipulated by law.

Coordination of the activities of law-enforcement bodies in the field of counteracting corruption shall be carried up, within the limits of entrusted authority as stipulated by laws, by the Prosecutor-General of Ukraine and by subordinated public prosecutors.

6. Subjects who take part in preventing, detecting and, in cases stipulated by law, applying measures aimed at stopping corruption offences, restoring infringed rights or interests of physical persons and legal entities and interests of the state, as well as in information and research support for the implementation of measures aimed at preventing and combating corruption, and in the international cooperation in this field, are:

   - authorized units and subdivisions of state authorities;
   - local executive bodies and local government bodies;
   - enterprises, institutions, and organizations irrespective of subordination and form of ownership, their officials and officers, as well as citizens and associations of citizens, upon their consent.

7. Officials and officers of state authorities, officials of local government, legal entities, and structural subdivisions thereof in the event of detection of a corruptive offence, or receipt of information on commitment of such offence by employees of the respective state authorities, local government bodies, legal entities or structural subdivisions thereof, shall be obliged within the limits of their powers, to apply measures to stop such offences and to immediately inform, in writing, of such commitment an appropriate specially authorized subject in the sphere of counteracting corruption.

The Law of Ukraine "On Principles of Preventing and Combating Corruption" provides the basic principles of interaction between public authorities and law enforcement agencies in preventing and combating corruption, and defines the range of subjects authorized to take measures to prevent and combat corruption (Table 2).

Table 2

Subjects applying anti-corruption measures	Content of activities
The President of Ukraine	Measures to prevent and combat corruption (Article 5, part 1)
The Verkhovna Rada	Measures to prevent and combat corruption (Article 5, part 1); parliamentary supervision in the sphere of preventing and counteracting corruption (Article 27)
Public Prosecutor's Offices	Measures to prevent and combat corruption (Article 5, part 1)
Bodies of State Authority	Measures to prevent and combat corruption (Article 5, part 2)
Bodies of State Authority	Supervision in the sphere of preventing and counteracting corruption (Article 27)

The Cabinet of Ministers of Ukraine	Control and coordination of the activities of executive bodies pertaining to prevention and combating corruption (Article 5, part 3)
Specially authorized body on matters of anti-corruption policy, established by the President of Ukraine	Coordination of the implementation by executive bodies of the anti-corruption strategy as determined by the President of Ukraine (Article 5, part 4)
Specially authorized subjects in the sphere of counteracting corruption (public prosecutor's offices; special units of the Ministry of Internal Affairs of Ukraine combating organized crime, subdivisions charged with combating corruption and organized crime of the Security Service of Ukraine, unless otherwise stipulated by law)	Direct application of measures, aimed at detecting, stopping, and investigating corruption offences (Article 5, part 5)
Public prosecutor's offices as specially authorized subjects in the sphere of counteracting corruption	Direct application of measures, aimed at detecting, stopping, and investigating corruption offences (Article 5, part 5)
The Prosecutor-General and public prosecutors subordinated to him	Coordination of the activities of law-enforcement bodies in the field of combating corruption (Article 5, part 5); supervision over the compliance with laws in the sphere of preventing and combating corruption (Article 29)
Authorized units and subdivisions of state authorities; local executive bodies and local government bodies; enterprises, institutions, and organizations irrespective of subordination and form of ownership, their officials and officers, as well as citizens and associations of citizens, upon their consent.	Participating in preventing, detecting, and in cases stipulated by law, in applying measures aimed at stopping corruptive offences, restoring infringed rights or interests of physical persons and legal entities and interests of the state, as well as in information and research support for the implementation of measures aimed at preventing and counteracting corruption, and in the international cooperation in this field (Article 5, part 6)

The Internal Security Office of the Personnel Department of the Administration of the State Border Guard Service of Ukraine belongs to the public authority units authorized to prevent and detect corruption offences.

History of the Internal Security Office

In order to implement paragraph 22 of Resolution of the Cabinet of Ministers of Ukraine No. 1220 of 03.08.1998 "On Implementation of Legal Acts on Civil Service and Anti-Corruption Legislation by Central and Local Executive Authorities", to prevent corruption and crimes in the central bodies of executive power, by Order of the Head of he State Border Guard Committee of Ukraine, in July 1999, was established the Internal Security Office.

The Internal Security Office was entrusted with the following tasks:

- exposing corruption among civil servants and other officials of the Border Troops of Ukraine;
- eliminating causes and conditions contributing to corrupt conduct;
- ensuring protection of the state border, blocking the channels of penetration of illegal migrants and contraband in Ukraine.

On August 1, 2003 in accordance with the Law of Ukraine "On the State Border Guard Service of Ukraine" was established the Internal Control and Security Office as a part of the Department of Operational Activities of the Administration of the State Border Guard Service of Ukraine.

To ensure the implementation of the Millennium Challenges USA Program in Ukraine and to reduce the level of corruption in the public sector, the Cabinet of Ministers of Ukraine adopted Resolution No. 31630/2/1-07 of 27.07.2007, according to which since March 14, 2008 the Internal Control and Security Office was reformed into the Internal Security Office and was no longer subordinate to the Department of Operational Activities. The reformed body was an autonomous, independent investigative unit with specific tasks and methods of operation.

Systemic innovations changed the nature of the Internal Security Office, strengthened its role and position as an investigative unit in the area of combating corruption, upgraded its status to that of an autonomous, independent body with an integrated system of independent units in the State Border Guard Service of Ukraine directly subordinate to the Head of the State Border Guard Service of Ukraine.

Structure of the Internal Security Office

The Internal Security Office is a structural unit of the Personnel Department of the Administration of the State Border Guard Service of Ukraine subordinate to the Director of the Personnel Department of the Administration of the State Border Guard Service, and an investigative unit of the Administration of the State Border Guard Service, subordinate to the Head of the State Border Guard Service of Ukraine.

The Office includes: section of development and inspection of operational-investigative activity, operational and organizational section, section of accounting and documentary support.

The following sections are subordinate to the Office:

- separate section of internal investigations;
- separate operational and technical section;
- separate section of internal security;
- separate section of internal security in the Administration and other units subordinate to the central authorities;
- 5 separate sections of internal security in the regional directorates.

The separate sections of internal security in the regional directorates include units and groups of internal security.

The Office within its competence takes measures on:

- prevention, early detection and combating crimes, connected with border guards' complicity in smuggling and human trafficking across the state border, violation of the border control regulations, as well as crimes and corruption offences committed by the personnel of the State Border Guard Service of Ukraine on duty;
- ensuring security and protection of the units, forces, resources and information from illicit encroachments and threats from organized criminal groups and individuals;
- coordination of measures to ensure private security of military and civil personnel of the State Border Guard Service of Ukraine.

Rights of the Internal Security Office:

- to carry out operational investigative activities in accordance with the Law of Ukraine "On Operational Investigative Activities";
- to prevent corruption among the personnel of the State Border Guard Service of Ukraine;
- to represent the State Border Guard Service in other state institutions on matters of governance;
- to carry on a correspondence in due course;
- to be at checkpoints and border posts for the purpose of search operations;
- to freely enter the buildings and premises of bodies and units of the State Border Guard Service of Ukraine to perform their duties;
- to supervise border control;
- to initiate inspections of certain bodies of the State Border Guard Service of Ukraine;
- to take part in representational activities;
- to use informational systems and records of the State Border Guard Service of Ukraine;
- to cooperate with the relevant units of the neighboring states on combating corruption;
- to coordinate internal security activities;
- to use, in the established order, vehicles and other technical facilities of the State Border Guard Service of Ukraine, necessary for the implementation of search operations;
- to receive information from the heads of units of the State Border Guard Service of Ukraine, to freely study documents connected with operational, economic and financial activities;
- to receive information in personnel sections, including personal records of the personnel;
- to conduct surveys among the personnel of the State Border Guard Service of Ukraine in order to obtain the required information;
- to get in the units of the State Border Guard Service of Ukraine informational and advisory help on matters that require specialized knowledge;
- to involve professionals of the State Border Guard Service of Ukraine, as well as experts from other ministries and bodies under the agreement, in performing tasks;
- to participate in the consideration of the military personnel appointment to executive positions in the State Border Guard Service of Ukraine;
- to study the materials of investigative units and bodies of the State Border Guard Service of Ukraine;
- to exercise control over the legality of bringing the personnel of the State Border Guard Service of Ukraine to disciplinary responsibility;

- to monitor the use of budget funds;
- to interact with units of the Security Service, Ministry of Interior, the Prosecutor's Office, as well as other state bodies in combating corruption.

2/B.4. *International cooperation against corruption*

It is known that fight against corruption is one of the internal functions of the state. It is carried out on the basis of national legislation by specifically authorized public bodies. However, in our time the national fight against crime becomes much more complicated because of the increased number of crimes, what is dangerous not only for individual countries, but also for humanity as a whole, and requires joint efforts and daily collaboration. The international community notes with concern that corruption crimes of international significance spread rapidly. This is due to the fact that organized crime has reached the transnational level. Therefore, the problem of corruption, which until recently was considered an internal affair of the state, can not be addressed by separate governments.

2/B.4.1. *Types of international cooperation according to the interaction areas*

Taking into account the interaction areas, it is possible to differentiate between the following types of international cooperation:

- presentation;
- training and education;
- direct interaction;
- technical and other assistance.

First of all, it should be emphasized that this classification (presentation, education and training, technical and other assistance, and direct interaction) of international cooperation between law enforcement bodies is considered in a broad context, including not only cooperation based on the investigation of a specific criminal case, but also cooperation with a view to establishing contacts between law enforcement agencies, gaining knowledge, skills, positive international experience, technical support, etc.

In addition, it should be noted, that corruption in this aspect is considered as criminal activity of international significance affecting the interests of two or more states.

Presentational international cooperation is manifested above all in the organization and participation of law enforcement officers in various conferences, seminars, meetings, roundtable discussions, during which they present their own experience in dealing with specific types of crimes. They give arguments for their views and proposals on specific aspects of their activity, raise questions of amendments to legislation, separation of powers and establishment of interaction before the representatives of the state bodies, enterprises of different forms of ownership and non-governmental organizations. Such measures are in most cases justified, because the routine methods of communication by telephone, official inquiries and internal conferences or meetings often do not give expected results due to neglect of the views of all interested parties and lack of controversy. In addition to the components described above, this type of collaboration also includes communication with the media, which is an extremely effective tool for increasing public awareness and formation of the negative attitude of the citizens to corruption offences. The activities of the law enforcement bodies are constantly and systematically covered by the media.

Training and education undoubtedly play an important role in the international cooperation between law enforcement agencies. Practical experience shows that corruption is evolving faster than the law enforcement practice, and it is quite logical that at first arises a problem, and only then can be found the way to solve it. In this context, constant training and self-improvement is important not only for senior and middle-level managers, but also for every individual practitioner.

Having information on the latest methods of combating corruption, facilities of international law enforcement bodies and NGOs, legal framework of foreign countries, best practices and contacts with foreign colleagues, law enforcement officials have the opportunity not only to develop transnational links, gain new knowledge, but also, as a result, to raise effectiveness through broad-based knowledge and understanding of every aspect of their work.

This interaction is manifested in the participation in various educational programs intended for different levels of professional experience and service rank – from experts to middle and senior level managers. These programs range from short-term trainings and seminars to protracted educational and practical courses. Quite often, the last two aspects are combined in order to acquire new knowledge while serving in a specially organized position in law enforcement units of foreign states.

Thus, in cooperation with the European Union Border Assistance Mission to Moldova and Ukraine (EUBAM) were organized 7 schools "Youth Against Corruption" (2010 – 1 school, 2011 – 4 schools, 2012 – 2 schools). In these events took part 182 students from Ukraine and Moldova, including 27 cadets of the National Academy of the State Border Guard Service of Ukraine.

The purpose of the "Youth Against Corruption" schools is to prevent corruption by involving young people in public initiatives on combating corruption and to promote a policy of zero tolerance to this phenomenon.

Taking into account that law enforcement bodies lack logistical support, **international cooperation for technical and other assistance** is of great importance.

For example, in the framework of the US Millennium Challenge Corporation Threshold Program to reduce corruption in the public sector the Internal Security Office of the Administration of the State Border Guard Service of Ukraine received technical facilities and equipment worth 3.9 million UAH.

Further classification of cooperation between law enforcement agencies of different countries is based on its understanding in the narrow context: direct cooperation between law enforcement agencies in operational-search activities, crime investigations and processing of information about these socially dangerous offences or persons involved in such activity.

Cooperation of border agencies in information exchange and interaction of internal security bodies is reflected in the following acts:

- the Protocol on cooperation of operational bodies (in combating corruption) is signed between the Administration of the State Border Guard Service of Ukraine and the Supreme Commander-in-Chief of the Border Guard of the Republic of Poland;

- the Ministry of Foreign Affairs gave permission to sign the Protocol on cooperation of operational bodies (in combating corruption) between the State Border Guard Service of Ukraine and the Ministry of Home Affairs of the Slovak Republic;

- draft Protocol on cooperation of operational bodies (in combating corruption) has been developed and is currently under review for agreement by the State Border Guard Service of Ukraine and the General Inspectorate of the Romanian Border Police.

2/B.4.2. *Types of international cooperation according to involved bodies*

International cooperation, depending on the bodies involved, is divided into: global, regional and departmental. It is realized through liaison officers, employees' personal contacts and international organizations.

The most important body carrying out **global** cooperation in the fight against corruption is the **International Criminal Police Organization** – Interpol. Its "globality" is due to the fact that it brings together the vast majority of the world countries.

Regional international cooperation is carried out on the initiative of the countries located geographically in certain parts of the world. Such cooperation of law enforcement agencies is narrower than global, but can effectively solve corruption-related problems specific to a particular region.

The interaction of law enforcement agencies through "liaison officers" is quite an important instrument of international cooperation. Many countries use it for various purposes of its domestic and foreign policy – from information exchange within the operational activity to the comprehensive review of the transnational organized crime tendencies in the frontier region.

The notion "liaison officers" is common, but "not quite official". Such persons constantly work in diplomatic missions abroad as attaché, advisors or representatives of the competent national central bodies of executive power.

As an example, the "liaison officers" of the State Border Guard Service of Ukraine work as first secretaries on border issues in the Embassies of Ukraine in the Russian Federation, Poland, Slovakia and Moldova.

Cooperation with involvement of opportunities of international and non-governmental organizations takes place primarily in the spheres, which require involvement of international experience or additional resources, in particular, work with victims receiving rehabilitation, financial and psychological support from international and non-governmental organizations, trainings for experts from different services, organization of joint awareness campaigns, etc.

Departmental international cooperation is the interaction of two or more law enforcement units of relevant state authorities.

The latter, of course, establish relations also through other forms of cooperation – global, regional, through "liaison officers", etc. However, departmental international cooperation is a direct cooperation, where no intermediaries are needed for maintaining working contacts. Quite often, law enforcement agencies cooperate in this way with colleagues from neighboring countries. Contacts are established and maintained throughout the period, which the parties require for verification of information and, most important, implementation of operational materials and investigation of cases. Such links are usually maintained and subsequently become systematic.

An example of this type is the interaction between the Administration of the State Border Guard Service of Ukraine and the Commander-in-Chief of the Border Guard of the Republic of Poland. Thus, on February 16, 2007, in Lviv, the Administration of the State Border Guard Service of Ukraine and the Commander-in-Chief of the Border Guard of the Republic of Poland signed the Additional Protocol amending the Protocol between the Administration of the State Border Guard Service of Ukraine and the Commander-in-Chief of the Border Guard of the Republic of Poland on cooperation between operational units of the State Border Guard Service of Ukraine and the Border Guard of the Republic of Poland. Similar draft protocols have been developed and will be signed with Belarus, Romania and Slovakia.

Cooperation with internal security units of other states bordering on Ukraine is based on the cooperation development plans between the Administration and the State Border Guard Service of Ukraine and border agencies of neighboring states.

Personnel of both operational and investigative units of law enforcement agencies often use **personal contacts** to organize effective cooperation with foreign counterparts. Sometimes it is more efficient than conventional methods, in many cases it helps to prevent loss of important information, evidence and time, needed for an official request or application for international legal assistance.

Preventing and combating corruption offences consists, above all, in practical cooperation with relevant law enforcement agencies of other states in order to obtain and exchange operational and background information, including information about criminals and other persons, including legal, involved in international traffic, surveys, confirmation of the certain facts accuracy, verification of accounting records, conducting surveillance, etc. Depending on the urgency, the inspection may be launched on the basis of a telephone arrangement or border officials meeting. In this case there is a need to establish direct personal contacts with the police officials involved in combating corruption.

2/B.4.3. *Legal framework of international anti-corruption cooperation*

According to Article 30 International Cooperation in the Sphere of Preventing and Combating Corruption of the Law of Ukraine "On Principles of Preventing and Combating Corruption", Ukraine shall in accordance with international treaties to which it acceded, carry out cooperation in the sphere of preventing and combating corruption with foreign states and international organizations that act to prevent and combat corruption.

International legal assistance and other types of international cooperation in judicial cases on corruption offences shall be carried out by the competent bodies according to law and international treaties of Ukraine the consent for the mandatory applicability of which has been granted by the Verkhovna Rada of Ukraine.

The main issues of international cooperation in preventing and combating corruption are regulated by the following international instruments:

- United Nations Convention against Corruption (Chapter IV "International cooperation");
- Council of Europe Criminal Law Convention on Corruption (Chapter IV "International cooperation");
- Additional Protocol to the Council of Europe Criminal Law Convention on Corruption (ETS191);
- Council of Europe Civil Law Convention on Corruption (Chapter II);
- European Convention on Extradition of December 13, 1957, ratified by Ukraine on January 16, 1998;
- Additional Protocol to European Convention on Extradition of October 15, 1975, ratified by Ukraine on January 16, 1998;
- Second Additional Protocol to European Convention on Extradition of March 17, 1978, ratified by Ukraine on January 16, 1998;
- European Convention on Mutual Assistance in Criminal Matters of April 20, 1959, ratified by Ukraine on January 16, 1998;

- European Convention on the Transfer of Sentenced Persons of March 21, 1983, Ukraine joined the Convention on September 22, 1995;
- Additional Protocol to European Convention on the Transfer of Sentenced Persons of December 18, 1997, ratified by Ukraine on April 3, 2003;
- CIS Convention on Legal Assistance and Conflicts of Law in Matters of Civil, Family and Criminal Law (The Minsk Convention) of January 22, 1993; ratified by Ukraine on November 10, 1994 (Chapter IV);
- Protocol to CIS Convention on Legal Assistance and Conflicts of Law in Matters of Civil, Family and Criminal Law of March 29, 1997, ratified by Ukraine on March 3, 1998;
- CIS Convention on Legal Assistance and Conflicts of Law in Matters of Civil, Family and Criminal Law (The Chisinau Convention) of October 7, 2002, is not ratified by Ukraine;
- Agreement on establishment of the Group of States against Corruption (GRECO).

The provisions of Articles 43-50 of the UN Convention against Corruption are the most specific and detailed, and identify the following issues:

- essence of international cooperation;
- extradition;
- transfer of sentenced persons;
- mutual legal assistance;
- transfer of criminal proceedings;
- cooperation between law enforcement agencies, in particular, joint investigations and special investigative techniques.

Articles 25-31 of the Council of Europe Criminal Law Convention on Corruption define:

- general principles and measures for international cooperation;
- central authority for international cooperation;
- mutual assistance;
- extradition;
- direct communication, mutual informing, as well as providing information on the own initiative.

Articles 13-14 of the Council of Europe Civil Law Convention on Corruption provide that the parties under control of GRECO shall cooperate 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 judgments and litigation costs, in accordance with the provisions of relevant international instruments on international cooperation in civil and commercial matters to which they are party, as well as with their internal law.

The Law "On Ratification of the United Nations Convention against Corruption" of October 18, 2006, ratified the UN Convention against Corruption of October 31, 2003, at the same time it was determined that the Law was to come into force on the date of entry into force of the Law of Ukraine on amendments to certain legislative acts concerning responsibility for corruption in connection with the ratification of the Convention. Likewise was ratified the Council of Europe Criminal Law Convention on Corruption of January 27, 1999. According to the Law of October 18, 2006 the Verkhovna Rada of Ukraine resolved to ratify it, and determined that the Law was to come into force on the date of entry into force of the Law of Ukraine on amendments to certain legislative acts concerning responsibility for corruption in connection with the ratification of the Criminal Law Convention on Corruption.

As international binding legal instruments the both Conventions entered into force long ago. The first of them was ratified by almost 80 states, the second – by more than 14.

The UN Convention against Corruption and the Council of Europe Criminal Law Convention on Corruption are in force in Ukraine.

If international treaties of Ukraine, approved by the Verkhovna Rada of Ukraine, stipulate other rules than those provided for by the legislation on prevention and combating corruption, the provisions of international treaties are applied.

The provisions of part 1 of Article 31 International Treaties of Ukraine in the Sphere of Preventing and Combating Corruption of the Law are consistent with Article 9 of the Constitution and Article 19 of the Law "On International Treaties of Ukraine". They state, that if an international treaty of Ukraine, which entered into force in accordance with the established procedure, stipulates rules other than those provided for in the Law of Ukraine, the rules of the international treaty are applied.

According to Article 32 International Exchange of Information in the Sphere of Preventing and Combating Corruption competent Ukrainian authorities may provide to the relevant authorities of foreign states and receive from them information, including information with limited access, on matters of preventing and combating corruption, in compliance with the requirements of law and international treaties of Ukraine, the consent for the mandatory applicability of which has been granted by the Verkhovna Rada of Ukraine.

Provision to authorities of foreign states of information on matters related to prevention and combating corruption shall be possible solely in the case when such authorities and the relevant competent authority of Ukraine are able to establish such a mode of access to the information as would preclude the disclosure of the information for other purposes, or the disclosure thereof in any manner, including by way of unauthorized access.

Issues of international information exchange in the field of preventing and combating corruption are governed by the following provisions:

1) The United Nations Convention against Corruption:

Article 46 ("Mutual legal assistance") deals with the possibility of State Parties without prior request to submit information, concerning criminal cases, to the competent authority of another State Party if they believe that such information could provide assistance to the authority in conducting or successful completion of investigations and criminal proceedings;

Article 48 ("Law enforcement cooperation") deals with enhancing and, where necessary, establishing channels of communication between their competent authorities, agencies and services in order to facilitate the secure and rapid exchange of information concerning all aspects of the offences covered by this Convention; exchanging information with other States Parties concerning specific

means and methods used to commit offences covered by this Convention; exchanging information and coordinating administrative and other measures taken as appropriate for the purpose of early identification of the offences covered by this Convention;

Article 61 ("Collection, exchange and analysis of information on corruption") provides that each State Party shall consider analysis of corruption trends in its territory, and the circumstances in which corruption offences are committed; as well as sharing with each other and through international and regional organizations statistics, analytical expertise concerning corruption and information on best practices to prevent and combat corruption.

2) The Council of Europe Criminal Law Convention on Corruption:

Article 28 ("Spontaneous information") – if possible, 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;

Article 31 ("Information") provides, that the requested Party shall promptly inform the requesting Party of the action taken on the request 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.

According to Article 33 Measures Aimed at Returning to Ukraine the Funds and Other Assets Acquired as a Result of Corruption Offences, and the Disposal of Recovered Funds and Other Assets Acquired as a Result of Corruption Offences, Ukraine shall take measures aimed at returning to Ukraine the funds and other assets acquired as a result of corruption offences, and shall manage such funds and other assets according to law and international treaties of Ukraine, the consent for the mandatory applicability of which has been granted by the Verkhovna Rada of Ukraine.

Issues declared in Article 33 of the Law, are regulated in details by the following provisions:

1) UN Convention against Corruption. According to Article 3 ("Scope of application") of the Convention, it shall apply, to the prevention, investigation and prosecution for corruption and to the freezing, seizure, confiscation and return of the proceeds of offences established in accordance with this Convention.

Chapter V "Asset recovery" (Articles 51-59 of) covers the following aspects:

- prevention and detection of transfers of proceeds of crime (Article 52);
- measures for direct recovery of property (Article 53);
- mechanisms for recovery of property through international cooperation in confiscation (Article 54);
- international cooperation for purposes of confiscation (Article 55);
- special cooperation (Article 56);
- return and disposal of assets (Article 57);
- financial intelligence unit (Article 58);
- bilateral and multilateral agreements and arrangements(Article 58).

2) Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism. The Convention was ratified with reservations and declarations by the Law of 17.11.2010.

3) The Law "On Prevention and Counteraction to Legalization (Laundering) of Proceeds of Crime or Financing of Terrorism".

Theme 3. PREVENTION OF CORRUPTION

3.1. *Measures to prevent corruption and their significance*

Article 6 of the UN Convention against Corruption provides, that each State Party shall, in accordance with the fundamental principles of its legal system, ensure the existence of a body or bodies, as appropriate, that prevent corruption by such means as: a) implementing anti-corruption policies and, where appropriate, overseeing and coordinating the implementation of those policies; b) increasing and disseminating knowledge about prevention of corruption.

Corruption prevention functions cover all aspects of public governance, they are so numerous and varied that can not be managed by a single authority. As follows from the UN Convention against Corruption, preventive functions include: prevention of conflict of interest in public service, verification of asset declarations of public officials, ensuring integrity and transparency of public service, prevention of money laundering and financial control over the expenditure of public funds.

Accordingly, in many countries, most of these functions are performed within the framework of existing institutions, including supervisory and audit bodies, the Ombudsman, executive authorities, commissions on ethics and prevention of conflicts of interest, specialized services and units to prevent corruption and to combat money laundering.

There are also a number of other tasks that are, as a rule, distributed among many state institutions and require special attention, namely: development of educational programs for professional training in the field of combating and preventing corruption; organization of public awareness campaigns; cooperation with the media, civil society and business groups; international cooperation.

Prevention of corruption in public authorities includes, firstly, the development of specific rules and restrictions that apply to civil servants, and, secondly, the imposition of disciplinary sanctions for non-compliance. Among mechanisms to fulfill these functions are state financial control, measures to prevent legalization of proceeds of criminal activity, steps towards transparency in government procurement, as well as in the system of licensing, permits and certificates. Finally, the preventive function consists in increasing transparency of public service, providing public access to information and ensuring control over financing of political parties.

The Member Countries of the European Union have developed a number of recommendations concerning the development and application of the rules of on-duty conduct and ethical standards for public officials, responsibilities of public officials, risk analysis and exploring ways to improve administrative procedures, financial transactions, as well as procurement procedures and award of contracts, transparency of decision-making, improving human resource management, including career planning, training, promotion and remuneration, audit and control systems, establishment of the system of disciplinary penalties, disclosure of information about the property owned by government officials, as well as development of self-control mechanisms in the institutions prone to corruption.

Most of these recommendations are reflected in the Moldovan legislation: the Law on Prevention and Combating Corruption, the Law on Code of Conduct for Public Officials, the Law on Public Office and Status of Civil Servant, the Law on Conflict of Interest, the Law on Transparency in Decision-Making, the Law on Access to Information, the Law on Public Procurement, the Law on Declaring and Control over Income and Assets of State Officials, Judges, Prosecutors, Civil Servants and some Managers, the Law on Prevention and Combating Money Laundering and Financing of Terrorism.

Measures aimed at prevention of corruption involve a wide range of actors and activities. Many of these are closely interrelated. Conceptually, however, the following types of prevention may be distinguished:

1. Preventive measures of the first group: integration and cooperation.

The objective is to promote integrity and cooperation against corruption within society on the whole. Tools include awareness-raising, educational measures, information activities, surveys and publications on corruption, measures to strengthen independent media and investigative journalism, as well as civil society institutions, implementation of integrity workshops, public/private partnerships, measures to encourage cooperation with the criminal justice system, the process of elaborating anti-corruption plans and codes of conduct or ethics.

Target groups are all sectors of society, including civil society in general, the media, educational institutions, NGOs, the business community, politicians and political parties, parliaments, governmental institutions.

2. Preventive measures of the second group: transparency and accountability.

The objective is to strengthen transparency and accountability within public administration, the business sector and civil society institutions which could be vulnerable to corruption.

Tools include measures to strengthen good governance in public administration and corporate governance in the private sector, application of codes of conduct, regulations on the financing of political parties and on lobbying and pressure groups, monitoring of service delivery by citizens, involvement of civil society in decision-making, access to information, public procurement rules, compatibility and conflict of interest rules, investigative journalism, clear rules on the acceptance of gifts.

Target groups include institutions and individuals prone to corruption, the business community, public administration, parliaments, politicians and political parties, governmental institutions, local governments, judicial and law enforcement agencies, interest and pressure groups and lobbyists.

3. Preventive measures of the third group: reducing risks and opportunities.

The objective is to reduce risks and opportunities for corruption within institutions and procedures vulnerable to corruption.

Tools include risk analyses, corruption prevention plans, anti-fraud mechanisms within companies, declaration of assets by public officials and politicians, rules on public procurement, rules on the documentation of decisions, blacklisting of companies, investigative journalism, “four-eyes” principle, and job rotation.

Target groups include institutions and individuals vulnerable to corruption, including law enforcement services, customs, judiciary and criminal justice institutions, public administration and officials involved in public procurement, institutions and officials providing services or licenses and permissions, politicians and political parties, local government, and public enterprises.

4. Preventive measures of the fourth group: control.

The objective is to control compliance with the rules, in particular within institutions and procedures highly vulnerable to corruption.

Tools include supervisory accountability, systematic audits, for example, of public procurement, monitoring compliance with codes of conduct and other relevant guidelines and rules, monitoring conflicts of interest, internal compliance systems within companies, investigative journalism.

Target groups include, as in the third group, institutions and individuals vulnerable to corruption, in particular those involved in processes and procedures particularly exposed to risks and offering opportunities for corruption.

In the Republic of Moldova preventive anti-corruption measures are provided for by laws, normative acts and in-house regulations of public bodies. The implementation of anti-corruption legislation falls within the competence of the National Anti-Corruption Center and the National Integrity Commission.

At the same time, Article 14 of the Law "On Prevention and Combating Corruption" provides that the powers to prevent and combat corruption through the implementation of anti-corruption policies and practices within the competence established by law, shall also be undertaken by the Parliament, the President of the Republic of Moldova, the Government, the Prosecutor's office, the Information and Security service, the Audit Chamber, other specialized central bodies of state administration and local authorities, the civil society.

The public authorities periodically evaluate the legal instruments and administrative measures with a view to determining their adequacy to prevent and combat corruption.

Corruption prevention measures are carried out by the public administration bodies, NGOs and other representatives of the civil society, together or separately.

Chapter II of the Law – Preventive measures – provides, that corruption prevention is ensured by the anti-corruption policies and practices, including legal, institutional, economic, social and moral measures:

- consolidation of public authorities activities;
- conduct of public officials, persons holding government positions and those, who provide services to the public;
- organization of anti-corruption expertise of draft legislation and regulations of the government, public discussions of the developed projects and assessment of institutional corruption risks;
- management of public finances;
- civil society participation and access to information for decision-making;
- access to information about preventive measures and the results of their application;
- private sector of the national economy;
- prevention of illegal income legalization;
- political activities and electoral process;
- other measures necessary to achieve the purpose of this Law.

Legal provisions stipulate the consolidation of the state authorities and public officials activities, namely:

- strict separation of powers of public authorities and their employees, based on the principles of transparency and objectivity;
- hierarchical control and monitoring activities of public authorities and their employees by the civil society;
- improving the structure of the civil service and procedures for resolving issues affecting the interests of individuals and legal entities;
- material basis and social protection to ensure activities, depending on the competence and responsibility of the given position;
- establishment of specific requirements, restrictions and prohibitions, criteria of employment, appointment and promotion in order to avoid conflict of interest, to protect the constitutional regime, rights and lawful interests of individuals and legal entities;
- reasonable balance between the jurisdictional immunities granted to various categories of civil servants.

Performance of public office functions shall ensure:

- establishment of rules of conduct, depending on the specifics of each public office;
- compliance with ethical rules in public authorities through imposition of disciplinary and other sanctions on those who violate the established norms;
- knowledge of and adherence to regulations governing the activities of public officials, persons holding government positions and those, who provide services to the public;
- approval of measures, encouraging public officials, persons holding government positions and those, who provide services to the public, to report acts of corruption revealed in the course of service duties.

Anti-corruption expertise of draft legislation and regulations of the government is the process of evaluating the compliance of their content with the national and international anti-corruption standards in order to identify the provisions that contribute or may contribute to corruption, and to develop recommendations for the elimination of their consequences.

Assessment of institutional corruption risks is conducted in accordance with the procedure established by the government, and seeks to identify organizational factors, that contribute or may contribute to corruption, and to develop recommendations to eliminate the effects of these risks.

The system of public procurement and effective management of public finances is ensured through: transparency and publicity of information on procurement procedures; objective criteria in decision-making; ensuring effective system of appeal in case of violation of the established rules or procedures; effective standards of accounting, audit and control; economical and efficient use of public property, if this use is provided by law.

Participation of the civil society in corruption prevention. The involvement of individuals and groups, which do not belong to the public sector, in the prevention of corruption is achieved by:

- participation in decision-making;
- access to information on the organization and functioning of the public authorities, decision-making processes and legal acts related to these individuals and groups;
- publication of information, periodic reports on corruption risks in the public administration;
- informing the public in order to raise intolerance towards corruption and implementing educational programs; providing information of public interest, and providing public services by electronic means through the official web-sites.

An important aspect of corruption prevention is the collaboration between the private sector and public authorities. Assistance of the private sector shall provide:

- reducing dependence of entrepreneurs from administrative pressure in the issuance of licenses, permits and certificates;
- promoting cooperation between the investigative units and legal entities under private law;
- increasing the liability of legal persons of private law in order to enable entrepreneurs to work properly, adequately and appropriately, preventing conflicts of interest and promoting fair trade relationship between enterprises, as well as fair contractual relationships with the state;
- establishing effective accounting and audit standards in order to prevent corruption by eliminating the possibility of keeping corrupt accounting, recording non-existent expenditures, using forged documents, intentional destruction of accounting records, etc.

Legalization of illicit proceeds is prevented by application of the rules for the mandatory declaration and control over income and assets; income and property declaration by all individuals and legal entities; control over financial transactions undertaken by individuals and legal entities through the banking system or outside it in order to prevent money laundering and financing of terrorism and combat these phenomena in accordance with applicable regulations and international treaties, to which the Republic of Moldova is a party.

In addition to ensuring the implementation of preventive measures, the National Anti-Corruption Centre is entrusted with a number of tasks to combat corruption:

- preventing corruption, anti-corruption education of citizens, active cooperation with the civil society in order to promote anti-corruption mass culture;
- providing training, upgrading and retraining;
- developing proposals to bring the regulations in line with international regulations in this area;
- carrying out an anti-corruption expertise of draft legislation and draft government regulations, and other legislative initiatives, submitted to the Parliament for approval, in order to establish their compliance with the national anti-corruption policy;
- assessment of corruption risks in public authorities and public institutions through training and counseling, monitoring and analysis of data relating to the assessment of corruption risks, as well as coordinating the development and implementation of anti-corruption plans.

In conclusion, prevention of corruption consists in promoting integrity and ethics, good governance, justice and the rule of law. It includes a large range of measures and seeks to involve a large number of actors. In addition, of course, there are many other elements that help to deter corruption, they include independent and effective judicial system, as well as economic and social development in general.

3.2 *Anti-corruption education and training*

Consideration of corruption as one of the greatest obstacles to economic and political development and recognizing the fact that it threatens national security, necessitate creating the system of anti-corruption training as a separate component of the educational system. Anti-corruption education and training are part of the state anti-corruption policy and aim at eliminating (minimizing) the causes and conditions that give rise to corruption in different spheres of life. Changing the mentality of an individual and the entire society from tolerating and concealing corruption towards the mentality of denial of corruption and ensuring the disclosure thereof is a determinant factor for a successful reduction of this phenomenon. This change is possible only if educational and information measures are applied.

Therefore, the aim of anti-corruption education is to develop the system of values and abilities required for the formation of young people's civic position on corruption. Only adequate training and education can help to achieve the desired result, that is to mould a personality who is aware of the threats posed by corruption to the public well-being and state security, intolerant towards the manifestations of corruption, able and willing to eliminate this phenomenon.

Promotion of intolerance towards corruption. Anti-corruption education of citizens requires the civil society and the state authorities to join their efforts and to carry out anti-corruption awareness campaigns, to organize activities of civic education of youth in the educational institutions, considering the fact, that according to surveys, this social group mostly tolerates corruption, and to carry out anti-corruption trainings for civil servants, professional groups, etc. Public officials should also be taught to respect the norms of professional ethics and the Code of Conduct for Civil Servants. The UN Convention against Corruption sets in paragraph 1 of Article 6 that "Each State Party shall <...> prevent corruption by such means as <...> increasing and disseminating knowledge about the prevention of corruption". To prevent a problem is always more preferable than to solve it. That is why anti-corruption education is traditionally considered to be one of the key instruments against corruption. But what is it and how does it help to improve the situation?

Anti-corruption education is a process of training and up-bringing for the benefit of individuals, society and the state, based on the educational programs, developed within the state educational standards, and implemented to meet the challenges of forming the anti-corruption ideology, raising legal awareness and legal culture of the students.

This approach is based on the assumption that corruption opportunities are related to various problems in the society: lack of public condemnation and rejection of actions of the officials, appropriating public assets or benefiting from the service position; alienation of citizens from taking decisions related to the issues, which are of vital importance for them; non-transparency of spending the funds meant to address social problems; poor legal literacy, legal nihilism and others. On the basis of these issues, **the key areas of anti-corruption education** may be highlighted:

1. **Overcoming legal nihilism.** Respect for the law should be the defining principle of the life of every citizen. The key role in overcoming legal nihilism is played by the legal education and formation of legal culture of students, particularly in the field of anti-corruption legislation.

2. **Informing the public about the many faces of corruption:** the nature of corruption as a social phenomenon, an illegal act, an economic phenomenon, a political phenomenon, an element of culture and a social disease.

3. **Formation of conscious perception / attitude towards corruption.** Exclusion of corrupt conduct, corrupt morals and ethics. Not only strict laws, but also moral choices protect the authorities and society from corruption. If the society tolerates corruption, the law can not prevent it. Today, therefore, it is necessary to lay down the foundation for the future of the country – to promote intolerance towards corruption among young people, to form negative attitude to corruption in the society.

4. **Mastering the skills necessary to combat corruption.** Creation of anti-corruption standards of conduct. Students should not only realize that corrupt conduct is unacceptable under any circumstances, but they should also know how to behave in every specific situation. And the fight against corruption should not be only passive – I do not accept and do not participate in corrupt practices, but also active – I combat all forms of corruption in our society.

5. **Anti-corruption propaganda** and dissemination of ideas of justice and respect for the law – this is an important direction of the National Anti-Corruption Plan.

6. **Activities aimed at understanding the nature of corruption, awareness of the social costs of its manifestations,** ability to convincingly defend the personal position, ability to search for ways to overcome corruption.

Complex measures applied in all these areas, contribute to the formation of anti-corruption outlook, strong moral foundations of personality, civic position and sound anti-corruption habits.

Formation of anti-corruption outlook involves a **number of tasks:**

1) to give a general idea about the nature of corruption, its forms and manifestations in various spheres of social life, causes of corruption, socially dangerous and harmful effects of this phenomenon;

2) to learn to identify corruption;

3) to acquire skills for adequate analysis and evaluation of this social phenomenon based on the principle of historicism;

4) to acquire knowledge about corruption situations in order to develop legal, moral and ethical standards of conduct;

5) to encourage anti-corruption behavior;

6) to promote intolerance towards corruption;

7) to demonstrate the ways to combat corruption;

8) to form the basis of legal literacy.

So, the main purpose of anti-corruption education is to develop the social competence, and in the narrow sense of the word – to form the anti-corruption competence. Competence is regarded as a multicomponent phenomenon comprising:

- willingness to exercise competence;
- knowledge of the competence content;
- experience in exercising the competence in standard and non-standard situations;
- recognizing the value and significance of the competence content;
- emotional-volitional regulation of the process and the result while exercising the competence.

In this sense, the expected result is the mature personality who is aware of the threats posed by corruption to the public well-being and state security, intolerant towards the manifestations of corruption, able and seeking to eliminate the latter.

In order to achieve results, the anti-corruption education and training must comply with the following principles:

Systematic approach. Anti-corruption education should be regarded as a complex system integrated both vertically and horizontally.

Complexity, focus on shaping the anti-corruption outlook and developing the anti-corruption standards of behavior and active citizenship.

Due regard for age differences.

Integration of anti-corruption education in the educational process. Anti-corruption education should be integrated into the educational process both horizontally and vertically. Vertical integration involves the introduction of elements of anti-corruption education to ensure continuity and integrity of its content at all the levels of education with due regard for the age differences of the students. Horizontal integration involves various forms of introducing the anti-corruption education in the educational process at each level.

Connection with the competence approach in education:

- ability for critical perception of reality;
- ability to adequately assess the situation;
- ability to independently assess the situation;
- ability to take a position on the basis of the assessment of the situation;
- ability to convincingly defend this position;
- ability to operate effectively in accordance with the personal convictions;
- ability to take responsibility for their actions.

Partnership. The goals of anti-corruption education may be achieved only with the participation in this process of all the interested parties: NGOs, parent community, government agencies, representatives of government agencies and law enforcement agencies, representatives of religious confessions.

Preventiveness. Anti-corruption education should focus on the prevention of any manifestation of corrupt behavior and thinking.

The anti-corruption education involves two approaches – formal and informal. Formal approach implies the direct introduction into the educational process of special courses on combating corruption, on the development of students' anti-corruption outlook, arrangement of extracurricular activities on anti-corruption legislation, anti-corruption behavior, basic morality, ethics, etc.

In the framework of the informal approach, the anti-corruption education program is implemented through workshops, a series of business games, competitions (essays, drawings, projects), civil anti-corruption forums, development of legal information computer programs, implementation of social projects, conducting civic actions, preparation of stands, sociological researches conducted by students, questionnaires, etc.

In the Republic of Moldova, as well as in OECD countries, in order to strengthen ethical competence of public officials and prevent corruption in public service, anti-corruption strategies often suggest to conduct anti-corruption trainings for different target groups. These countries have put in place codes of ethics and provide training for public officials in this area. Such trainings usually involve lectures or ad-hoc seminars on legal requirements related to the fight against corruption, conflict of interest regulations and codes of ethics. However, these lectures and seminars often focus on rules only and do not address values. They do not address specific corruption and integrity risks in individual agencies or practical problems facing the public officials. Experiences of Spain, Austria, Estonia and other countries provided new and more advanced approaches, which included tailor-made practical ethics training on rules and values, delivered systematically by dedicated ethics officials, using an interactive approach. In order to make anti-corruption trainings for employees of state agencies and institutions more effective, it is important to improve the approach to conducting anti-corruption trainings, adhering to the following rules:

1. A more systemic approach to the trainings on ethics and other anti-corruption matters, which should involve a dedicated body/unit/official responsible for the development and delivery of the training, and the development of the anti-corruption program based on the assessment of risks and needs of public officials in the country and taking into account international best practice.

2. The training should be mandatory, at least for some categories of public officials; it is necessary to provide such training to all new civil servants when they enter the service.

3. The role of managers of public agencies and institutions in ensuring ethical standards among their subordinates should be promoted in the anti-corruption training programs, especially on ethical behavior.

4. Special attention should be paid to the preparation and design of ethics trainings; such trainings should be specially developed for individual public institutions, or target groups of officials. They should address legal requirements/rules and values; they should be practical and based on real cases relevant to the activities of the institution or the group of officials.

5. Special attention should also be paid to the follow-up. This may include train-the-trainer methods, as well as transfer of knowledge gained at training events to practical work situations. Assessing the effectiveness of trainings is a challenging task, but some of the elements can be built into the overall training program, for instance such programs may include a test; in addition tests of

ethical competence or other anti-corruption standards may be included to the regular performance evaluation of civil servants.

6. Use of attractive, practical tools like workplace calendars with anti-corruption information, such as the deadline for submission of asset declarations, could be a practical approach to draw attention of public officials to anti-corruption issues.

7. Effectiveness of an anti-corruption training can be increased if it is part of a more comprehensive framework, which includes intra alia a possibility for a public official to seek practical advice and guidance on dealing with specific practical problems or "grey" unregulated areas, effective channels for reporting suspicions of corruption by public officials, whistleblowers protection, and other corruption prevention measures related to corruption.

The mass media plays an important role in the fight against corruption. Its task is not only to inform (educate) the public about specific cases of corruption, but also to promote the anti-corruption program and to report on its successes, to show people the examples of anti-corruption behavior, to develop new standards of civic morality, to promote anti-corruption campaigns.

Awareness raising campaigns usually involve public advertising, such as TV spots, banners and posters, which inform about the negative effects of corruption and ask citizens not to pay bribes.

These systematic campaigns should be developed for specific groups of citizens and communities and consider their practical needs. However, even the best-designed awareness campaign will be effective only when the institutions demonstrate their determination to combat corruption through practical measures.

3.3. *Corruption risk assessment*

The fundamental task of combating corruption is to identify and minimize the risks of corruption, conditions and reasons contributing to its development. Assessment of corruption risks and their prevalence in different spheres of public relations, determination of causes, conditions and motives of corruption help to identify gaps in anti-corruption legislation, challenges faced when implementing it, as well as shortcomings in the organizational, ideological support and resource provision of this activity and, therefore, to develop measures that meet the capacities and needs of modern society. Analysis of the literature and regulatory sources gives a wide range of definitions of "corruption risks".

The Guidelines to identify the areas of potential corruption risks in one region of the Russian Federation define corruption risks as "inherent in the system of the state and municipal management possibilities for action (or inaction) of officials and employees in order to gain illegal material and other profit while performing their official duties".

Scientists, investigating psychological aspects of corruption in the customs, believe that a corruption factor (risk) is a phenomenon or a set of phenomena giving rise to corruption offences or contributing to their spread.

With regard to public service, V. Astanin treats corruption risks as the probability of corrupt conduct, which may be caused by non-compliance with the duties, prohibitions and restrictions imposed on public officials while on duty and because of their professional activities.

G. Satarov, a well-known researcher of corruption, characterizes corruption risks as a probability to get in a corruption situation, when in contact with the officials representing our state. Corruption risks are caused by corruption enthusiasm of public officials, who contrive scarcity of public services

and build bureaucratic barriers in order to extort bribes. The risk of corruption is an assessment of the probability that the respondent, getting in a certain situation (while solving a problem), will be involved in a corrupt deal.

Other authors believe that corruption risks are reduced to the existence of favorable conditions and circumstances that provide the possibility of entering into corrupt relationships.

Considering the definitions of corruption risks, it should be noted that in the world practice there is no perfect definition, appropriate for all, as well as there is no perfect definition of corruption.

Even if there is a clear definition of corruption risks, in order to estimate the prevalence of corruption in a particular organization, it is necessary to take into account what we mean by "corruption".

Corruption is a generic term that is the subject of endless definitional debate. This is not "idle academic debate", but arises because the term corruption is both:

- descriptive – that is, it is used to identify actions or practices based on a set of existing criteria, e.g. existing law such as bribery provisions;

- evaluative – what we regard as corruption is also based on our underlying assumptions of how a sound political process or public administration should function.

Despite all the difficulties, corruption is manifested through a wide range of specific practices, and there is usually an agreement on the illicit nature of most such practices.

In order to assess risks, experts advise not to focus directly on corruption but, instead, to focus on specific practices, which prevent officials from performing their public service functions in an impartial and accountable manner. These practices might be direct examples of corruption (e.g. bribery or trading in influence). They might also however include other practices such as unfair or unequal treatment, failure to follow particular requirements of law or other legal norms/procedures, etc. So the concern would not just be over core cases of corruption, but also more broadly with activities in which, with or without corrupt intentions, public individuals act in ways that serve their own interests rather than those of the public.

With such approach, it is important to avoid the word "corruption", especially if the evidence is obtained through face-to-face assessments (surveys, interviews). For example, questions designed to get information on bribery might be better phrased as questions about "considerations" or "gifts". In this particular example, questions would also have to be designed to distinguish between gifts of genuine appreciation, gifts that are compulsory, and cases where the provision of the service is conditional on or influenced in various ways by the gift (such as reducing waiting times), and so on.

So, what is the corruption risk assessment and who is entrusted with this task?

According to Article 7 of the Law of the Republic of Moldova No. 90-XVI of 25.04.2008 "On Prevention and Combating Corruption", assessment of institutional corruption risks is one of the preventive measures practiced in Moldova.

In the Methodology of corruption risk assessment in public institutions, approved by Decision of the Government of the Republic of Moldova No. 906 of 28.07.2008, corruption risk assessment in public institutions is understood as the process of identification of institutional factors that favor or might favor the corruption, as well as drawing up recommendations to eliminate their effects.

As follows from the above definitions, the objectives of the assessment are:

1) to identify the institutional factors that favor or might favor corruption;

2) to draw up recommendation on how to eliminate or diminish their effects (drawing up integrity plans).

In order to conduct assessment, the head of the institution orders to establish a working group, composed of a representative number of chiefs of relevant subdivisions (from 5 up to 7 members).

The group may include representatives of the National Anti-Corruption Centre, as according to Article 4 of the Law of the Republic of Moldova on the National Anti-Corruption Center, the objectives of this body are to ensure the corruption risk assessment in public authorities and public institutions through training and counseling, monitoring and analysis of data relating to the corruption risk assessment, as well as to coordinate the development and implementation of anti-corruption plans.

As the existing legislation authorizes the working group to identify and analyze corruption risks, the evaluation is carried out through self-assessment.

The assessment shall be carried out in three stages.

Assessment of preconditions. At this stage, the working group analyzes and assesses the legal framework (laws and legal acts, including in-house regulations), relevant to the specific institution, and the provisions relating to vulnerable activities. In this sense, the following is to be identified: lacking regulations, incomplete regulations, regulations with insufficient focus on the integrity requirements, lack of employees' awareness of the regulations, inconsistent application of regulations.

Vulnerable activities might be the ones, related to the internal organization of the institution, as well as those, related to the external attributions (tasks) of the institution (Table 3).

Table 3

Vulnerable activities, related to the internal organization of the institution	Vulnerable activities, related to the external attributions (tasks) of the institution
Handling of information (storage of inside information; provision of classified information; production, examination, administration (storage), duplication of classified documents, including electronic files and database; internal and external mutation of classified documents, including electronic files). Management of funds and financial resources (allocation, control and audit of budgets; payment of expenses, granting bonuses, premiums, and allowances). Management of goods and services (making decisions about purchasing or hiring, setting quality requirements of terms of delivery, carrying out negotiations, assigning suppliers, administration and allocation of goods within the organization, using company goods outside the office hours or outside the institution).	Collection of payments (taxes, administrative charges, amounts due, etc.). Contracting (orders, auctions, tenders, contracts etc.). Payments (subventions, premiums, allowances, sponsoring, benefits etc.). Granting rights (issuing licenses, driving licenses, passports, identity cards, authorizations, certificates etc.). Enforcement of legislation (control, supervision, checking compliance with or violation of the law, imposing sanctions, punishments etc.).

Special attention should be paid to the institution's organizational structure assessment, which assumes analysis of flowchart, analysis of job descriptions, analysis of work processes and procedures and is conducted on the basis of the following criteria: the level of compliance of the organizational structure with the tasks, competences, rights and obligations of the institution; the level of effectiveness of the organizational structure to meet the challenges, competences, rights and obligations of the institution.

Identifying corruption risk factors. Identification of corruption risk factors involves the division of the second stage into two main parts: research and identification of risks (collection of information on actual or potential risks of corruption), followed by analysis.

A well-designed risk assessment will in fact do both of these things. Conducting an assessment based on the "blind" application of a set of external criteria risks missing or failing to focus sufficiently on issues that are of particular importance in the institution being assessed and neglects the crucial role of the institutions informal culture in mediating between organizational objectives and individual motives. At the same time, it is important to balance the focus on the institution "from within" with an attempt to identify some external standards of assessment, if we are to prevent the assessment process from "assimilation". For example, in the case of some police functions (for example dealing with certain petty offences) the existence of discretion may be justified for a range of reasons (every case is different), and these "internal factors" must be taken into account. However, in the case of other police functions (such as handling of complaints or notifications of suspected criminal acts), the existence of excessive discretion or monopoly may be rightly identified as a corruption risk in certain circumstances, and an assessment "from within" might not readily identify these as a problem.

A variety of methods exist that attempt to assess the incidence and loci of corruption. The main ones are the following:

1. The assessment of employees' resistance to corruption risks assumes assessment of the practices related to: selection and training of personnel; job description; combination of (internal and external) functions; consultation and accountability; availability of supervision; focusing on integrity; external contacts; responsibility and supervision; suspicious outsiders; mala fide employees; gifts / additional income; physical security; lawfulness versus efficiency; loyalty; communication.

2. In order to verify the correctness of the assessment of employees' resistance to the corruption risks within the institution, a questionnaire is to be distributed to the personnel. The questionnaire should be designed in such a way as to raise the awareness of the participants in matters of moral principles in the provision of public services and inadmissibility of behavior which does not serve the public interest. Direct questions on corruption are unlikely to elicit open responses; and they establish an adversarial spirit between the investigator and the participants. In other words, the aim should be not only to obtain information, but also – through the very process and manner in which information is obtained – to develop moral principles that public officials would espouse and endorse. This would help them assess how they should act, how to treat their professional responsibilities, and to understand that it is appropriate to expect from them. The basis of the questionnaire is given in the appendix.

3. The assessment of institution's relationship with the public assumes a detailed analysis of all procedures related to public relation, including procedures related to the consideration of petitions, level of transparency of the institution, institution's web page, relationship with the mass media.

4. 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.

In order to investigate and identify corruption risks, the following techniques for collection of information are being used:

- revision of basic information – collection of information from existing sources, as for example, the previous investigation or an assessment carried out by groups of interest, public officials, auditors, the Court of Accounts, the Parliament, as well as information obtained from petitions of citizens or the mass media;

- collection of information from surveys – information obtained from population's answers to written questionnaires or verbal interviews. Those might be administrated to the population in general, or to a group of people, selected for comparative studies;

- use of target groups – collection of information using target groups. Target groups are definite 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 corruption, its reasons, as well as ideas regarding the possibilities of a specific authority to combat corruption;

- direct observation – there may be cases where research can be conducted through "direct experience", e.g. sending a participant of the risk assessment to apply for something etc. While potentially giving useful information, such exercises are clearly controversial (involving "entrapment"). Moreover, such methods may compromise its targets (if payments are not solicited) – many who do not take bribes may nonetheless be reluctant to expose those who offer them, but to treat the failure to report such offers as a criminal act seems to be a case of entrapment, or at least not entirely fair.

The experts, who worked out the Methodology of corruption risk assessment guide in Albania, offer another way of obtaining indications of corruption – observation of phenomena that are assumed to be proxies or near-proxies of corruption, e.g. comparing the customs revenue on imported items and domestic sales figures for the same items; or observing the length of time taken to secure certain decisions or rights (such as a license or permit).

Whether to pursue a proxy method must be decided on a case-by-case basis. However, the key point here is not to confuse proxies (i.e. variables that are assumed to be direct indicators of corruption itself) with causal conditions (that may give rise to corruption). The most obvious example of confusion between the two is the "Klitgaard formula", according to which

CORRUPTION = MONOPOLY + DISCRETION – ACCOUNTABILITY

In other words, the amount of corruption will be determined by the extent of monopoly and discretion in the provision of a particular public service, combined with the level of accountability of those responsible for provision. That is, the less competition and more discretion providers enjoy, the more corrupt they will be, while the more accountable they are the less corrupt they will be.

Next, the working group proceeds to analyze the collected information, to identify and prioritize risks. Since it is impossible to allocate the same time, attention and resources to each of the identified risks, it is especially important to prioritize the identified risks, depending on the level of threat they pose to the institution. Prioritization of risks (minor, moderate, grave) is carried out depending on the impact of each concrete risk, its eventual continuation, or depending on the probability of its occurrence.

The analysis of the identified corruption risks is carried out in accordance with their priority.

Development of recommendations to eliminate or mitigate the identified risks (development of integrity plans). Once a risk assessment has been completed, the results may be used to identify steps that need to be taken to address the risks and problems identified by the assessment. However, it should be underlined that risk assessments may also identify institutions or processes/units within institutions that work effectively and with integrity. These might be termed "islands of integrity". Where such islands are identified, the analysis should identify why it is that they function in such a way. The lessons drawn – which are based on an objective analysis and focus on the functioning of an institution in the local context – may then be used as the source of inspiration when formulating policies to improve the situation in other institutions that function not so effectively.

The assessment of preconditions and corruption risks is to be concluded by issuing a self-assessment report, on the basis of which an integrity plan is developed. The integrity plan represents a detailed action plan regarding the prevention of corruption within the institution. When drawing up the integrity plan, the authors need to take into account the prioritization of risks. Thus, actions dealing with risks of grave impact and risks of high probability of occurrence will have priority. Those actions are to be followed by the ones dealing with diminishing risks of moderate impact and of medium probability of occurrence. Finally, actions dealing with diminishing risks of low impact and of low probability of occurrence are to be planned. The integrity plan, after being coordinated with all the interested subdivision of the institution, is to be approved by an order of the head of the institution.

The periodicity of the risks self-assessment is to be determined by the specific of the institution, but it must take place at least once in three years. The risks with grave impact as well as the ones with high probability of occurrence ought to be assessed once a year in order to efficiently control and diminish them. The reassessment is to be carried out also in case of any corruption crime, committed by an employee of the institution.

It should be noted that in any self-respecting enterprise, organization, institution, regardless of ownership, whether public or private, much attention is paid to risk management and implementation of the ISO standard 31000:2009 "Risk management. Principles and Guidelines".

The crucial role in the institutional risk management is played by the introduction of Law of the Republic of Moldova No. 229 of 23.10.2010 "On State Internal Financial Control", providing for the need to implement financial management, control and internal audit in all the central and local public authorities, public institutions, as well as autonomous bodies / institutions disposing the national budget. The ways to organize the financial control, stipulated by this legal act, in some positions are similar or identical to the methods of corruption risk assessment. In order to avoid duplication, experts offer to combine similar methods and steps to further use of the results for the development of the Integrity plan and the Declaration on good governance.

3.4. *Anti-corruption expertise of draft legislation*

Anti-corruption expertise of draft legislation is considered to be one of the measures to prevent corruption.

Original prerequisites to defining conceptual fundamentals of anti-corruption expertise of legislation emerged in 2004 with signing by the Republic of Moldova of the UN Convention against Corruption, Article 5 of which states, that each State Party to the Convention shall endeavor to periodically evaluate relevant legal instruments with a view to determining their adequacy to prevent corruption. Then, the tasks of organizing the expertise were reflected in the National Strategy for Prevention and Combating Corruption, adopted by the Parliament of the Republic of Moldova on 16.12.2004 № 421-XV. Finally, in 2006, the Government Decision approved the Regulation on organizing the process of performing anti-corruption expertise of draft legislative and normative acts, which designates

the National Anti-Corruption Centre as a responsible body for carrying out anti-corruption expertise. Implementation of anti-corruption expertise of draft legal acts and regulations of the government, as well as other legislative initiatives submitted to the Parliament, in order to establish their compliance with the state anti-corruption policy, is one of the tasks of the Centre, according to Article 4 of Law №. 1104-XV of 06.06.2002 on the National Anti-Corruption Centre.

Law No. 90-XVI of 25.04.2008 "On Prevention and Combating Corruption" defines anti-corruption expertise as an independent measure to prevent corruption.

The most important element of any expertise is its object, and anti-corruption expertise is not an exception to this rule. In accordance with the applicable national legislation, the objects of anti-corruption expertise are all draft legal acts and regulations of the government.

A draft legal act and/or regulation is the original version of the document, formally introduced in the prescribed manner by a competent law-making body for preliminary discussion, clarification or expert evaluation before making the final decision by the competent state authorities.

Therefore, if provisions of a draft regulatory act are exclusively considered to be the object of study, the moments associated with the development, harmonization, adoption of this regulatory act are beyond expertise. In this case, the question arises: could the violation of individual procedures of the regulatory act adoption become a source of corruption?

The purpose of the expertise is to verify the compliance of the object of examination with the national and international anti-corruption standards, as well as to prevent the emergence of new regulations that foster or may foster corruption.

The task of anti-corruption expertise is to early detect corruption-factors that create potential opportunities for corrupt decisions and actions of law enforcement subjects – officials, state and municipal employees, government agencies, heads of commercial and non-profit organizations. It should be noted that defects of a regulatory act, which can generate (or have already generated) corruption, are corruption-factors.

The above general formulations of the purpose and tasks of anti-corruption expertise give impression that we refer not only to a specific study of legal material, but to a quality expertise of a legal act. During projects development most of the indicated tasks are to be fulfilled, as well as social, economic and political validity of their adoption is to be thought over.

Presently, expertise of draft legislation is a common rule aimed at the assessment of a bill's quality. Since the expertise as a whole is a mandatory element of the law-making process, it's necessary to note that there are several types of expertise: legal, anti-corruption, economic, financial, scientific, ecological and other expertise, including compatibility with the Community laws. The type of expertise is assigned depending on the regulated public relations. Along with the above examinations, all draft legal acts are subject to mandatory linguistic expertise.

Goals and stages of anti-corruption expertise, corruption-factors typology, structure, requirements for the form and content of the expert report on the anti-corruption examination of draft legislative and normative acts shall be regulated by the Methodology for conducting anti-corruption expertise of draft laws, approved by the order of the Director of the National Anti-Corruption Centre.

According to the Methodology, **anti-corruption expertise of draft laws and regulations** (hereinafter – expertise) is the process of assessing the compliance of the content of draft laws and regulations (hereinafter – projects) with the national and international anti-corruption standards in order to identify corruption-factors and to develop recommendations to eliminate or reduce their consequences.

Examination consists of three independent, consistent stages: overall evaluation of the project; conceptual assessment; expert report on the corruption potential of the project.

During the first stage the person, conducting the examination, evaluates the validity of the project and its compliance with the national and international anti-corruption standards. At this stage, the expert should pay attention to the economic and financial costs to implement this bill, the total amount of funds, justification for estimated costs; he also considers whether the project contains implicit encouragement or damage to group or individual interests, if there is no reasonably justified public interest. This information must be clear, truthful and sufficient to prevent false or ambiguous interpretations.

Any legal act or regulation is a carrier of certain interests: general, group and individual. During the evaluation it is necessary to identify the interests, fostered by the future legislative instrument, as well as persons who may benefit or suffer detriment as a result of the project implementation. Information regarding such persons and criteria for their selection should be clearly set forth in the project or in the explanatory notes. Particular attention should be paid to projects that are designed to promote group or individual interests. If the project leads to encouragement or damage to any group or individual interest, this project should be checked for compliance with the public interests.

Anti-corruption expertise would not make sense and would not be called so, if checking the compliance of the project with the anti-corruption standards were not an integral part of this process. The term “anti-corruption standards”, which is common in the world legal practice, refers to a specific set of fundamental, officially fixed rules, with which the regulatory provisions regulating specific types of state activity must comply in order to limit corruption processes in it, to allow timely detection of specific cases of corruption, to prevent their negative consequences.

National anti-corruption standards are included in different national anti-corruption laws and regulations, as well as in the acts relating to other areas (accounting, audit, etc.). International anti-corruption standards are included in universal international regulations (United Nations documents), as well as regional regulations (documents of the Council of Europe, the Organization for Economic Cooperation and Development, the European Union, the Group of States against Corruption (GRECO), etc.). Assessing the compliance of the project with the national and international anti-corruption standards involves the identification of provisions that do not meet or contradict them.

At the second stage (conceptual assessment) corruption-factors of legal acts are identified, conclusions are drawn and recommendations are developed to eliminate or reduce the impact of these factors. According to the typology of corruption-factors, they are divided into certain groups.

Unclear wording. A normative legal act must comply with the rules of legal techniques and be formulated clearly and precisely. The use of ambiguous or unsettled terms, concepts and definitions, evaluative categories with unclear, vague content, allowing different interpretations, increases the risk of corruption. Different terms used to define one and the same phenomena may distort the meaning of the legal provisions, which increases the risk of an arbitrary application of the legal acts. Unclear rules establishing legal responsibility are unacceptable. During the examination, particular attention should be paid to obscure wording of provisions, which regulate legal responsibility, powers of public authorities and control mechanisms.

Shortcomings of legal techniques and linguistic errors can lead to serious negative consequences as uncertain and obscure provisions can be understood ambiguously, that allows the official to widely interpret the provisions and increases the risk of their arbitrary application. Unclear provisions establishing legal responsibility are unacceptable. According to E. Galashina, legal-linguistic ambiguity is logically considered a separate independent corruption-factor, which is subject to mandatory evaluation during anti-corruption expertise.

Any, even the slightest uncertainty in the design of a legal text may cause inconsistencies and contradictions in its interpretation that can be seen as a corruption-factor. Corruption potential of a legal act refers to its ability to establish such relationships, which increase the risk of abuse of power.

Thus, the text of a draft legal act or regulation is to be written in the state language, adhering to the following rules:

- sentences must be made up in accordance with grammatical rules so that thoughts are expressed correctly, concisely, avoiding ambiguity, and should be easy to understand by all the interested readers;
- one sentence expresses only one thought;
- usage of appropriate, commonly understood terms, compatible with those used in the Community legislation;
- concepts are defined by the corresponding terms, but not by definitions or descriptions;
- terminology is used in the same meaning and the same form as in other legislative acts of the Community; one and the same term should be used if it is correct and if its re-use doesn't lead to ambiguity;
- a neologism mustn't be used if there is a commonly used synonym. If the use of foreign terms and expressions cannot be avoided, their equivalents in the state language should be given, if possible;
- a draft legal act must be written in a simple, clear and concise language, avoiding any ambiguity and strictly observing grammatical and spelling rules. Archaisms and dialecticisms must not be used. Legal texts should be dispositive, establishing standards without any explanation or substantiation;
- legal tautology is excluded;
- the rules of spelling and punctuation are strictly obeyed.

Example. The phrase "in the form and amount sufficient for identification" is evaluative and unclear due to absence of the sufficiency criterion for identification. In this case, the word "sufficient" can be interpreted by an authorized official at his discretion, depending on the benefits or a personal interest; therefore, it can be determinant for corrupt application of the law.

Conflict of laws. Conflict of laws is the discrepancy (contrast) of content of two or more current regulations dealing with one and the same issue, i.e. regulating the same relationship, but differently. Regulations with conflict potential enable officials, responsible for the implementation of legislative or regulatory acts, to abuse the applied legal norms. In order to detect a conflict of laws, it's necessary to analyze both the draft law and legal acts of different levels related to it.

Inner and outer referential "white norms". Inner references refer to legal norms contained in the same act. Outer references refer to legal norms contained in other acts. Both have a certain degree of corruption potential. Possible corruption potential increases in case of so-called "white norms", referring to legal norms that should be accepted. Outer references are justified only if the fundamental regulating norms are provided by law.

High corruption potential of outer references becomes evident when the detailed regulation of legal relations (usually manner and timing of performing certain obligations or powers) is left to discretion of any authority. Thus, this authority may itself create conditions for its activities, sometimes to the beneficiaries' detriment. While assessing the corruption potential of inner and outer references, it is important to determine their nature and consequences, to analyze the degree of coverage by applicable legal norms.

Examples: references refer to existing legal acts or regulations, without specifying their titles, and set any rules or define any criteria; refer to laws or regulations, which were not adopted; provide authorities with a possibility to set rules, criteria and procedures to implement them and to impose sanctions for non-compliance.

Excessive discretionary powers of public authorities. Legal norms, investing officials with unfounded discretionary powers, constitute the bulk of corrupt legislation. In case of draft legislation regulating activities of public authorities, particular attention should be paid to those, who are authorized to take decisions, applicable to these authorities.

Examples: authorization to apply provisions (decision-making), without defining clear criteria for such decisions; absence of clear timing or excessive terms for decision-making; authorization to determine and extend the terms of decision-making without any restrictions or without providing clear grounds for such extensions; absence or insufficiency of tendering procedures for granting contracts and concessions; providing parallel competences.

Excessive requirements for individuals to be met while implementing their rights. Requirements are excessive, if they demand unreasonably considerable efforts. Particular attention is paid to projects (permits and registrations), regulating powers and duties of public authorities.

Example: the list of grounds to refuse the exercise of rights is open (non-exhaustive) or refers to the grounds for refusal set out in other regulations, including departmental; if they contain conditions, the implementation of which is difficult (e.g. the requirement to conduct a costly examination of documents, which in themselves are not significant); if they contain a non-exhaustive list of conditions, allowing the public authorities to impose additional arbitrary requirements for rights holders; if they contain conditions adapted to certain individuals or groups (e.g. licensing terms, adapted to a sole supplier of a particular sector).

Limited access to information, lack of transparency. Lack of transparency in the work of public authorities may be a corruption-factor if there are no or not enough legal provisions establishing mandatory accountability of the public authorities to the civil society; if there are no or not enough legal provisions ensuring transparency of information on public authorities through information technologies.

Absence / lack of control mechanisms. Assessment of control mechanisms includes examination of internal and external controls, as well as rules of reporting on performance results. In this respect, the project may be prone to corruption if it: lacks clear procedures to monitor the process of the project implementation; lacks internal or judicial procedures to challenge the actions and decisions of the public authorities, adopted within the powers and duties provided by the project.

Inadequate liability and sanctions. It is necessary to identify and analyze draft provisions relating to the determination of liability and sanctions for violations of the law. In this regard, corruption-factors include: lack of clearly defined liability of individuals and public authorities for the violation of the project's provisions; lack of specific and proportionate penalties for the violation of the project's provisions.

After the examination the expert draws up a report, which contains specific recommendations to eliminate or reduce corruption-factors, as well as, if necessary, recommendations to supplement the draft regulation with anti-corruption provisions. The report shall be signed by the person, conducting expertise, and sent to the authority – the author of the project. Reports are published on the website of the National Anti-Corruption Center of the Republic of Moldova.

3.5. *Corruption diagnostics and measurement tools*

Corruption is quite difficult to measure. This is primarily due to the fact that it (as other types of "shadow economic activities") is, in principle, concealed from official statistics. Since public officials have more opportunities to hide their crimes than ordinary citizens, corruption is reflected in the crime statistics less than many other types of crime. In addition, many types of corruption are not directly related to monetary remuneration, and therefore can not be valuated.

Measuring corruption is an important element of any national or regional anti-corruption strategy. It helps to assess the overall level of corruption in a country or a sector of economy and to identify "hot spots" where corruption level is high and should be treated as a burning problem. Regular surveys of corruption are the source of information about the factors, which give rise to various forms of corruption, and help to develop adequate anti-corruption measures. Measuring corruption is a powerful tool for policy implementation: surveys attract attention to and enhance public awareness of corruption dangers and help citizens to put pressure on their governments. Monitoring of corruption through its measurement helps to carry out anti-corruption measures more effectively. The main tasks of measuring corruption are:

- taking state decisions: identifying "hot spots" and the factors that give rise to corruption in order to develop effective anti-corruption policy;
- implementation of policy: raising public awareness of corruption dangers, exerting public pressure on the governments, supporting regular monitoring of corruption in order to strengthen the policy enforcing mechanisms;
- decision-making in the private sector: recommendations for investment and other decisions.

Today, the civil society and the private sector are the most active actors in the process of measuring corruption; recently some international financial institutions (IFIs), international organizations and researchers have significantly stepped up efforts in this direction. The media widely use materials and conclusions of these studies, as well as commentaries, and call on governments to respond them adequately in order to change the situation.

Corruption is extremely difficult to measure. As a rule, it is hidden from others, and participants of corrupt deals are almost always not interested in disclosing the substance of these deals. Researchers face the following methodological problems:

- novelty of research subjects;
- implicit nature of corruption.

At present, the survey of public opinion is the most commonly used diagnostic tool to measure the level of corruption. Study groups consist of representatives of the civil society, private sector and government segments. Typically, these surveys provide information about certain elements or types of corruption in the country. Most of these studies aim at identifying subjective opinions of respondents through direct questions about the experiences and practices of citizens or private enterprises.

This approach has been adopted by many countries, international and regional organizations. Reputable organizations regularly publish indices, assessing activities of public officials and their social status from different perspectives. These indices are: the Corruption Perceptions Index (CPI) and the Bribe Payers Index of Transparency International, Index of Economic Freedom of Heritage Foundation, Freedom House's "Democracy's Century" surveys, the Opacity Index of PricewaterhouseCoopers and other indices.

We will consider the most famous and powerful ones.

1. The World Bank studies corruption in the framework of the Business Environment and Enterprise Performance Surveys (BEEPS), which are conducted since 1999 once in three years through interviews of owners and senior managers of companies from Central and Eastern Europe, the former Soviet Union and Turkey. To date, four studies are available. This study covered about 3,000 companies. According to the reports of 2005 and 2008, corruption takes the 3rd place out of 14 main factors impeding business development.

Despite the fact that corruption is considered to be one of the main obstacles to business, according to the 2008 survey, as compared to 2005, the number of entrepreneurs, who admitted that they often have to pay bribes, decreased.

Another project of the World Bank – World Governance Indicators (WGI) – is also associated with corruption study. Since 1996 the survey has been conducted 12 times in 200 countries. The index is based on 30 data sources, among them – world sociological studies, data of state bodies and independent experts from certain countries. One of the indicators to measure the quality of governance is the corruption control indicator. Recent reports indicate, that along with a marked decline in bribery, control over corruption has increased.

2. Since 2005, the World Economic Forum analyzes economic situation in different countries using the Global Competitiveness Index (GCI), in which one of the indicators is also corruption. The GCI is currently compiled for 142 countries and is based on the key economic indicators and more than a hundred of world rankings.

Results of the study of economic progress suggest that the problem of corruption in all the countries is very acute. According to some individual indicators it enters the first quarter (innovation potential – 38th place, market growth – 8th place, education – 27th place). At the same time, experts have called corruption the most important obstacle to the development of business (it causes almost a quarter of problems – 22.8%). Corruption is followed by the negative impact of inefficient bureaucracy (13.3%), crimes, low availability of credits, inflation, tax regulations (5 to 10%).

3. At present, the Corruption Perceptions Index (CPI), compiled by Transparency International (TI), is one of the most popular and reliable surveys. This non-profit organization, specialized in corruption study, gathers data from scientific studies conducted in different countries by individual economists and organizations over 3 years prior to the calculation of the composite index. The results of these studies are compared to subjective corruption assessments given by businessmen and analysts from different countries. It summarizes expert opinions on the level of corruption, defined as the abuse of public office for private gain, and includes ratings of experts and business leaders rather than statistics. In the process of compilation of individual studies data, each country receives a score on a 10-point scale, where 10 points indicate the absence of corruption (the highest "transparency" of the economy), and 0 points – the highest degree of corruption (the lowest "transparency").

The CPI has been published annually since 1995. The database used by Transparency International is constantly growing: in 1995 the CPI was calculated for 41 countries, in 2003 – for 133 countries, in

2003 it integrated the results of 17 surveys of public opinion conducted by 13 independent institutions, and in the final list were included only those countries that were covered by at least three studies. In 2011, the index included data for 183 countries, taken from 17 different sources of 13 institutions.

All the sources used to calculate the index contain ratings of countries, and they all measure the overall level of corruption, i.e. the frequency and/or extent of corruption in public sector. Other researchers willingly refer to TI reports. In particular, the Global Corruption Barometer compiled by TI is one of the sources to prepare the Control of Corruption indicator for the World Bank's Worldwide Governance Indicators.

The Corruption Perceptions Index is a global research and accompanying rating of countries in terms of corruption in the public sector, where corruption is defined as "any abuse of public office for private gain". The Index focuses on experts' estimates, because, as project promoters explain, when measuring corruption statistics, e.g. the number of corruption-related prosecutions or court decisions, as a rule, "does not work". These data, firstly, are not always available, and, secondly, reflect mostly not the real level of corruption, but efficiency of the law enforcement agencies to detect and prevent corruption. In this situation, the only reliable source of information, according to the researchers, is the opinion and testimony of those who directly face corruption (entrepreneurs) or professionally study it (analysts).

The Corruption Perceptions Index is a composite indicator, calculated on the basis of the data obtained from the expert sources provided by international organizations. All sources measure the overall extent of corruption (frequency and/or amount of bribes) in public and economic sectors and include assessments of many countries.

Sources providing data for the CPI rely on the opinion of experts living in and outside the country being assessed, as well as on corruption-related data from expert and business surveys carried out by a variety of independent institutions. The Index ranks countries and territories on a scale from 0 (the highest level of corruption) to 100 (the lowest level of corruption) on the basis of perception of corruption in the public sector. The final ranking includes the score and rank, as well as the number of sources, the difference between the highest/lowest indicators for each country on the basis of relevant sources, the standard deviation and the confidence interval for each country, which allows to draw conclusions about the accuracy of the index for each country.

The organization makes considerable efforts to ensure accuracy of primary data used to compile the index and validity of the final results. According to the requirements, a country can be included in the list only if there are at least three sources of information. In general, the index is a relatively reliable measurement tool. However, it has some disadvantages. For example, the degree of reliability of the measurements is not the same for all the countries. Index scores and corresponding ranks of countries, in which the level of corruption is estimated on the basis of a relatively small number of sources and which are characterized by a wide variation of the estimates, may eventually prove to be not quite adequate. Since noticeable changes of corruption level occur slowly enough, the Index is based on the averaged data collected over the last three years. That is, the index indicates the current experts' estimates of the level of corruption, without focusing on changes going on from year to year. Therefore, the index does not always reflect the real dynamics, since its fluctuations may be caused by adjusting of sampling, methodology and sources of information (not all of them are updated annually), and the country's place in the list may change dramatically just because the list of countries included in the rating changed. With a clear objective-setting for measuring corruption (why measure corruption?) and target audience (who will measure corruption and for whom?) it is important to define the scope and subject of study (what to measure?): level of corruption in a country / city / region / sector – corrupt practices (e.g. the amount and frequency of bribes, services requiring severe payments, etc.); level of corruption: corruption perception (e.g. possibility of obtaining services through bribes, bribery reliability, general attitude towards the possibility of bribery, etc.); indicators of governance (e.g. judicial independence, regulatory burden, informal sector); indicators of public

confidence (e.g. general level of public confidence in the authorities at the national and local levels, overall credibility of the executive, legislative, judiciary powers and law enforcement agencies, etc.); efficiency of business; risks of corrupt business; other criteria (freedom of information, political corruption, etc.).

These diagnostic indices play an important role in raising anti-corruption awareness of citizens, but as a means of specific policy reforms they have serious limitations. The Minister of Health can not formulate policy recommendations based on the knowledge that corruption affects infant mortality. The Minister of Finance will not know what to do with the information about the negative impact of corruption on the growth of GDP per capita or on attracting foreign direct investments. In this case, projects, focused on measuring corruption in public and private sectors, can provide valuable additional information. At the institutional or strategic level, the quantitative research is complemented by the qualitative research of integrity systems and ethical institutions. Presently, there is a growing trend to conduct qualitative researches, such as surveys of ethics in public service. Some of them have an explicit anti-corruption focus; others analyze institutional system in which corruption continues to flourish. This approach needs detailed justification and explanation. There is no common or consistent strategy or methodology for qualitative research of corruption, as matters under investigation are rather specific and should be treated differently: use of checklists, expert surveys, expert interviews, focus groups, etc.

The main advantage of the qualitative research of corruption lies in the fact that these studies outline and analyze the extent of a particular matter or the level of corruption in a particular sector. In some cases, the data and analytical materials can be used as an additional source of information to develop a strategy, and to take concrete measures in order to solve a specific problem or impact on a particular sector. The main drawback is that the data of identical studies on specific sectors or countries are difficult to compare; sometimes even within a country they can not be considered as a comprehensive diagnostics of corruption; though recent efforts of OECD to develop and implement the methodology for comparative study of national anti-corruption strategies, as well as corruption and anti-corruption policies in the EU candidate countries (EUROMAP), conducted by the Open Society Institute, prove that qualitative studies of corruption are effect-oriented. At the same time, the majority of qualitative researches focus on the study of acts of corruption, but they are not specifically aimed at the study of the problem of corruption as such.

Module III. CLASSIFICATION OF CORRUPT PRACTICES AND LEGAL LIABILITY THEREFOR IN THE REPUBLIC OF MOLDOVA AND UKRAINE

Theme 1. CLASSIFICATION OF CORRUPT BEHAVIOR

1.1. *Classification of corruption offences*

In the modern world corruption is definitely regarded as a negative phenomenon in the field of politics and public management, as a destructive factor in public life, which determines the state of national security of any country, as an obstacle to real democracy and welfare of the population. There are a number of reasons for corruption emergence and its widespread occurrence in political, economic, cultural, spiritual, social and structural organization of society. All of its manifestations are mostly noticeable in social life, they impact on the degree of protection of citizens, their rights and freedoms. The destructive effect of corruption can be undoubtedly put in the center of all the current social conflicts. Socially destructive consequences of corruption appear in all the spheres of social life. A corrupt state can be neither democratic nor legal, neither economically nor social developed.

The scale of corruption gives reasons to rate it as the most dangerous phenomena for public management and social life. Studies of the problem of corruption are now updated and cover different areas – institutional and legal (adequacy of legislative and regulatory means and methods of combating corruption), organizational and managerial (functionality in power-sharing and control over application of such powers by officials), axiological, ethical and cultural. All these have created conditions for the development of the methodological framework for corruption studies.

Corruption as a political-legal and social phenomenon is an informal, deviant behavior of the governing elite, which manifests itself in illegitimate use of its social benefits and powers. Among risks of corruption are: distortion of social relations, destruction of the normal order of things in society, resulting in the “corrosion” of public institutions.

In general terms, there are several approaches to the definition of corruption:

1. Corruption as deviation from the norm.

2. Corruption and group behavior strategy.

3. Corruption as systemic inefficiency.

4. Corruption as realization of interests.

Each of these approaches has the right to exist; each covers a certain aspect of corruption and allows to enrich its definition as a social phenomenon.

The first approach treats corruption as some deviations from the law, professional ethics or universal moral principles. Thus, corruption is a set of offences – from criminal to unethical – committed by certain persons. These persons may be deputies, they can work in ministries, commercial companies or trade-unions. The following section focuses on “state” corruption, i.e. corruption, in which public officials are involved.

State corruption exists, because officials have an opportunity to administer resources, which do not belong to them, through adoption or rejection of certain decisions. Some of these resources are: budgetary funds; state or municipal property, government contracts or benefits, medical, educational and other social services provided by the state, etc.

A civil servant shall make decisions on the basis of objectives set out by law (the Constitution, laws and other regulations) and socially approved cultural and moral norms. Corruption arises when the actions of an official meeting these goals and standards are replaced by his own actions caused by self-interest. It is enough to characterize such a manifestation of corruption as abuse of public office for personal gain. Officials often act not only in their own interests but also in the interests of other parties (citizens, business representatives and other officials). This party needs certain services provided by the official not in the context of his services duties, but for a fee, which is not provided by legal norms and is concealed from the society by the corrupt deal participants. In this case we speak about bribery as one of the manifestations of corruption. The most common bribery-related activities – taking bribes for "services" or "removing obstacles" – are referred to as **administrative corruption.**

In the framework of this approach different manifestations of corruption are classified according to location and nature of corrupt activities. It is useful to distinguish between grand and petty corruption.

Grand corruption includes politicians, top and middle officials and is associated with making "high price" decisions (legal norms, government orders, sentences of higher courts, change of ownership form, etc.) It is important to note that grand corruption is often generated by the interaction between business and government.

Petty corruption concerns mid- and lower-level officials and is associated with a routine interaction between officials and citizens (fines, registration, health services, housing, social security, etc.). In addition, corruption described in this approach is often classified according to professional sphere: corruption in customs, corruption in tenders and auctions, corruption in education, etc.

Petty corruption is divided into two major categories. First – everyday corruption – is connected with everyday life of citizens and their families. It arises from the need to satisfy the concerns of private life – health, education, leisure, housing, personal protection, etc. Second – business corruption – is connected with economic (in wide sense) activities of individuals and legal entities. It arises from the need to establish and develop firms, to settle their relationship with the state and with each other.

The second approach considers corruption as a universal set of behavioral strategies of large social groups. For example, "purchase" of public services through bribery is a universal strategy to compensate the deficit of services and poor quality of services, which are to be provided by the state. Under this interpretation of corruption, in the first place – business or corruption arising from the interaction between the government and business, it is useful to consider two strategies.

The first of these is commonly called "state capture". This term refers to corporate and individual strategies of business aimed at establishing implicit control over the adoption of administrative decisions, bearing in mind different branches of government, as well as different levels of government (central, regional, etc.).

The second strategy is called "business capture". By this term is understood a set of strategies and tactics of the power, by which the power through its representatives or organizations tries to establish implicit control over business in order to extract collective and (or) individual administrative rent.

These two strategies are universal, because they have always existed in different forms and to different degrees. Both are manifestations of an overall strategy aimed at obtaining resources, which one party doesn't have (or lack), but another party has (in excess). However, state capture and business capture are considered as types of corruption, if these strategies are implemented by illegal or "shadow" means. Finally, the universality of these strategies is proved by the fact that they have always been implemented by relevant social groups in all countries, but in different forms and to different degrees.

The third approach focuses on corruption as a means of interest realization. Corruption exists and is dangerous insofar as it is attractive and beneficial to many people. For civil servants it is a source of additional income, and this income is not only much greater than their salaries, but has its particular glamour in our cynical times.

For an ordinary citizen a bribe given to an official is the only means to make the power serve the public, i.e. this particular person.

Giving a bribe, the citizen tries to surpass both the bribe-taker and those who did not (was unable or unwilling) give a bribe. Bribing is often the only effective remedy for stupidity, arbitrariness and sluggishness of the state machine. At the same time, a bribe is a substitution for other qualities in the fight for scarce services, such as higher education or payment for the opportunity to break the law.

For a businessman corruption is a way to export market relations in those areas, where there is no place for them, and, at the same time, is a means to suppress competition where it is needed by the society, but not by the businessman. A bribe given by a businessman is an acquisition of another's will, appropriation of legal prerogatives of others.

For a politician corruption is not only the comfortable environment, where he, as a mediator between the sphere of decision-making and the sphere, in which these decisions are implemented, gains regular profit. And of course, it is not only a topic to exercise eloquence. Corruption for him is the most important tool of political struggle, it is a hammer, which can overwhelm any opponent. Finally, it is a springboard that can throw him to the top of the power pyramid.

Corrupt relations are convenient and profitable for many people. But at the same time (without doubts) corruption is condemned by the society. The key question is: which of these tendencies is weightier. The strategy and the very fate of the anti-corruption policy may depend on the answer to this question. Corruption is connected with the notion "conflict of interest", which is one of its qualifying characteristics.

By the term "conflict of interest" is meant the situation in which the personal interest of the civil servant affects or might affect the objective performance of his official duties, and in which there is or might be a contradiction between the personal interest of the civil servant and legitimate interests of citizens, organizations, and society.

Situations, in which personal interests of a public servant cause or might cause a conflict of interest, are avoided in order to prevent harm to legitimate interests of citizens, organizations and society.

Article 2 of Law of the Republic of Moldova No. 16 of 15.02.2008 "On Conflict of Interest" defines the basic concepts and provides that concepts used in this Law shall have the following meaning:

- conflict of interest – the conflict between the performance of service duties and personal interests of persons, referred to in Article 3, which might affect objective and impartial performance of their statutory powers and duties;

- public interest – the general public interest in impartial and legal decision-making by officials in the framework of their service duties;

- personal interest – any interest, tangible or intangible, of persons referred to in Article 3, arising from their personal needs or intentions, from the actions that could be legitimate if they were acting as private persons, from relations with their relatives or legal persons irrespective of the form of ownership, from personal relations with political parties, NGOs, international organizations, which is the consequence of their preferences or obligations;

- related persons – husband (wife), relatives by blood or adoption (parents, children, brothers, sisters, grandparents, grandchildren, nephews, uncles, aunts) or relatives by marriage (brother-in-law, sister-in-law, father-in-law, mother-in-law, daughter-in-law).

One thing is certain: getting of an official in circumstances that give rise to a conflict of interest is a precondition of corruption (of course, not every conflict of interest leads to corruption).

Interests – one of the operating forces of corruption. But interests can be eliminated only with their carriers. Therefore, to curb corruption as an instrument to realize private interests, some means of realizing interests must be indemnified by others.

From the sociological point of view, corruption as the use of public service for personal gain in wide sense is the realization of officials' private selfish interests, a form of illegal "social tax", levied by the corrupt state apparatus from the society. And unlike legitimate taxes and fees, this "tribute" is spent not on maintenance and development of state apparatus, but is misappropriated by officials. It is also the source of social contradictions in the society, the basis of forming quasi-civil relations in the sphere of public administration and direct social threat of deformation of state objectives to regulate processes of social development.

The fourth approach is based on the principle of separating corruption as a systemic social phenomenon from particular types of corruption (petty and grand, west and east, state capture and business capture). In this case, corruption is generally treated as a common defect of the system (state, society, legal system, economy). Then, corruption may be regarded as a "friction force", which should be overcome by the society in order to complete its tasks, as "entropy" of the social system (a measure of internal disorder, a measure of uncertainty according to traditional definitions), or, more narrowly, as entropy of the management system. No wonder that many interstate studies prove: the level of corruption (in wide sense) in different countries highly correlates with efficiency indicators of economic, social and political systems in these countries. Corruption can be generally considered as a measure of social inefficiency. Moreover, certain manifestations of corruption are indicators of this inefficiency in specific areas of regulation or, in other words, in specific areas of relationships between government and society.

That is why, it seems rather reasonable that corruption is impossible to be limited exclusively by repressive methods, that in order to complete this task it's necessary to apply comprehensive institutional measures ranging from policies and procedures of political representation to procedures of providing state services to citizens.

Having analyzed the national and foreign adaptive practices some authors state, that corruption is primarily the system of relations based on illegal activities of officials to the detriment of state and public interests. "As a social phenomenon, – according to scientists, – corruption covers all forms of abuse, in which official powers are used for personal profit, and this profit is not necessarily material."

It should be added, that being **a social threat** corruption manifests itself as a destructive factor in the system of social relations in the society, its wide occurrence strengthens the system of pseudosocial relationships and interactions. For example, the original principles of social exchange in the field of interaction between the government and business are violated, instead of them various forms of merger of power and shadow capital, power and criminal structures are rooted in the state and society. Such pseudosocial ties more often appear at the level of government agencies, which undoubtedly distorts the objectives of the state's social policy.

According to existing international assessments, state corruption can be defined as illegitimate and mostly illegal use of public resources for private gain, including personal enrichment.

The state can not prevent taking protective measures against the spread of corruption in government, otherwise it will lose its subjectivity in the system of social control, and the real power will go to various pseudogovernment corrupt structures. But anti-corruption tasks should be based on not only well designed, but also practically verified methodological basis. At present, state management lacks developed and sufficient scientific apparatus.

All forms of corruption flourish in every period of unrest, rearrangements, revolutions, when the property is redistributed and "recaptured", when along with the crisis and instability of authorities the old moral values are destroyed and the new ones are not yet finally formed.

The level of corruption is a kind of thermometer of the society, an indicator of its moral status and ability of the state apparatus to solve problems not in its own interest, but in the interest of the society. And the higher is the resistance of the society, which is primarily determined by its moral demands, the less is the impact of corruption on the functioning of the state apparatus. Among forms of corruption are: nepotism, theft, overpricing, adoption of non-existent projects, tax fraud.

Corruption is not necessarily accompanied by an immediate financial or monetary benefit. There are also implicit forms of corruption: granting privileges; loyalty of civil servants in relation to political parties, relatives, friends, industrial companies; lobbying; favoritism; protectionism; transition of political leaders and government officials to positions of honorary presidents of corporations and private firms; investing commercial firms at the expense of the state budget; transfer of state property into joint stock companies; ties to criminal society, etc.

Of particular social concern is transition of corruption from separate acts to organized nets, when parties interested in corrupt deals belong to the same public organization and the head, who takes bribes, would cover any unlawful act of his subordinates, which often also entails bribe-taking.

The level of corruption – is primarily the indicator of confidence in the state and state authorities. It indicates that the state does not enjoy sympathy, does not give rise to enthusiasm and even loyalty on the part of both citizens and officials. Corruption is not so much a legal concept as social and moral.

Corruption is a complex difficult-to-analyze phenomenon, which involves a variety of factors. It is generally recognized that the root causes of corruption went beyond the state management system and penetrated into internal organizational structure of the political system, relationships between the key state institutions, interactions between companies and relationships between the state and civil society. Corruption can take many forms and be fed from different sources, and its influence is felt at many different levels.

As already mentioned, corruption is a social phenomenon that poses a threat to the state and society and is associated with illegal use of official powers or possibilities (rights, competences) for personal gain. It manifests itself differently: as social deviations from generally accepted ethical and legal standards of conduct of public officials in order to obtain illegal social and economic benefits or advantages (it can be considered as a socio-institutional feature and basis of corruption); as a direct, conscious, deliberate violation of law by a public official using his official status for illegal personal tangible and intangible benefits, as well as official's action or inaction in favor of other interested parties, willing to provide him with certain benefits and advantages; as quasi-institutional power relations, based on bribery and corruption of public officials, which gradually replace institutional norms established by law.

Speaking about classification of corrupt behavior, it is necessary to determine classification criteria. Legal literature contains a number of such criteria, but there choice depends on the goals and objectives of the study.

On the grounds of illegality all acts of corruption can be divided into acts entailing criminal liability, i.e. crimes and administrative offences, and other offences entailing disciplinary or other kind of responsibility.

The legislation of the Republic of Moldova clearly defines what acts or activities of public officials are considered as acts of corrupt behavior.

Thus, in accordance with Article 15 of the Law "On Prevention and Combating Corruption" of 25.04.2008, the following activities of the persons, who are subject to this law, are recognized as facts of corrupt conduct:

- interference in the work of other bodies, enterprises, institutions and organizations, regardless of form of ownership and legal organization, using official position, if it is not within their competence, which leads to a conflict of interest;
- participation in voting or decision-making associated with discussing and solving problems connected with personal interests or interests of related persons;
- rendering assistance, not provided by regulations, to business or other private activities or acting as charge d'affaires of third parties in public administration, in which they work, which is subordinate to them or the activities of which they control;
- unjustified preferential treatment of certain persons or entities in preparing and making decisions;
- using privileges in obtaining credits and loans for themselves or others, purchase of securities, real estate and other assets as a result of malpractice;
- unlawful use of public property, provided at their disposal for the performance of official duties;
- using for personal advantage or advantage of other persons information, obtained for the performance of official duties, if it shall not be disclosed;
- denial for personal advantage or advantage of other persons to provide information, permitted by regulations, to individuals or legal persons, delay in providing such information, deliberate provision of false or selective information;
- inappropriate allocation of material and financial public resources, for personal advantage or advantage of other persons;
- receiving from any individual or legal entity gifts or benefits, which could affect honest performance of official duties, with exception of cases prescribed by law.

All the above facts of behavior are reflected in articles of the Criminal Code of the Republic of Moldova or the Code of Administrative Offences of the Republic of Moldova.

Legislation governing relationships of civil servants contains direct references to the types of liability for acts or facts of corrupt behavior. The provisions of the above Law directly classify acts of corruption. Article 16 of the Law provides as follows:

1. Subjects of acts of corruption or facts of corrupt behavior, individuals and legal entities bear responsibility under the Criminal Code for culpable acts of corruption.

2. Acts of corruption are:

   - active corruption;
   - passive corruption;
   - benefiting from influence;
   - receiving a bribe;
   - giving a bribe.

3. Acts related to acts of corruption are the following activities directly linked to them:

   - abuse of power or position;
   - excess of authority or official duties;
   - legalization of proceeds derived from acts of corruption;
   - obstruction to justice;
   - appropriation of property;
   - causing material damage by false pretences or abuse of confidence;
   - destruction of or damage to property;
   - protectionism;
   - falsification of voting results;
   - bribery of voters;
   - forgery;
   - falsification of accounting records.

All these offences are scattered in various chapters of the Criminal Code of Moldova. In addition to criminal liability, the Law provides for other forms of liability. Article 17 contains relevant provisions.

Article 17. Other forms of liability

Violation of the provisions of this Law shall entail, as appropriate, civil, disciplinary or administrative liability under applicable law, including:

- committing acts of corruption or facts of corrupt behavior, if these actions do not constitute a crime, by individuals or legal entities;
- failure to comply with the restrictions and prohibitions specified in legal acts regulating the special status of civil servants, political appointees, and other persons providing public services;
- violation of the law on declaration of income and assets, as well as legal obligations on conflict of interest;
- failure to report acts of corruption by persons whose duties include it;
- failure to ensure implementation of anti-corruption measures by persons having such authority;
- failure of competent persons or bodies to ensure implementation of protective measures, provided by law, for public officials who report in good faith acts of corruption and acts related to corruption, facts of corrupt behavior, non-compliance with the rules of declaration of income and assets, and breach of legal obligations on conflict of interest;
- other violations stipulated by legislation.

1.2. *Subjects of corruption offences*

1.2.1. *Subjects of corruption offences (according to legislation of the Republic of Moldova)*

Article 4 of Law of the Republic of Moldova No. 90 of 25.04.2008 "On Prevention and Combating Corruption" determines subjects of acts of corruption or facts of corrupt behavior and states that the provisions of this Law shall be applied to:

- officials, high-ranking officials, employees of the cabinet of high-ranking officials, employees of autonomous or governing bodies of public authorities, electoral candidates, proxies of electoral candidates and others provided by law;
- persons administering commercial, public or other non-governmental organizations;
- foreign public officials and international civil servants.

The Criminal Code of the Republic of Moldova defines the concepts "official", "public official" and "high-ranking official".

According to Article 123 of the Criminal Code of the Republic of Moldova, an official is a person who in an enterprise, institution, state, or local public administration organization or a subdivision thereof is granted, either permanently or temporarily, by law appointment, election, or assignment certain rights and obligations related to exercising the functions of a public authority or to administrative management or to economic/organizational actions.

Public official is a government employee, also with a special status (employees of a diplomatic service, customs, defence agencies, national security and public order, other persons having special or military rank); an employee of an autonomous or regulatory body of public authority, state or municipal enterprise, other legal entities of public law; an employee of the cabinet of high-ranking officials; a person authorized by the state to provide public services on behalf of the state or act in public interests.

A high-ranking official is an official person whose appointment or election is regulated by the Constitution of the Republic of Moldova or who is appointed according to the law by the Parliament, the President of the Republic of Moldova or the Government; an adviser to a local council; a deputy of the People's Assembly of Gagauzia; a person to whom a high-ranking official delegates his/her duties.

Article 123 of the Criminal Code of the Republic of Moldova gives definition to a foreign public official and an international civil servant.

1. A foreign public official is any person appointed or elected, who has legislative, executive, administrative or judicial mandate of a foreign state; a person exercising a public office for a foreign country, including foreign public agency or public enterprise; a person acting as a juror in the judicial system of a foreign state.

2. An international civil servant is an employee of an international or supranational organization or any person authorized by such an organization to act on its behalf; a member of the parliamentary assembly of an international or supranational organization; any person exercising judicial functions in the international courts, including functions related to court records.

According to Article 124 of the Criminal Code of the Republic of Moldova a person administering a commercial, social, or other non-governmental organization is a person who within the above-indicated organizations or subdivisions thereof is granted, either permanently or temporarily, by appointment, election, or assignment, certain rights and obligations related to exercising administrative management or to economic/organizational functions or actions.

To define the main concepts related to the public office and the status of a civil servant, one should turn to the provisions of Article 2 of Law of the Republic of Moldova No. 158 of 04.07.2008, according to which:

- civil service – public interest activity, organized and carried out by a public authority;
- public authority – any organizational structure or body established by a law or any other normative act, operating as a public power aimed at promoting a public interest;
- public position – totality of responsibilities and obligations established by law for the purpose of carrying out the competences of the public authority;
- civil servant – an individual appointed to a public position under the provisions of this Law;
- public dignity function – a public function held through a mandate obtained directly, as a result of organized elections, or indirectly, through appointment, under the provisions of the law;
- management of public functions and civil servants – totality of activities necessary for the implementation of the procedures of HR planning, employment, professional development, remuneration and assessment of the civil servants' professional performance, as well as other HR policies and procedures for the purpose of accomplishing most efficiently the mission and strategic objectives by the public authority.

Article 4 of the above Law directly states that:

1. Provisions of this Law shall be applied to civil servants from public authorities specified in Annex 1.

2. Provisions of this Law shall apply to civil servants with special status (employee of a diplomatic service, customs service, defence agencies, national security and public order bodies and other categories established by law) if not regulated by special laws.

Public authorities, subject to the Law on Public Office and Status of Civil Servant (Annex 1) are:

- Office of Parliament;
- Office of the President of the Republic of Moldova;
- Government Office;
- Office of the Superior Council of Magistrates;
- Secretariat of the Constitutional Court;
- Office of the Supreme Court of Justice;
- Centre for Human Rights;
- Office and units of the Court of Accounts;
- Office of the Central Electoral Commission;
- Office of the Academy of Science of the Republic of Moldova;
- Office of the National Council for Accreditation and Attestation;
- Office of the National Integrity Commission;
- Office of the Council for Prevention and Elimination of Discrimination and Promotion of Equality;
- Offices of other public authorities set up by Parliament, President of the Republic of Moldova or Government;
- Specialized central public administration authorities and other administrative authorities (central offices, deconcentrated public services, other public administration bodies under the subordination of specialized central public administration authorities);
- Offices of local public administration authorities, offices of autonomous territorial unit with special status, and their decentralized services;
- Offices of the Courts, Prosecutor's office, bodies of the diplomatic service, of the customs service, bodies ensuring defence, national security and public order (persons holding public positions in the public authorities mentioned above and whose activity is not regulated by special legislative acts).

Law of the Republic of Moldova No. 16 of 15.02.2008 "On Conflict of Interest" also contains the list of subjects, obliged to declare personal interests associated with their positions.

Article 3 of the Law provides that the subjects obliged to declare personal interests are:

- high-ranking officials, indicated in the annex to Law No. 199 of 16.07.2010 "On Public Officials Status";
- members of the Supervisory Board of the National Public Broadcasting Company "Teleradio-Moldova"; deputies of the National Assembly of the Autonomous Territorial Unit of Gagauzia; Deputy Director General of the National Health Insurance Company;
- heads and deputy heads of administrative authorities (public institutions) subordinate to central specialized bodies, state or municipal enterprises, commercial companies sponsored mostly from the state budget, financial institutions with the state or predominantly state capital;
- persons exercising management and control functions in the institutions of public education and public health;
- employees of the cabinet of high-ranking officials;
- public officials, including those with special status.

Provisions of this Law shall also apply to persons authorized in accordance with the legislative acts to make decisions or administer the property owned by the state or territorial-administrative units, including cash, as well as to persons, not civil servants, to whom the state temporarily delegated one of these functions.

In addition to the above regulations, Article 3 of Law of the Republic of Moldova No. 1264 of 19.07.2002 contains the list of subjects of income and assets declaration, namely:

- high-ranking officials, indicated in the annex to Law No. 199 of 16.07.2010 "On Public Officials Status";
- members of the Supervisory Board of the National Public Broadcasting Company "Teleradio-Moldova"; deputies of the National Assembly of the Autonomous Territorial Unit of Gagauzia; Deputy Director General of the National Health Insurance Company;
- heads and deputy heads of administrative authorities (public institutions) subordinate to central specialized bodies, state or municipal enterprises, commercial companies sponsored mostly from the state budget, financial institutions with the state or predominantly state capital;
- persons exercising management and control functions in the institutions of public education and public health;
- employees of the cabinet of high-ranking officials;
- public officials, including those with special status.

Provisions of this Law shall also apply to persons authorized in accordance with the legislative acts to make decisions or administer the property owned by the state or territorial-administrative units, including cash, as well as to persons, not civil servants, to whom the state temporarily delegated one of these functions.

Based on the foregoing, we conclude that the legislation of the Republic of Moldova fully covers and determines persons responsible for acts of corruption.

1.2.2. *Subjects of corruption offences (according to legislation of Ukraine)*

Organization of effective prevention and combating corruption offences primarily requires proper and clear definition of subjects responsible for their committing.

Article 4 of the Law of Ukraine "On Principles of Preventing and Combating Corruption" contains the list of persons liable for corruption offences. They are as follows:

1) persons authorized to perform public or local self-government functions:

- the President of Ukraine, Chairman of the Verkhovna Rada of Ukraine and his/her deputies, the Prime Minister of Ukraine and other members of the Cabinet of Ministers of Ukraine, other heads of central executive bodies, who are not members of the Cabinet of Ministers, and their deputies, the Chairman of the Security Service of Ukraine, the Prosecutor General of Ukraine, Chairman of the National Bank of Ukraine, Chairman of the Accounting Chamber, the Commissioner for Human rights of the Verkhovna Rada of Ukraine, Chairman of the Verkhovna Rada of the Autonomous Republic of Crimea, Chairman of the Council of Ministers of the Autonomous Republic of Crimea;
- people's deputies of Ukraine, deputies of the Autonomous Republic of Crimea, deputies of local councils;
- civil servants, local self-government officials;
- military officers of the Armed Forces of Ukraine and other military formations established in accordance with the law;
- judges of the Constitutional Court of Ukraine, professional judges; Chairman, members, disciplinary inspectors of the High Qualification Commission of Judges of Ukraine, officials of the secretariat of this Commission; the Chairman, Vice-Chairman, section secretaries of the Supreme Council of Justice, as well as other members of the Supreme Council of Justice; lay judges and jurors;
- junior and senior staff of interior agencies, criminal enforcement service, the State Special Communications and Information Security Service of Ukraine, tax police, civil protection offices and divisions;
- officials and personnel of prosecutor offices, the State Security service of Ukraine, diplomatic service, customs service, state tax service;
- members of the Central Election Commission;
- officials and officers of other central government bodies and government bodies of the Autonomous Republic of Crimea;

2) persons conferred to the same status as persons authorized to perform public or local self-government functions:

- officials of legal entities subject to the public law, not mentioned above;
- persons other than government employees or local self-government officials, who render public services (auditors, notaries, experts, appraisers, insolvency officers, independent intermediaries or members of council of conciliation during the settlement of collective employment disputes, arbitrators and other persons as set forth in the law);

- foreign officials (holding positions in foreign legislative, enforcement or judicial offices, and also other persons performing public functions for a foreign state, in particular, government offices or public enterprises), as well as foreign arbitrators, persons authorized to resolve civil, commercial and labor disputes in foreign countries as alternative to court;

- officials of international organizations (employees of an international organization or individuals authorized to represent such organization), members of international parliamentary assemblies, to which Ukraine is a party, judges and officials of international courts;

3) persons, permanently or temporarily holding positions related to organizational, executive, or administrative and economic responsibilities, or persons, specifically authorized to perform such duties at legal entities of private law, regardless of their legal form, in accordance with the law;

4) officials and employees of legal entities, in case they, or other persons with their participation, grant unlawful benefits to the persons listed in paragraphs 1, 2 of this Article;

5) individuals, in case they, or other persons with their participation, grant unlawful benefits to the persons specified in paragraphs 1-4.

Depending on the specific features of the subjects of criminal and administrative offences, legal theory differentiates between general and special subjects.

The special subject of the most crimes under the section of the Special Part of the Criminal Code of Ukraine, providing for the liability for official crimes, and Chapter 13-A of the Code of Ukraine on Administrative Offences is an official. Official crimes committed by a special subject (Article 369 of the Criminal Code imposing criminal liability for offering or giving unlawful benefit to an official) are also associated with the impact on officials. Therefore, an offence committed by an official on duty or by influencing an official is a sign of an official offence.

According to the note to Article 364 of the Criminal Code, officials are persons who permanently or temporary represent public authorities or local self-governments and also permanently or temporary occupy positions in the government, local authorities, state-owned or municipal enterprises, institutions or organizations, which are related to organizational, managerial, administrative and executive functions, or are specifically authorized to perform such functions.

For the purpose of Articles 364, 365, 368, 368-2, 369 of the Criminal Code legal entities, in the authorized capital of which the state or municipal share exceeds 50 percent or is sized to allow the state or local community to exercise a dominant influence on the economic activity of the enterprise, are equal to state or communal enterprises.

Officials also include officials of foreign states and officials of international organizations.

Thus, all officials can be divided into three categories:

1) public officials;

2) persons charged with organizational and administrative powers;

3) persons charged with administrative and economic powers.

Public officials are employees of state agencies and institutions, authorized within their competences to make demands and decisions binding on individuals and legal entities regardless of their affiliation.

Organizational and administrative duties – functions related to managing industrial sector, staff, area of work, production activities of individual workers in enterprises, institutions or organizations, regardless of ownership. These functions, in particular, are carried out by heads of central executive bodies, all kinds of enterprises, institutions and organizations, their deputies, heads of structural units (departments, divisions, sections, shops, laboratories and their deputies, etc.), managers of work sites (masters, work superintendents, foremen, etc.).

Administrative and economic functions – powers on management or disposition of property (establishment of storage rules, processing, implementation, control over these operations, etc.). With such powers are vested chiefs of finance departments and services, logistics departments and their deputies, heads of warehouses, shops, workshops, studios, auditors and inspectors, etc.

The person is an official not only when he performs appropriate functions or duties constantly, but also when he performs them temporarily or by special authorization, in accordance with law. For example, the status of an official has a person holding an interim appointment.

Considering subjects liable for corruption offences, the following aspects should be noted. As mentioned above, Article 4 of the Law of Ukraine "On Principles of Preventing and Combating Corruption" among subjects liable for corruption offences indicates only individuals. According to the Criminal Code an offender (a person who is criminally liable) is also only an individual (Article 18 of the Criminal Code). However, in 2013 according to the Law of Ukraine "On Amendments to Certain Legislative Acts Concerning Implementation of the Action Plan on EU Visa Liberalization for Ukraine Regarding Liability of Legal Entities" the Criminal Code of Ukraine was annexed with Chapter XIV-1 – Criminal liability of legal entities.

1.3. *Forms of corruption in border guard and customs agencies*

Information sources concerning forms of corruption typical of customs departments. The literature on the forms of corruption typical of customs contains mostly research materials of corruption cases, which have taken place in the customs, but still there is no scientific and analytical literature on corruption in the customs service of Ukraine.

Such studies can be divided into the following groups:

I. Studies on the level of corruption in various spheres of public life in Ukraine, defining corruption in Ukraine as a whole. Such materials include the survey conducted by the European Research Association in cooperation with Kyiv International Institute of Sociology supported by UNITER, Pact Inc. Presented in the report are comparative results of National sociological surveys on the state of corruption in Ukraine conducted in 2007, 2008, 2009 and 2011. Such researches outline the level of corruption in the customs compared to other spheres of public relations, as well as the dynamics of the processes taking place. In particular, the data indicate that corruption in the customs takes the 7th place (36.1%), and this level corresponds approximately to 2007 (36.6%). It is necessary to take into account the fact that the level of corruption in the customs of Ukraine in 2009 decreased to 29.5%.

II. Nationwide studies on corruption in the customs, the so-called "external analysis" of corruption offences in the State Customs Service of Ukraine (SCSU), such as Management Systems International (MSI) research. This study was conducted within the project "Promoting Active Citizen Engagement in Combating Corruption in Ukraine", which is part of the Threshold Program implemented in Ukraine by Millennium Challenge Corporation (MCC) with financial support from the U.S. Agency for international Development (USAID). The purpose of the research was to analyze the perception of corruption by representatives of companies involved in foreign-economic activity, as well as to study the level of corruption in the customs and the effectiveness of the measures taken. Therefore, the study was

carried out twice with an interval of 12 months. The disadvantage of the study was the fact that it didn't cover the so-called "passenger departments" – corruption offences committed by customs officers relating to transportation of goods by citizens.

To better understand the results of quantitative studies, qualitative in-depth interviews have been conducted in four cities – centers of the major regions of Ukraine: Kyiv, Lviv, Donetsk and Odesa. The survey was conducted in two directions: expert poll of officials who are directly involved in regulatory policy in the sphere of customs and transportation, as well as surveys of customs services consumers, i.e. enterprises that passed customs procedures.

It is notable that the level, determined on the basis of "corruption" experience of foreign-economic activity participants actually coincided with the level of corruption perception in the customs (attitude of the society to corruption in the customs, which is formed on the basis of information received from the media). Participants of foreign economic activity faced corruption in 31.5% of cases, and in the society is widely believed that the level of corruption in the customs is 36.6%.

III. SCSU official sources, in particular the official web site of SCSU, heading "Prevention of Corruption". There one can find the number and types of criminal prosecutions and administrative reports on corruption offences. The advantage of this information is that it contains quarterly statistics of corruption offences committed in the customs of Ukraine. The main disadvantage is that the forms and types of offences themselves are left beyond the analysis, containing only the articles of the criminal and administrative law by which decisions were made.

IV. The fourth group contains official analytical materials, prepared by the relevant structures of SCSU: Personnel Department, Department of Risk Analysis, Smuggling and Corruption Prevention. These materials contain primarily "internal corporate investigations" and reflect corruption offences, which are not included in other studies, e.g. business activities of customs officers, failure to declare incomes and assets, etc.

As for the forms of corruption, there arise some difficulties in defining "forms of corruption typical of the customs authorities". Analysis of domestic and foreign literature suggests that such forms are distinguished according to corpus delicti. So, offences are classified according to the object of offence, its objective elements, the subject and subjective elements. National studies focus mainly on the object and the objective elements of corruption offences.

Customs procedures, among which corruption offences are most frequently registered. Materials of the above studies give opportunity to differentiate between the following forms of corruption on the basis of the object of offences. These are the most corrupt stages of customs inspection:

- customs control and customs clearance (37% of all corruption offences);
- customs valuation (13%);
- regulatory support; administrative, organizational and managerial aspects, including verification (10% each);
- counteracting smuggling and customs violations (up to 7% of offences);
- corruption offences relating to administration of customs duties (4%).

Forms of corruption, typical of border (customs) authorities differentiated according to objective elements of offences. The in-depth study of the corruption-prone stages of customs inspection allows to identify the following situation of corruption offences:

- customs control and customs clearance of goods and vehicles, including those imported by citizens with violations of the orders, instructions, etc.;
- entry of false or incomplete information in the relevant documents;
- passage of goods without required customs and other controls.

In the sphere of customs valuation, offences committed by customs officers are mostly related to: assistance to subjects of foreign economic activity in evasion of customs duties by declaring cheaper codes of goods, compared to that determined by the Customs Tariff of Ukraine; making decisions on defining reduced customs value of goods, compared to their true price, i.e. manipulation of information, available to the official, for the benefit of concerned parties; making decisions on expediency of providing additional documents confirming the customs value, including the deadline and sequence of their submitting.

Corruption offences in the activities of the customs of Ukraine are mostly associated with discretionary powers. Using them, customs officers make administrative decisions at their discretion or choose one of the provided several possible solutions. This factor is also aggravated by lack of proper regulation of certain decision-making procedures. Among administrative, managerial and organizational aspects the weak components are control over activities of subordinates by direct managers and reluctance in using statutory methods of education and prevention.

In the work of units specialized in combating smuggling and customs violations, the following corruption factors can be highlighted: failure to draw up a protocol on violation of customs regulations, as well as groundless drawing up protocols on violation of customs regulations; delay in carrying out necessary procedures to record and document violations of customs regulations or failure to comply with legal proceedings on violation of customs regulations; including in documents false or incomplete information about objects, subjects, conditions or circumstances of violation of customs regulations.

Corruption factors in administration of customs duties include: procedure of identifying and confirming the country of origin (incorrect application of criteria of goods processing); groundless granting of preferences in the form of exemption from payment of duty or value added tax; violation of levying the fixed duty at the checkpoints across the state border of Ukraine; forgery (falsification) of certificates of origin.

Moral and psychological aspects belong to the mental element of corruption offences in the customs. Impact of these aspects on the integrity of customs officers in the performance of their duties is undoubtedly high. A person always makes decisions primarily on the basis of his own experience, psychological attitude towards his work, personal (subjective) beliefs and personal socio-economic status. However, moral-psychological aspects and social-legal factors, as factors of specific corruption risks, are difficult to detect by both external and internal investigations of corruption offences committed in the customs.

In this regard it should be noted that the **service activity of the border guard units is prone to corruption risks in the following situations:**

1. Violation of the established procedure of crossing the state border of Ukraine by persons and vehicles at the state border checkpoints:

   - failure to enter or entering false information on the persons and vehicles crossing the state border in the database “Hart-1/P”;
   - allowing illegal crossing of the state border by persons, whose entrance in or exit from the territory of Ukraine is prohibited according to instructions of law enforcement agencies;
   - allowing entrance/exit of persons, who use forged, invalid documents or documents which do not authorize them to cross the state border;
   - failure to bring to administrative responsibility for overstaying on the territory of Ukraine.

2. Violating the rules of goods and cargos movement across the state border of Ukraine:

   - failure to inspect or partial (superficial) inspection of vehicles;
   - unjustified re-direction of vehicles from “green channel” to “red channel”.

3. Assistance of border officers to representatives of criminal structures in illegal activities in the “green sector” of the state border:

   - falsification of results of operational activities with indications of an offence (artificially inflated operational activities);
   - disclosure of service information regarding the organization of the state border protection;
   - unauthorized changing of patrol routs or leaving the place of service;
   - withholding information on identified violations of the state border.

4. Other paid employment or business activities.

5. Failure to submit or late submission of declaration of assets, income, expenses and financial obligations.

6. Violation of public procurement:

   - conclusion of a contract without procurement procedures;
   - avoiding a procurement procedure by dividing its amount to pieces;
   - tendering with limited participation without the consent of the authority;
   - falsification of tender materials;
   - falsification of protocols of tender offer disclosure and conducting tenders in order to increase the procurement price;

- specifications for goods and services to be purchased, tailored to the particular supplier, or specification of requirements by the supplier;
- inviting business entities to participate in the tender and suggest the price significantly higher than the one suggested by the supplier;
- awarding procurement contracts at prices higher than the ones suggested by other tender participants;
- creating preferential conditions for one of the participants by changing essential conditions before the tender.

Theme 2. LEGAL LIABILITY FOR CORRUPTION OFFENCES

2.1. *Criminal liability for corruption offences*

The legislation of the Republic of Moldova provides for legal liability of public officials for improper and unlawful conduct.

In accordance with the provisions of Law of the Republic of Moldova No. 158 of 04.07.2008 "On Public Office and Status of Civil Servants" and Law No. 25 of 22.02.2008 "On Code of Conduct for Public Officials" in Articles 56 and 131 respectively, "The civil servant shall bear disciplinary, civil, administrative, penal (as the case may be) responsibility for the infringement of his/her work obligations and norms of conduct, as well as for material damage, contraventions and offences committed during work or in connection with the fulfillment of job related duties", "Violation of the provisions of this Law, except for paragraph (1) of Article 11 and Article 12, is a disciplinary offence, to which the provisions of the legislation on public office and status of civil servants are applied.

(2) Violation of the provisions of paragraph (1) of Article 11 of this Law shall be punished in accordance with the provisions of the Contravention Code and the Criminal Code.

(3) Violation of the provisions of Article 12 of this Law shall be punished in accordance with Article 251 of the Law on Conflict of Interest."

Thus, in accordance with law, public officials may be subject to disciplinary, administrative and criminal liability.

Provisions similar in spirit and content are included in the Law of Ukraine "On Principles of Preventing and Combating Corruption", according to which there are four types of liability for corruption offences: criminal, administrative, civil and disciplinary. This section focuses on the analysis of bringing to liability for corruption offences.

2.1.1. *Criminal liability according to legislation of the Republic of Moldova*

Law of the Republic of Moldova No. 90 of 25.04.2008 "On Prevention and Combating Corruption", in Article 16 clearly states that subjects of acts of corruption or corrupt behavior, individuals and legal entities shall bear liability, pursuant to the provisions of the Criminal Code, for the deliberate commission of corruption acts.

At the same time acts of corruption are:

a) active corruption;

b) passive corruption;

c) influence peddling;

d) bribe taking;

e) bribe giving.

The first three offences are provided for in Chapter XV of the Criminal Code of the Republic of Moldova "Crimes against the proper order in the public sphere", the following two offences are provided for in Chapter XVI of the Criminal Code "Corruption offences in the private sector".

Paragraph three of this article states that in direct connection with corruption acts are the actions committed for the purpose of:

a) abuse of power or abuse of official position;

b) excess of power or excess of official authority;

c) legalization of illicitly obtained income;

d) interference with the dispense of justice;

e) appropriation of another person's property;

f) causing material damages by frauds or abuse of trust;

g) destruction or deterioration of property;

h) protectionism;

i) falsification of voting results;

j) bribery of voters;

k) forgery of public documents;

l) forgery of accounting records.

These offences are stipulated by different articles of the Criminal Code of the Republic of Moldova.

In addition, public officials may be brought to criminal responsibility for committing acts directly specified in Article 14 of Law of the Republic of Moldova No. 1264 of 19.07.2002, i.e. intentional entering of incorrect or incomplete data in the declaration. This act is an offence punishable under Article 3521 of the Criminal Code. The deliberate disclosure or publication of information from declarations on income and property by persons to whom such information became known in the course of their official duties or supervisory activities – this act is also a crime and is punishable under Article 3301 of the Criminal Code.

Article 53 of Law of the Republic of Moldova No. 158 of 04.07.2008 stipulates the grounds of suspension of service relations by the public authority:

a) the civil servant is under preventive or administrative arrest;

b) during the investigation of the case against the civil servant, if the ongoing exercise of the competences by the civil servant can influence the objectivity of the inquiry and its results;

c) when acknowledged as suspect or in case of an ordinance putting the civil servant under charges, until the final judgment is passed.

Article 61 of the same Law sets conditions for termination of service relations. Service relations shall be terminated in the following cases:

a) in circumstances that do not depend on the will of the parties;

b) upon dismissal (for any other circumstances than misbehaviors);

c) upon dismissal (for serious misbehaviors);

d) upon resignation.

The service relation shall terminate in the following circumstances that do not depend on the will of the parties: if the civil servant is convicted through the final court decision by which an imprisonment sanction has been imposed – on the date when the decision enters into legal force; as a result of depriving the civil servant of the right to hold certain positions or to carry out a certain activity, as a basic or complementary sanction, set as a final court sentence for such interdiction (paragraph 1 (f, g), Article 62, Law No. 158).

In accordance with Article 19 of the Law of 25.04.2008 "On Prevention and Combating Corruption" the provisions related to the independence of operations of diverse categories of public agents can not constitute an impediment for holding them liable in cases of commission of corruption acts or protectionism. The jurisdiction immunities of public agents in regard of criminal pursuit shall constitute an adequate equilibrium with the possibility of effective investigation and judgment of corruption acts.

Thus, the current Criminal Code of the Republic of Moldova provides for liability for the following acts listed in Table 4.

Table 4

ACTS OF CORRUPTION	SANCTIONS
Article 324. Passive Corruption	
(1) The act of an official or an international public official of claiming or receiving undue offers, money, securities, other goods or material advantages or of accepting undue services, privileges or other advantages in order to undertake or not to undertake or to delay or to speedup an action related to his/her professional duties or to undertake an action contrary to such duties	shall be punished by imprisonment for a term of 3 to 7 years with a fine in the amount of 1000 to 3000 conventional units and with the deprivation of the right to hold certain positions or practice certain activities for a period of 2 to 5 years

(2) The same actions committed: a) by an international civil servant; b) by two or more persons; c) with extortion of the goods or services listed in paragraph (1); d) on a large scale	shall be punished by imprisonment for a term of 5 to 10 years with a fine in the amount of 1000 to 3000 conventional units and with the deprivation of the right to hold certain positions or practice certain activities for a period of 2 to 5 years
(3) The actions set forth in paragraphs (1) or (2) committed: a) by a high-ranking official; b) on an especially large scale; c) in the interest of an organized criminal group or a criminal organization	shall be punished by imprisonment for a term of 7 to 15 years with a fine in the amount of 1000 to 3000 conventional units and with the deprivation of the right to hold certain positions or practice certain activities for a period of 3 to 5 years
Article 325. Active Corruption	
(1) Promising, offering or providing an official or an international public official either personally or through an intermediary services, undue privileges or other advantages in order to undertake or not to undertake or to delay or to speedup an action related to his/her professional duties or to undertake an action contrary to such duties	shall be punished by imprisonment for up to 6 years with a fine in amount of 1000 to 3000 conventional units, and the legal entity shall be punished by fine from 2000 to 4000 conventional units with deprivation of the right to perform certain activities
(2) The same actions committed: b) by two or more persons; c) on a large scale	shall be punished by imprisonment for a term of 6 to 12 years with a fine in the amount of 1000 to 3000 conventional units, and the legal entity
(3) The actions set forth in paragraphs (1) or (2) committed: a) on an especially large scale; b) against a high-ranking official or an international civil servant; c) in the interest of an organized criminal group or a criminal organization	shall be punished by fine from 5000 to 10,000 conventional units with deprivation of the right to perform certain activities, or liquidation of legal entities
(4) The person who promised, offered or provided the goods or services listed in Article 324 shall be exempt from criminal liability if the goods or services were extorted from him/her or if the person denounces himself/herself without knowing that criminal investigative bodies knew about the crime he/she committed.	
Article 326. Influence Peddling	
(1) Claiming or accepting money, securities, services, other goods, or material advantages either personally or through an intermediary for personal use or for another person committed deliberately by a person having influence or claiming to have influence on a civil servant, a high-ranking official, a foreign official or an international civil servant in order to make him/her undertake or not undertake, delay or speedup actions that are part of his/her official duties irrespective of whether such actions were undertaken or not	shall be punished by imprisonment for up to 5 years with a fine in the amount of 500 to 1500 conventional units, and the legal entity shall be punished by fine from 2000 to 4000 conventional units with deprivation of the right to perform certain activities

(1^1) Promising, offering or giving to a person, directly or through an intermediary, property, services, benefits or advantages listed in paragraph (1), for personal use or for another person, if the person has or claims to have an influence on a civil servant, a high-ranking official, a foreign official or an international civil servant, for the purposes specified in paragraph (1)	shall be punished by imprisonment for up to 3 years with a fine in the amount of 500 to 1500 conventional units, and the legal entity shall be punished by fine from 2000 to 4000 conventional units with deprivation of the right to perform certain activities
(2) The actions set forth in paragraphs (1) or (1^1) and committed: b) by two or more persons; c) with the receipt of goods or advantages on a large scale; d) followed by the promised influence or the achievement of the result sought.	shall be punished by imprisonment for a term of 2 to 6 years with a fine in the amount of 1000 to 3000 conventional units, and the legal entity shall be punished by fine from 3000 to 8000 conventional units with deprivation of the right to perform certain activities
(3) The actions set forth in paragraphs (1), (1^1) or (2) committed: a) with the receipt of goods or advantages on an especially large scale; b) in the interest of an organized criminal group or a criminal organization	shall be punished by imprisonment for a term of 3 to 7 years with a fine in the amount of 500 to 1500 conventional units, and the legal entity shall be punished by fine from 5000 to 10,000 conventional units with deprivation of the right to perform certain activities, or liquidation of legal entities
(4) The person who promised, offered or provided the goods or services listed in paragraph (1) shall be exempt from criminal liability if goods or services were extorted from him/her or if the person denounces himself/herself without knowing that criminal investigative bodies knew about the crime he/she committed.	
Article 333. Taking Bribes	
(1) Claiming or receiving, directly or through a mediator, by an arbitrator selected or appointed to settle by arbitration a dispute by a person who manages a commercial organization, public or another NGO or working for such an organization of undue goods, services, privileges or benefits in any form, for himself or for another person, or accepting the offer or promise to undertake or not to undertake or to delay or to speedup an action related to his/her professional duties or to undertake an action contrary to such duties	shall be punished by a fine in the amount of 500 to 1500 conventional units or by imprisonment for up to 3 years, in both cases with the deprivation of the right to hold certain positions or to practice certain activities for up to 5 years
(2) The same actions committed: b) by two or more persons; c) with extortion of a bribe; d) on a large scale	shall be punished by a fine in the amount of 1000 to 3000 conventional units or by imprisonment for a term of 2 to 7 years, in both cases with the deprivation of the right to hold certain positions or to practice certain activities for a period of 2 to 5 years
(3) The actions set forth in paragraphs (1) or (2) committed: a) on an especially large scale; b) in the interests of an organized criminal group or a criminal organization	shall be punished by imprisonment for a term of 3 to 10 years with the deprivation of the right to hold certain positions or practice certain activities for a period of 2 to 5 years

Article 334. Giving Bribes	
(1) Promising, offering or giving, directly or through a mediator, an arbitrator selected or appointed to settle by arbitration a dispute, a person who manages a commercial organization, public or another NGO or working for such an organization undue goods, services, privileges or benefits in any form, for himself or for another person, in order to undertake or not to undertake or to delay or to speedup an action related to his/her professional duties or to undertake an action contrary to such duties	shall be punished by a fine in the amount of 500 to 1500 conventional units or by imprisonment for up to 3 years, and the legal entity shall be punished by fine from 1000 to 2500 conventional units with deprivation of the right to perform certain activities
(2) The same action committed: b) by two or more persons; c) on a large scale	shall be punished by a fine in the amount of 1000 to 2000 conventional units or by imprisonment for up to 5 years, and the legal entity shall be punished by fine from 2000 to 4000 conventional units with deprivation of the right to perform certain activities
(3) The actions set forth in paragraphs (1) or (2) committed: a) on an especially large scale; b) in the interests of an organized criminal group or a criminal organization	shall be punished by imprisonment for a term of 3 to 7 years, and the legal entity shall be punished by fine from 5000 to 10,000 conventional units with deprivation of the right to perform certain activities, or liquidation of legal entities
(4) The bribe giver shall be exempt from criminal liability if the bribe was extorted from him/her or if he/she denounces himself/herself without knowing that criminal investigative bodies knew about the crime he/she committed.	
OFFENCES RELATED TO ACTS OF CORRUPTION	
Article 327. Abuse of Power or Abuse of Official Position	
(1) The deliberate use by an official of his/her official position for purposes of profit or other personal interests provided that such an action caused considerable damage to public interests or to the legally protected rights and interests of individuals or legal entities	shall be punished by a fine in the amount of 150 to 400 conventional units or by imprisonment for up to 3 years, in both cases with the deprivation of the right to hold certain positions or to practice a certain activity for up to 5 years
(2) The same actions: b) committed by a high-ranking official; c) causing severe consequences	shall be punished by a fine in the amount of 500 to 1000 conventional units or by imprisonment for 2 to 6 years, in both cases with the deprivation of the right to hold certain positions or to practice a certain activity for up to 5 years
(3) Abuse of power or abuse of an official position committed in the interest of an organized criminal group or a criminal organization	(3) Abuse of power or abuse of an official position committed in the interest of an organized criminal group or a criminal organization

Article 335. Abuse of Official Positions	
(1) The deliberate use of an official position by a person, administering a commercial, social, or another NGO or working for such organizations, of his/her job position for purposes of profit or for other personal interests provided that such an action caused considerable damage to public interests or to the legally protected rights and interests of individuals or legal entities	shall be punished by a fine in the amount of 150 to 400 conventional units or by imprisonment for up to 3 years, in both cases with the deprivation of the right to hold certain positions or to practice a certain activity for a period of 2 to 5 years
(2) The actions set forth in paragraph (1): a) committed in the interests of an organized criminal group or a criminal organization; b) causing severe consequences	shall be punished by imprisonment for a term of 3 to 7 years with the deprivation of the right to hold certain positions or to practice certain activities for 2 to 5 years
Article 328. Excess of Power or Excess of Official Authority	
(1) Commission by an official of actions obviously exceeding the limits of the rights and authority granted him/her by law provided that such an action caused considerable damage to public interests or to the legally protected rights and interests of individuals or legal entities	shall be punished by a fine in the amount of 150 to 400 conventional units or by imprisonment for up to 3 years, in both cases with the deprivation of the right to hold certain positions or to practice certain activities for up to 5 years
(2) The same actions involving: a) the use of weapons	shall be punished by imprisonment for a term of 2 to 6 years with the deprivation of the right to hold certain positions or to practice certain activities for up to 5 years
(3) The actions set forth in paragraphs (1) or (2): a) committed by a high-ranking official; b) committed in the interest of an organized criminal group or a criminal organization; c) causing severe consequences	shall be punished by imprisonment for 6 to 10 years with the deprivation of the right to hold certain positions or to practice certain activities for 2 to 5 years
Article 332. Forgery of Public Documents	
(1) Obviously false data entries in public documents or forgery of such documents by an official provided that such actions were committed for purposes of profit or for other personal interests	shall be punished by a fine of up to 500 conventional units or by imprisonment for up to 2 years, in both cases with the deprivation of the right to hold certain positions or to practice certain activities for up to 5 years
(2) The same actions committed: b) by a high-ranking official; c) in the interests of an organized criminal group or a criminal organization	shall be punished by a fine in the amount of 500 to 1000 conventional units or by imprisonment for a term of 1 to 6 years, in both cases with the deprivation of the right to hold certain positions or to practice certain activities for 2 to 5 years

Article 335. Forgery of Accounting Records	
(1) Processing or using an invoice or any other accounting document or record containing false information and malicious failure to enter payment transactions in books in order to conceal acts of corruption, if the act does not constitute complicity	shall be punished by a fine in the amount of up to 1000 conventional units, or by community service for 180 to 240 hours, or by imprisonment for up to 3 years, in all the cases with the deprivation of the right to hold certain positions or to practice certain activities for up to 5 years, and the legal entity shall be punished by fine from 1000 to 2500 conventional units with deprivation of the right to perform certain activities for a period of 2 to 5 years
(2) The same actions committed in the interests of an organized criminal group or a criminal organization	shall be punished by a fine in the amount of up to 1500 conventional units, or by imprisonment for a term of 3 to 7 years, in both cases with the deprivation of the right to hold certain positions or to practice certain activities for a period of 2 to 5 years, and the legal entity shall be punished by fine from 2000 to 4000 conventional units with deprivation of the right to perform certain activities for a period of 2 to 5 years
Article 181. Bribery of Voters	
(1) Offering or granting voters property, services or other benefits in order to induce them to exercise their electoral rights in a certain way during the parliamentary, presidential and local elections and referenda	shall be punished by community service for 100 to 200 hours or by imprisonment for up to 3 years
(2) The things with a symbol of an electoral rival and/or election slogan, the price of one unit of which is less than two conventional units, do not fall into the category of the property specified in paragraph (1)	
Article 182. Falsification of Voting Results	
(1) Voting of a person: without having this right, either twice or more times, either by introducing in the ballot box more ballots than he/she has the right to, or by using a fake ID card or a fake ballot	shall be punished by a fine in the amount of 200 to 400 conventional units, or community service for 100 to 200 hours or by imprisonment for up to 2 years
(2) Falsification of voting results, by any means	shall be punished by a fine in the amount of 300 to 500 conventional units, or community service for 180 to 240 hours or by imprisonment for up to 3 years
Article 191. Appropriation of Another Person's Property	

(1) The appropriation of another person's property, meaning the misappropriation of another person's goods entrusted into the administration of the guilty person	shall be punished by a fine of up to 500 conventional units or by imprisonment for up to 3 years, in both cases with (or without) the deprivation of the right to hold certain positions or to practice certain activities for up to 3 years
(2) The appropriation of another person's property: b) committed by two or more persons; c) causing considerable damage; d) committed by use of an official position,	shall be punished by a fine in the amount of 500 to 1000 conventional units or by imprisonment for a term of 2 to 6 years, in both cases with the deprivation of the right to hold certain positions or to practice certain activities for up to 5 years
(3) The actions mentioned in paragraphs (1) or (2) committed by an organized criminal group or a criminal organization	shall be punished by imprisonment for a term of 4 to 8 years with deprivation of the right to hold certain positions or to practice certain activities for 2 to 5 years
(4) The actions mentioned in paragraphs (1), (2) or (3) committed on a large scale	shall be punished by imprisonment for a term of 7 to 12 years
(5) The actions mentioned in paragraphs (1), (2) or (3) committed on an especially large scale	shall be punished by imprisonment for a term of 8 to 15 years
Article 243. Money Laundering	
(1) Money laundering committed by: a) conversion or transfer of goods by a person who knew or should have known that such goods were illegal earnings in order to conceal or to disguise the illegal origin of goods or to help any person involved in the commission of the main crime to avoid the legal consequences of these actions; b) the concealment or disguise of the nature, origin, location, disposal, transmission, or movement of the real property of the goods or related rights by a person who knew or should have known that such were illegal income; c) the purchase, possession or use of goods by a person who knew or should have known that such were illegal earnings; d) the participation in any association, agreement, complicity through assistance, help or advice on the commission of actions set forth in letters a)-c)	shall be punished by a fine in the amount of 1000 to 2000 conventional units, or by imprisonment for up to 5 years, in both cases with (or without) the deprivation of the right to hold certain positions or to practice certain activities for 2 to 5 years, and the legal entity shall be punished by fine from 7000 to 10,000 conventional units with deprivation of the right to perform certain activities, or liquidation of legal entities
(2) The same actions committed: a) by two or more persons; b) by use of an official position	shall be punished by a fine in the amount of 2000 to 5000 conventional units or by imprisonment for a term of 4 to 7 years
(3) The actions set forth in paragraphs (1) or (2) committed: a) by an organized criminal group or a criminal organization; b) on an especially large scale	shall be punished by imprisonment for a term of 5 to 10 years

(4) Illegal actions shall also be acts committed outside the territory of the country provided that such acts include the constitutive elements of a crime in the state where they were committed and may be the constitutive elements of a crime committed on the territory of the Republic of Moldova.	
Article 303. Interference with the Dispense of Justice and with Criminal Investigations	
(1) Interference in any form with the examination of cases by courts in order to hinder the comprehensive, complete, and objective examination of a specific case or in order to obtain an illegal court decision	shall be punished by a fine in the amount of 200 to 500 conventional units, or by community service for 180 to 240 hours, or by imprisonment for up to 2 years
(2) Interference in any form with the activities of criminal investigative bodies in order to hinder a speedy, complete and objective investigation of a criminal case	shall be punished by a fine of up to 350 conventional units or by community service for 180 to 240 hours
(3) The actions set forth in paragraphs (1) or (2) committed with the use of an official position	shall be punished by a fine in the amount of 400 to 600 conventional units or by imprisonment for up to 4 years, in both cases with the deprivation of the right to hold certain positions or to practice certain activities for up to 3 years
Article 303. Interference with the Dispense of Justice and with Criminal Investigations	
(1) Interference in any form with the examination of cases by courts in order to hinder the comprehensive, complete, and objective examination of a specific case or in order to obtain an illegal court decision	shall be punished by a fine in the amount of 200 to 500 conventional units, or by community service for 180 to 240 hours, or by imprisonment for up to 2 years
(2) Interference in any form with the activities of criminal investigative bodies in order to hinder a speedy, complete and objective investigation of a criminal case	shall be punished by a fine of up to 350 conventional units or by community service for 180 to 240 hours
(3) The actions set forth in paragraphs (1) or (2) committed with the use of an official position	shall be punished by a fine in the amount of 400 to 600 conventional units or by imprisonment for up to 4 years, in both cases with the deprivation of the right to hold certain positions or to practice certain activities for up to 3 years
Article 3521. False Declarations	
False declarations made by a person to a competent body aimed at generating certain legal consequences for himself/herself or a third party when according to law or circumstances the declaration causes the generating of these consequences	shall be punished by a fine in the amount of 600 conventional units or by imprisonment for up to 1 year with the deprivation of the right to hold certain positions or to practice certain activities for up to 5 years
Article 3301. Violation of Rules on Declaring Income and Assets	
(3) The deliberate disclosure or publication of information from declarations on income and assets by persons to whom such information became known in the course of their official duties or supervisory activities	shall be punished by a fine in the amount of 150 to 300 conventional units with (or without) the deprivation of the right to hold certain positions or to practice certain activities for 1 to 5 years

Article 256. Receipt of an Illegal Remuneration for the Performance of Public Service Works	
(1) Receipt through extortion by an employee of an enterprise, institution, or organization of undue remuneration for the performance of work or the provision of services in the areas of trade, public nutrition, transportation, social services, medical or other work and services as part of the professional duties of this employee	shall be punished by a fine of up to 200 conventional units or by community service for 120 to 180 hours
(2) The same action committed: b) by two or more persons; c) on a large scale;	shall be punished by a fine in the amount of 200 to 400 conventional units or by community service for 180 to 240 hours or by imprisonment for up to 2 years

2.1.2. *Criminal liability according to legislation of Ukraine*

The Law "On Principles of Preventing and Combating Corruption" sets down four types of liability for corruption offences: criminal, administrative, civil and disciplinary.

It should be noted that, unfortunately, not all the violations of the restrictions and limitations, provided for in the anti-corruption legislation, entail legal liability.

In addition, lists of corruption crimes, corruption administrative offences and corruption disciplinary offences are not legally defined. Scientists still debate this issue. Based on the content analysis of the aforementioned Law and the Criminal Code, experts offer several different lists of corruption offences – from short to quite extensive, including crimes which fall within dozens of various articles of the Criminal Code. First of all, difficulties arise in the work of law enforcement officers, as the doubts, whether this or that crime should be referred to as a corruption offence, entail ambiguous approaches to the solution of practical problems, such as statistical work. To eliminate this gap law enforcement agencies act differently in order to streamline the law enforcement practice. For example, in Russia a joint document of the General Prosecutor's Office and the Interior Ministry approved the list of corruption-related crimes, containing 40 offences.

In Ukraine, there are proposals to create a separate section in the existing Criminal Code, providing for criminal liability for acts of corruption (this is done, for example, in the Criminal Code of the Republic of Kazakhstan), by analogy with the separate chapter "Corruption Administrative Offences" in the Code of Ukraine on Administrative Offences. However, it is very difficult to fulfill. For example, corruption offences provided for in the Criminal Law Convention on Corruption fall within Article 354 (paragraph 3) of the Criminal Code "Bribing Employees of State Enterprises, Institutions or Organizations" and Article 368 of the Criminal Code "Accepting an Offer, Promise or Receiving Unlawful Benefit by an Official". They are placed in different chapters of the Criminal Code of Ukraine and are characterized by different subject and object. Could they be united in one chapter without violating the logic of the structure of the Criminal Code? The issue is debatable.

At the same time, there is no legally approved list of corruption disciplinary offences, moreover, their specification also causes some problems in the law enforcement practice.

The most frequent corruption offences, provided for by Chapter XVII of the Special Part of the Criminal Code, entail criminal liability for offences in the sphere of service duties and professional activities related to rendering public services. The special subject of most crimes under this chapter of the

Criminal Code is an official. The subjects of legal liability for corruption offences are in detail described in Section 1.2.2 of this Module.

As previously mentioned, the criminal law of Ukraine traditionally does not recognize a legal entity as an offender, i.e. a person who is criminally liable (Article 18 of the Criminal Code). However, it should be noted, that in 2013 according to the Law of Ukraine "On Amendments to Certain Legislative Acts Concerning Implementation of the Action Plan on EU Visa Liberalization for Ukraine Regarding Liability of Legal Entities", the Criminal Code of Ukraine was supplemented with Chapter XIV-1 "Criminal Liability of Legal Entities". Let's address some legal norms provided by this chapter. In particular, Article 96-3 of the Criminal Code stipulates as a basis for the application of punitive measures certain offences, committed by an authorized person on behalf of and in the interests of a legal entity and provided for in: Article 368-3 (parts 1 and 2) of the Criminal Code of Ukraine "Subornation of an Officer of a Private Law Legal Entity Irrespective of its Legal Form", Article 368-4 (parts 1 and 2) of the Criminal Code of Ukraine "Subornation of a Person Rendering Public Services", Article 369 of the Criminal Code of Ukraine "Offering or Giving Unlawful Benefit to an Official", Article 369-2 of the Criminal Code of Ukraine "Abuse of Influence".

Authorized persons of a legal entity are officials and other persons empowered to act on behalf of this legal entity. The above crimes are considered to be crimes committed in the interest of a legal entity, if they are aimed at getting unlawful benefit or creating conditions for reaping such benefits, as well as evading legal liability provided by law.

In accordance with Article 96-4 of the Criminal Code of Ukraine punitive measures can be applied by the court to enterprises, institutions, or organizations, other than public bodies, authorities of the Autonomous Republic of Crimea, local self-government authorities, organizations established by them in the prescribed manner, fully financed, respectively, from the state or local budgets, funds of obligatory state social insurance, the Individuals Deposit Guarantee Fund, as well as international organizations.

According to Article 96-5 of the Criminal Code of Ukraine a legal entity shall be discharged from criminal liability if from the date of committing an offence by an authorized person to the date when the sentence comes into force the following terms expired: for the crimes stipulated by Article 368-3 (part 2) and Article 368-4 (part 2) of the Criminal Code of Ukraine – 5 years, and the crimes stipulated by Articles 369, 369-2 of the Criminal Code of Ukraine – 10 years.

The following measures may be applied to legal entities under criminal law: a fine, confiscation of assets and liquidation. A fine and liquidation may be used only as basic measures under criminal law, and confiscation of property – only as an extra measure.

However, the legislation suggests the possibility of applying to a legal entity only a fine as a penalty for corruption offences committed by an official of this legal entity. The court may apply to a legal entity a fine in the amount of 5000 to 75000 tax-free minimum incomes.

The maximum amount of a fine stipulated for legal entities in case when their officials commit crimes under Article 368-3 (part 2) and Article 368-4 (part 2) of the Criminal Code of Ukraine is 20000 tax-free minimum incomes and crimes under Articles 369, 369-2 of the Criminal Code of Ukraine – 50000 tax-free minimum incomes. Taking into account the property status of the legal entity the court may impose a fine to be paid in installments within the period of up to three years.

Imposing punitive measures on a legal entity, the court takes into account the degree of gravity of the offence committed by an authorized person, the degree of consummation of the criminal intent, the damage caused, the nature and size of the unlawful benefits, which were received or might be received by the legal entity, measures taken by the legal entity in order to prevent this crime.

The main criterion for subsuming a service crime under corruption offences is that subjects of service crimes must have features specific to subjects of corruption acts defined in the Law "On Principles of Preventing and Combating Corruption". Optional – performing intentional actions aimed at illegal use of his/her official position, receipt of certain benefits and advantages or providing others with such benefits.

The characteristic feature of these crimes is that they cause significant harm to the protected by law state or public interests, or the rights and interests of individuals or legal entities. If no significant harm was caused, the actions shall be classified not as a crime, but as a less serious offence. This, however, does not mean that all service crimes have material constituents, i.e. significant harm can be expressed in very different forms. For example, the harm caused by actions of an official to the image of a service (agency's reputation) is often considered by the courts as a significant harm.

Significant harm in Articles 364, 364-1, 365, 365-1, 365-2, and 367 of the Criminal Code, is the harm causing material losses, which are one hundred and more times greater than a tax-free minimum income.

Grave consequences in Articles 364-367 of the Criminal Code are such consequences, which inflict material damage 250 and more times greater than a tax-free minimum income.

Let's briefly review common features of corruption criminal offences.

Crimes falling within Article 354 of the Criminal Code of Ukraine "Bribing Employees of State Enterprises, Institutions or Organizations" have specific subject and object and should be considered separately. This Article stipulates legal liability for offering or promising unlawful benefits to an employee of a state enterprise, institution, organization, who is not an official, or to a third party, as well as providing such benefits in return for any actions or omission through abuse of his/her position in the interests of the person, who offers, promises, or provides such benefits, or in the interests of a third party. These actions shall be punished by a fine in the amount of 1700 to 4250 UAH or community service for up to 100 hours. The same actions committed repeatedly or by a group of persons pursuant to prior agreement should be punished by a fine in the amount of 4250 UAH to 8500 UAH, or community service for 200 hours, or correctional labor for up to two years. At the same time, accepting an offer, promise or receiving unlawful benefits by an employee of a state enterprise, institution, organization, who is not an official, shall entail legal liability. In this Article, unlawful benefit is understood as money, property, advantages, privileges, services, the cost of which exceeds 0.5 tax-free minimum incomes (286.75 UAH in 2013).

Article 364 of the Criminal Code of Ukraine. Abuse of Power or Official Position

In part 1 of Article 364 of the Criminal Code the concept "abuse of power or official position" is defined by reference to such features of this offence: socially dangerous act – using power or official position contrary to the interests of the service; socially dangerous consequences – causing significant harm to the state or public interests or the rights and interests of individuals or legal entities, which are protected by law; the offender is an official; the form of guilt – intent; motives are: a) gain, b) other personal interests, and c) interests of third parties.

Features of a socially dangerous act – abuse of power or position, that is: any action or omission through abuse of official's position; the action is related to official position and competence of the official; illegality of the action; the action is contrary to the interests of the service, i.e. the interests of the state and society (and not the interests of particular enterprises, institutions and organizations that may be in conflict with national interests).

The most typical ways to abuse power or official position: temporary free use of another's property,

which is entrusted to the official due to his/her official position; providing the state or collective property, managed by the official, to other persons at understated prices or for free; providing preferential loans from others' funds without proper justification; inappropriate use of resources; evasion of mandatory payments from personal income; protectionism in employment, enrolment to a university or a school, distribution of goods from social funds; indulgence to crimes committed by subordinates or other persons; illegal actions with documents.

Mercenary motives of the analyzed crime – the desire to get personal material gain in any form, or to acquire wealth, or to avoid mandatory payments.

Other personal interests occur when an official abuses power or position, guided by careerism, misunderstanding of the service interests, or by family feeling, revenge, jealousy, etc. In addition, he/she receives non-material benefits.

Actions are performed in the interests of others, when an official wants to ensure receiving benefits by other persons. These can be tangible benefits – enrichment in any form, as well as intangible – employment, enrolment to a university or a school, distribution of goods from social funds. In this case, third persons are authorities or other individuals close to the official – relatives, neighbors, friends, who obtain advantages over other citizens.

The difference between unlawful benefitting from the abuse of official position and exceeding of power is clearly illustrated by the Russian researcher S.V. Izosimov in the following example.

In 2002, the court considered the criminal case against police officers L. and V., who were charged with accepting a bribe extorted on preliminary arrangement by a group of persons on a large scale, as well as abuse of official position and excess of power. Investigation bodies established that citizens M. and D. turned to the local policeman V. with a statement on gang rape. At the same time, they explained that they would not insist on bringing the rapists to justice, if they pay them financial indemnity. As M. was an old acquaintance of V., the latter agreed to help them and reported on the received statement to his supervisor L., who personally took part in the search operations.

After the detention of the suspects by police officers L. and V., they were offered to pay victims M. and D. 2 thousand dollars each, and L. – one thousand dollars. Otherwise, they would face criminal prosecution for rape. The detainees agreed and began to collect money. The next day, one of the detainees B., having borrowed three thousand dollars, handed them over to L. and V., and after that the latter were detained. The accusation of taking a bribe was based on the version that L. and V. had mercenary motives for committing this crime. The court excluded extortion and accepting bribes from the charge and acquitted the accused as their acts didn't not constitute an offence. The sentence stated that the actions of the defendants, who had forced suspects to pay money, lacked any mercenary interest, and the only defendants' motive was to force the suspects to compensate M. and D., who were acquainted with V., material and moral damage. The sentence indicated: "Due to lack of evidence, that the defendants had mercenary motives or intended to satisfy illegal self-interests of others, their actions can not be classified as theft of other people's property. As the defendants in forcing the victims had no mercenary purpose, but another personal interest due to acquaintance of M. with V. and service relationships between themselves, their actions in this part were correctly classified as abuse of power" (the terminology of the Russian Criminal Code).

It should be noted that Chapter XIX of the Criminal Code of Ukraine (the so-called "Military Offences") contains an analogous Article applied to military officers. **Article 423** stipulates legal liability for **the abuse of authority or official position by a military official.** The direct object of this offence is the regular activity of military authorities and the established order of performing official duties by military officials.

The objective elements of the offence are: illegal use of vehicles, buildings, or other military equipment, as well as illegal use of a subordinate to provide personal services or services to other persons, and any other abuse of authority or official position committed for mercenary motives or any other personal interest or interests of third persons, if such actions caused significant harm (250 or more times greater than a tax-free minimum income) – part 1 of Article 423, or caused serious consequences (damage is 500 or more times greater than a tax-free minimum income) – Part 2 of Article 423.

The subjects of this crime are military officials, as well as other officers, who permanently or temporarily hold positions related to performing organizational or administrative powers or are authorized to perform such duties by a special order of the command.

Part 3 of Article 423 – actions committed in the state of martial law or in a battle.

Article 365 of the Criminal Code of Ukraine. Excess of Authority or Official Powers

Excess of authority or official powers are defined in part 1 of Article 365 of the Criminal Code as "deliberate commitment by an official of actions that clearly transgress the limits of vested rights or powers". The objective sign of excess of authority or official powers – going beyond the official's competences. The Plenum of the Supreme Court of Ukraine explained, that excess of authority or official powers includes the following four types of actions: a) actions falling within the competence of senior officers of the service or other agencies; b) independent actions, whereas they could only be committed collectively; c) application of specific measures or order to settle any issue, if there are no specific preconditions, and d) actions, which no one has the right to perform.

Article 366 of the Criminal Code of Ukraine. Forgery in Office

In accordance with Article 366 of the Criminal Code of Ukraine, forgery in office is related to one of the following socially dangerous actions: drawing up or issuance by an official of fictitious official documents, entering fictitious data to official documents, other forging of official documents.

The crimes provided by part 1 of Article 366 of the Criminal Code are considered completed from the moment of the action regardless of whether it caused consequences and whether the forged document was used or not.

The subjective aspects – part 1 of Article 366 – direct intent, part 2 of Article 366 – concerning consequences there may be both intent and negligence. Examples of crimes falling within this Article are the cases of fraud protocols on administrative violations on citizens, who have not committed administrative offences, drawn up in order to overstate performance indicators.

There are other common cases, as exemplified by the case from judicial practice.

The Head of the Personnel Department of the border detachment B. at the request of former border guard sergeant A., fired for systematic disregard of contract conditions, prepared an extract from the order, according to which A. was allegedly fired due to family circumstances. B. withdrew the actual extract from the order and attached the fake document to the personal file of A. In addition, B. introduced in records false information and forged the signature of a military official of the border guard detachment. Later, A., on the basis of the documents forged by B., was wrongly hired to military contractual service in another military unit. In this example the mercenariness of the actions of B. should be proved in order to be classified only under Article 366 or jointly under Article 368 and 366 of the Criminal Code.

Article 367 of the Criminal Code of Ukraine. Neglect of Official Duty

Features of this offence: a socially dangerous act – failure to perform (inaction) or improper performance of official duties (action); socially dangerous consequences – causing significant harm (part 1) or grave consequences (part 2); the causal link between the misconduct on service and its consequences, the subject – an official; the form of guilt – negligence.

Neglecting official duties by an official means: in case that there is a real opportunity to act as required by the interests of the service, he performs his duties improperly or does not perform his duties.

The definition of "an official" for Article 367 of the Criminal Code is included in Article 18 of the Criminal Code.

Widely used term "bribery" is a historically developed notion, which traditionally covered offences included in Chapter XVII of the Special Part of the Criminal Code, namely: receiving a bribe, offering or giving a bribe, provocation of bribery or commercial bribery.

According to the amendments introduced to the legislation in April 2013, the term "bribe" in the Criminal Code was replaced by the term "unlawful benefit".

Article 368 of the Criminal Code of Ukraine. Accepting an Offer, Promise or Receiving Unlawful Benefit by an Official

The note to this Article differentiates between different types of unlawful benefit according to its amount. A bribe in substantial amount shall be such a bribe that equals or exceeds five tax-free minimum incomes, a bribe in large amount shall be such a bribe that equals or exceeds two hundred tax-free minimum incomes, and a bribe in especially large amount shall be such a bribe that equals or exceeds five hundred tax-free minimum incomes.

Public officials are those, whose positions according to Article 25 of the Law of Ukraine "On Civil Service" belong to the third, fourth, fifth and sixth categories, as well as judges, prosecutors and investigators, heads and deputy heads of state authorities, local governments, their departments and units. High-ranking officials are the persons mentioned in part 1 of Article 9 of the Law of Ukraine "On Civil Service" and the persons whose positions in accordance with Article 25 of the Law of Ukraine "On Civil Service" belong to the first and second categories.

Repeated in Article 368 of this Code shall be a crime committed by the person who had previously committed any of the offences provided for in this Article or in Articles 354, 368-3, 368-4, 369 of the Criminal Code.

Extortion of unlawful benefits is understood as demand of an official to provide him with unlawful benefits accompanied by a threat to perform or not to perform, with the use of authority or official position, such actions as may inflict damage to the rights or legitimate interests of the person, who provides unlawful benefits, or deliberate creation by an official of conditions where a person is forced to give a bribe in order to forestall harmful consequences in respect to his/her rights and legitimate interests.

The definition of "an official" from the note to Article 364 of the Criminal Code (Section 1.3 of Module III), applies to Article 368 of the Criminal Code of Ukraine.

The legislator doesn't clearly distinguish between the terms denoting "unlawful benefit", "gift" and "donation", "income", "reward", "services and property".

Could a gift, a donation, as well as a reward, services and property be considered as unlawful benefit? To answer this question one should compare features of the relevant concepts with the above features of unlawful benefits.

The definition of "unlawful benefit" is given in the note to Article 364-1 of the Criminal Code of Ukraine and is common to Articles 364-1, 365-2, 368, 368-2, 368-3, 368-4, 369, 369-2 and 370. **Unlawful benefits** are pecuniary funds or other assets, advantages, privileges, services, or non-material assets that are without lawful grounds promised, offered, given, or received without payment or at a price below minimum market price.

Thus, this concept is characterized by two mandatory features, according to which **unlawful benefits may be:**

1) only items such as: pecuniary funds, other assets, advantages, privileges, services, non-material assets;

2) the items, which are promised, offered, given or received without lawful grounds.

N.I. Havroniuk interprets these features as follows.

The first feature of unlawful benefits. Property – a separate thing or a set of things that are subjects of property rights and may be the object of various civil and business legal contracts. To property as special objects belong property rights and obligations. Special types of property are: animals, enterprise as a single property complex, foreign currency, securities. Non-material property includes the results of intellectual and creative activity, other intellectual property rights, information, and personal non-material values. A human can not be ascribed to property (although there is such a notion as "human trafficking").

In the UN Convention against Corruption "property" shall mean assets of every kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments evidencing title to or interest in such assets.

Advantages – additional material or other benefits or opportunities that a person has in comparison with others, putting him in superior position to others. Synonymous with the word "advantage" are: "priority", "privilege", "superiority", "exclusive right".

Advantage may be, in particular, the right to priority or immediate obtaining of material goods or services or privileges. For example, receiving an apartment from the state by a person, who is registered in the priority list for receiving an apartment, but is not the first in this list, that is he actually receives an apartment out of turn and it may be considered as an advantage. Illegal advantages are granted to a person, who doesn't have legal rights for them, and thus the interests of others are violated.

Privileges – discounts, social and other benefits established by law for different categories of persons, which consist in exemption from certain duties, or in other words, in providing additional tangible or intangible opportunities (exemption from mandatory payments, additional paid vacation).

Services – activities, carried out to the customer's order for his personal needs in order to provide the customer or transfer him certain tangible or intangible benefits or outcome of economic activity stipulated by the contract.

As non-material assets the Tax Code of Ukraine determines:

1) the right to use natural resources (minerals, etc.);

2) the right to use property (land, buildings);

3) the right to commercial designations (trademark rights, i.e. trademarks for goods and services);

4) he right to industrial property (inventions, utility models, industrial designs, plant varieties, animal breeds, trade secrets);

5) copyright and related rights (the right to literary, artistic, musical works, computer programs);

6) ther intangible assets (the right to conduct activity, to use economic and other benefits, etc.);

7) goodwill.

The second feature of an unlawful benefit, according to N.I. Havroniuk, is that its objects are promised, offered, given or received without lawful grounds. This means that the person, who promises, offers or gives these items, as well as the person who receives them, doesn't have legal grounds for this in the form of direct permission. Such permission is given, for example, in part 2 of Article 8 of the Law "On Principles of Preventing and Combating Corruption", according to which a person may: a) accept gifts from close persons, b) in certain cases, accept gifts from others, and c) receive publicly available discounts on goods, services, winnings, prizes, awards, bonuses.

Liability under this article occurs only if an official has received unlawful benefits for: performance or nonperformance of any action using his powers or official position, in the interest of the one who provides unlawful benefits or in the interest of a third party.

It does not matter, whether an official fulfilled or not what he had promised; whether he intended to carry out what he had promised; whether the unlawful benefit was received before or after fulfillment of the promised actions. These factors do not influence the classification of the crime. If the actions committed by an official for unlawful benefits are criminal (forgery, etc.), they are classified in the aggregate.

Subjective aspects of obtaining unlawful benefits are characterized by a direct intent and a mercenary motive. The obligatory condition is that both, the person providing unlawful benefits and the official receiving them, clearly understood that unlawful benefits were provided and received.

Describing the intellectual constituent of intent, it is important to emphasize that an official's intent consists in the intention to use his official position in order to receive unlawful benefits. An official is aware that he receives a compensation for certain illegal actions (inactions) and that he can commit or facilitate performing these actions (inactions) using his official position. This leads to two important conclusions.

The first is that, if an official is aware that he receives unlawful benefits for illegal actions (inactions), which are not included in his official powers, or he can not contribute to their fulfillment using the official position, the committed actions are not considered as unlawful benefits. These actions may be classified as fraud, provided that the official deliberately misinformed the person providing unlawful benefits about his official competence, or consciously used the ignorance of the latter in his mercenary interests. If an official did not clearly know his competences and service opportunities and wrongly assumed that he had powers to perform certain actions (or inactions) using his official position, receipt of unlawful benefits should be classified, according to S.V. Izosimov, as an attempt to receive unlawful benefits.

The second conclusion is, that if an official having corresponding service competences (opportunities), in receiving unlawful benefits did not intended to perform the conditioned actions (inactions) or refused them later, his actions shall be classified as receiving unlawful benefits. Performing by an official actions (or inactions) for unlawful benefits is not a part of objective aspect of the crime, that is why the intention to perform them does not matter. It is important that the person providing and the official receiving unlawful benefits are aware that their actions are connected with abuse of power.

The subjective aspect of the crime includes not only a direct intent, but also a mercenary motive.

In 2011, the Criminal Code was supplemented with new provisions.

Article 368-2 of the Criminal Code of Ukraine. Unlawful Enrichment

Unlawful enrichment in this article refers to an official, who receives unlawful benefits in substantial amount or transfers such benefits to close relatives, if there are no signs of crimes, stipulated by Article 368 of the Criminal Code.

Unlawful benefit in substantial amount shall be pecuniary funds or other assets, advantages, privileges, services, and non-material assets that are without lawful grounds promised, offered, provided, or received without payment or at a price below the minimum market price, in the amount that exceeds one hundred tax-free minimum incomes, in large amount – in the amount that exceeds two hundred tax-free minimum incomes, and in especially large amount – in the amount that exceeds five hundred tax-free minimum incomes.

Close relatives are parents, wife, husband, children, brothers and sisters, grandfather, grandmother, grandchildren – irrespective of whether they share the household with the official or whether they have mutual rights and obligations.

Features of unlawful enrichment, according to Article 368-2 of the Criminal Code, are as follows:

a) receiving unlawful benefits in substantial amount or transferring such benefits to close relatives;

b) receiving unlawful benefits by any official, specified in the note to Article 364 of the Criminal Code;

c) unlawful benefits, such as pecuniary funds or other assets, advantages, privileges, services, and non-material assets received by an official without lawful grounds, if there are no signs of crimes, stipulated by Article 368 of the Criminal Code.

The offence under Article 368-2 of the Criminal Code should be distinguished from the offence under part 2 of Article 172-5 of the Code of Ukraine on Administrative Offences "Breach of Statutory Limitations on Receiving Gifts (Donations)". As a rule, one-time receiving from a single source a gift (donation) worth more than 50 percent of the minimum wage (or with a total value more than one minimum wage during a year), but less than one hundred tax-free minimum incomes is classified under part 2 of Article 172-5 of the Code of Ukraine on Administrative Offences. Privileges, benefits and services, regardless of their value, cannot be referred to gifts (donations).

According to paragraph 5 of section 1 of Chapter XX "Transition Provisions" of the Tax Code, if legal provisions refer to a tax-free minimum income, the sum meant is 17 UAH, except provisions of administrative and criminal legislation used for classification of crimes, for which the amount of a tax-free minimum income is set at the level of a tax social privilege indicated in paragraph 169.1.1 of the Tax Code of Ukraine for the current year. Till December 31, 2014 for the purposes of this paragraph the tax social privilege equals 50 percent of the subsistence minimum for able-bodied persons (per month), established by the law on January 1 of the tax year for any taxpayer. The minimum wage is set in the Law "On the State Budget" for the respective year (paragraphs 5-2 and 5 of Article 38 of the Budget Code of Ukraine).

Minimum wage			tax-free minimum income – for determining sanctions	
01.01.2013 - 30.11.2013	1 147 UAH	Article 8 of the Law "On the State Budget of Ukraine for 2013" (N 5515-VI of 06.12.2012).	17 грн	paragraph 5 of section 1 of Chapter XX "Transition Provisions"
tax-free minimum income – for classification	573,50 UAH			

Article 368-4 of the Criminal Code of Ukraine. Subornation of Person Rendering Public Services

In the context of the topic this Article is interesting in the aspect of bribery of an expert. If an expert is provided with unlawful benefits in order to impel him to refuse to deliver an opinion or to give a false opinion, these actions should be classified under Article 386 of the Criminal Code of Ukraine.

Article 369 of the Criminal Code of Ukraine. Offering or Giving Unlawful Benefits to Officials

This crime consists in providing (or offering) an official with material assets, rights to property, or other property benefits for actions (inactions) using his power or official position in the interests of the person, who offers or promises unlawful benefits, or in the interests of a third party.

The subject of the crime can be both private and official person.

According to this Article the person, who offered, promised or gave unlawful benefits, shall be exempted from criminal liability, if he voluntarily reported on the occurrence.

Article 370 of the Criminal Code of Ukraine. Provocation of Bribery – deliberate creation by an officer of circumstances and conditions that call forth offering or acceptance of unlawful benefit, in order to subsequently expose the person who gave or received the unlawful benefit. This crime can be committed only through active actions aimed at creating the circumstances and conditions that cause offering or accepting unlawful benefits, and is considered as finished from the date of the performance, irrespective of whether the unlawful benefit was actually given (received) or not.

The offender acts only with direct intent, guided by different motives (revenge, careerism, envy, desire to be known as the "fighter" against corruption, etc.), and pursues a special aim – to expose the person, who gave or received unlawful benefit.

The subject is only an official. This crime should be distinguished from cases of legal exposure of a culprit. Generalized information on criminal liability for certain acts of corruption is given in Table 5.

Table 5 **Criminal liability for certain acts of corruption**

ACTS OF CORRUPTION	SANCTIONS
Abuse of Power or Official Position (Article 364 of the Criminal Code of Ukraine)	
Abuse of power or official position – deliberate, motivated by mercenary self-interest, or other personal interest, or interests of third parties, use by an official of power or of official status contrary to the interests of service, which causes substantial damage to the protected by law rights, freedoms, and interests of individual citizens, or state or public interests, or interests of legal entities	Corrective labor for a term of up to 2 years, or imprisonment for a term of up to 6 months, or restriction of freedom for a term of up to 3 years, concurrently with deprivation of the right to hold certain positions, or to practice certain activities for a term of up to 3 years and with fine in the amount of 4250 to 12750 UAH concurrently with special confiscation
Abuse of power or official position causing grave consequences	Imprisonment for a term of 3 to 6 years concurrently with deprivation of the right to hold certain positions, or to practice certain activities for a term of up to 3 years and with fine in the amount of 8500 to 17000 UAH concurrently with special confiscation
Abuse of power or official position committed by an employee of a law-enforcement body	Imprisonment for a term of 5 to 10 years concurrently with deprivation of the right to hold certain positions or to practice certain activities for a term of up to 3 years concurrently with confiscation of property
Abuse of Official Authority by an Officer of a Private Law Legal Entity Irrespective of Legal Form (Article 364-1 of the Criminal Code of Ukraine)	
Abuse of official authority – deliberate, with the purpose of gaining unlawful benefits for him/herself or for other persons, use, contrary to the interests of the private law legal entity concerned irrespective of the legal form thereof, by an official of such legal entity of his/her authority, which caused substantial harm	Fine in the amount of 8500 to 34000 UAH, concurrently with deprivation of the right to hold certain positions or to practice certain activities for a term of up to 2 years
Abuse of official authority, causing grave consequences	Fine in the amount of 170000 to 340000 UAH, concurrently with deprivation of the right to hold certain positions or to practice certain activities for a term of up to 3 years
Excess of Authority or Official Powers (Article 365 of the Criminal Code of Ukraine)	
Excess of authority or official powers, i.e. deliberate commitment by an official of actions that clearly transgress the limits of vested rights or powers, which caused substantial harm to the protected by law rights or interests of individual citizens, or state or public interests, or interests of legal entities	Corrective labor for a term of up to 2 years, or restriction of freedom for a term of up to 5 years, or imprisonment for a term of 2 to 5 years, concurrently with deprivation of the right to hold certain positions or to practice certain activities for a term of up to 3 years and with fine in the amount of 4250 to 8500 UAH
Excess of authority or official powers, causing grave consequences	Imprisonment for a term of 7 to 10 years, concurrently with deprivation of the right to hold certain positions or to practice certain activities for a term of up to 3 years and with fine in the amount of 12750 to 25500 UAH
Abuse of Authority by Persons Who Render Public Services (Article 365-2 of the Criminal Code of Ukraine)	

Abuse of authority by a person, not a civil servant, in order to receive unlawful benefits for him/herself or others, which caused substantial harm	Fine in the amount of 17000 to 51000 UAH, concurrently with deprivation of the right to hold certain positions or to practice certain activities for a term of up to 3 years
Abuse of authority, committed in respect of a minor or a disabled person, a person of advanced age, or repeatedly	Fine in the amount of 51000 to 170000 UAH, concurrently with deprivation of the right to hold certain positions or to practice certain activities for a term of up to 3 years
Abuse of authority, causing grave consequences	Fine in the amount of 170000 to 340000 UAH, concurrently with deprivation of the right to hold certain positions or to practice certain activities for a term of up to 3 years, with or without confiscation of property
Forgery in office (Article 366 of the Criminal Code of Ukraine)	
Drawing up or issuance by an official of fictitious official documents, entering fictitious data to official documents, other forging of official documents	Fine in the amount of up to 4250 UAH, or restriction of freedom for a term of up to 3 years concurrently with deprivation of the right to hold certain positions or to practice certain activities for a term of up to 3 years, with special confiscation
The same actions, if caused grave consequences	Imprisonment for a term of 2 to 5 years, concurrently with deprivation of the right to hold certain positions or to practice certain activities for a term of up to 3 years and with fine in the amount of 4250 to 12750 UAH, with special confiscation
Accepting an Offer, Promise or Receipt of Unlawful Benefit by an Official (Article 368 of the Criminal Code of Ukraine)	
Accepting by an official of offer or promise to give him/her or a third party unlawful benefits, for the performance or non-performance in the interests of the person, who offers or promises unlawful benefits, or in the interests of a third party, of any action with the use of authority or official position entrusted to him/her	Fine in the amount of 12 750 to 17 000 UAH, or corrective labor for a term of 1 to 2 years
Acceptance by an official of unlawful benefits for him/herself or a third party, for the performance or non-performance in the interests of the person, who offers or promises unlawful benefits, or in the interests of a third party, of any action with the use of authority or official position entrusted to him/her	Fine in the amount of 17000 to 25500 UAH, or restriction of freedom for a term of 3 to 6 months, or imprisonment for a term of 2 to 4 years, concurrently with deprivation of the right to hold certain positions or to practice certain activities for a term of up to 3 years and with special confiscation
Acceptance of an unlawful benefit in substantial amount	Fine in the amount of 25500 to 34000 UAH, or imprisonment for a term of 3 to 6 years, concurrently with deprivation of the right to hold certain positions or to practice certain activities for a term of up to 3 years and with special confiscation

Acceptance of an unlawful benefit in large amount, or by a public official, or by a group of persons pursuant to prior agreement, or repeatedly, or combined with the extortion of unlawful benefits	Imprisonment for a term of 5 to 10 years, concurrently with deprivation of the right to hold certain positions or to practice certain activities for a term of up to 3 years, with special confiscation and confiscation of property
Acceptance of an unlawful benefit in especially large amount, or by a high-ranking official	Imprisonment for a term of 8 to 12 years, concurrently with deprivation of the right to hold certain positions or to practice certain activities for a term of up to 3 years, with special confiscation and confiscation of property
Unlawful Enrichment (Article 368-2 of the Criminal Code of Ukraine)	
Unlawful enrichment – receipt by an official of unlawful benefit in substantial amount or transfer by the official of such benefit to close relatives, in the absence of signs of accepting an offer or promise of unlawful benefit	Fine in the amount of 8500 to 17000 UAH, or restriction of freedom for a term of up to 2 years, concurrently with deprivation of the right to hold certain positions or to practice certain activities for a term of up to 3 years with special confiscation
Unlawful enrichment where the object of it was unlawful benefit in large amount	Restriction of freedom for a term of 2 to 5 years, or imprisonment for a term of 3 to 5 years, concurrently with deprivation of the right to hold certain positions or to practice certain activities for a term of up to 3 years with special confiscation
Unlawful enrichment where the object of it was unlawful benefit in especially large amount	Imprisonment for a term of 5 to 10 years, concurrently with deprivation of the right to hold certain positions or to practice certain activities for a term of up to 3 years with special confiscation and confiscation of property
Offering or Giving Unlawful Benefits to Officials (Article 369 of the Criminal Code of Ukraine)	
Offering unlawful benefit to an official or a third party, for the performance or non-performance in the interests of the person, who offers or promises unlawful benefits, or in the interests of a third party, of any action with the use of authority or official position entrusted to him/her	Fine in the amount of 4250 to 8500 UAH, or community service for a term of 160 to 240 hours, or restriction of freedom for a term of up to 2 years
Providing an official or a third party with unlawful benefit, for the performance or non-performance in the interests of the person, who provides unlawful benefits, or in the interests of a third party, of any action with the use of authority or official position entrusted to him/her	Fine in the amount of 8500 to 12750 UAH, or restriction of freedom for a term of 2 to 4 years, or imprisonment for the same term with special confiscation
The same action, committed repeatedly	Imprisonment for a term of 3 to 6 years, concurrently with fine in the amount of 8500 to 17000 UAH with special confiscation and with (or without) confiscation of property
The same action, if unlawful benefit is given to a public official, or by a group of persons pursuant to prior agreement	Imprisonment for a term of 4 to 8 years, with special confiscation and with (or without) confiscation of property
The same action, if unlawful benefit is given to a high-ranking official, or by an organized group of persons, or by a member of such group	Imprisonment for a term of 5 to 10 years, with special confiscation and with (or without) confiscation of property

The person who offered or provided unlawful benefit	shall be relieved of criminal liability if in respect to him/her extortion of unlawful benefit took place, or if after offering, promising or providing unlawful benefit, the person voluntarily reported on the occurrence, prior to the institution of criminal case against this person, to a body vested by law with the right to institute criminal case
Abuse of Influence (Article 369-2 of the Criminal Code of Ukraine)	
Offer or provision of unlawful benefit to a person who offers or promises (consents) for such benefit to influence the adoption of a decision by a person who is authorized to perform state functions	Fine in the amount of 3400 to 8500 UAH, or restriction of freedom for a term of 2 to 5 years with special confiscation
Acceptance of unlawful benefit for influencing the adoption of a decision by a person who is authorized to perform state functions, or offer to exert such influence for the provision of such benefit	Fine in the amount of 12750 to 25500 UAH, or imprisonment for a term of 2 to 5 years with special confiscation
Acceptance of illegal benefit for influencing the adoption of a decision by a person who is authorized to perform state functions, combined with extortion of such benefit	Imprisonment for a term of 3 to 8 years with special confiscation and confiscation of property

Summing up, we should state that combating corruption crimes on the state border, of course, is an essential element of the prevention of transnational organized crime.

2.2. *Administrative liability for corruption offences*

2.2.1. *Administrative liability according to legislation of the Republic of Moldova*

The Contravention Code of the Republic of Moldova, adopted by Law No. 218 of 24.10.2008, provides for legal liability of persons, who committed offences.

Article 32 of the Code provides that on individuals, who have committed an offence may be imposed the following sanctions:

- warnings;
- fines;
- deprivation of the right to practice certain activities;
- deprivation of the right to hold certain positions;
- assigning penalty points;
- deprivation of a special right (right to drive vehicles, right to keep and bear arms);
- unpaid community work;
- arrest.

Deprivation of the right to practice certain activities, deprivation of the right to hold certain positions and assigning penalty points can also be imposed as complementary sanctions.

The only sanction for juveniles is the complementary sanction of deprivation of the right to practice certain activities.

The following are the sanctions applicable to a legal entity:

- fines;
- deprivation of the right to practice certain activities.

The deprivation of the right to practice certain activities can also be imposed as a complementary sanction.

Civil servants can be brought to administrative liability for different administrative offences (Table 6)

Table 6

OFFENCES	SANCTIONS
Article 264. Illegal Participation of Civil Servants in Business Activity	
Illegal participation of a civil servant in any business activity as a founder of a company or as a leader of an entrepreneurial activity directly or indirectly through other individuals	Fine in the amount of 50 to 100 conventional units with the deprivation of the right to hold certain positions or to practice certain activities for a period of 3 months to 1 year
Article 312. Abuse of Power or Official Status	
Deliberate use of one's official status in a way that contravenes the protected by law public interests or the rights and interests of individuals and legal entities, if such actions do not constitute a crime	Fine in the amount of 50 to 150 conventional units with deprivation of the right to hold certain positions or of the right to practice certain activities for a period of 3 months to 1 year
Article 313. Excess of Authority or Official Powers	
Committing an action that clearly exceeds the limits of the rights and powers granted by law and that contravenes the protected by law public interest or the rights and interests of individuals or legal entities, if such actions do not constitute a crime	Fine in the amount of 50 to 150 conventional units with deprivation of the right to hold certain positions or of the right to practice certain activities for a period of 3 months to 1 year
Article 313[1]. Protectionism	
Protectionism, i.e. containing no evidence of a crime assistance in addressing challenges of individuals or legal entities, not stipulated by regulations, regardless of motives, using official duties by a person, working in a public authority, public institution, in a state or municipal enterprise, or commercial company financed mostly from the state budget	Fine in the amount of 100 to 300 conventional units
Article 313[2]. Failure to declare a conflict of interest	
Failure to declare a conflict of interest by a person working in a public authority, public institution, in a state or municipal enterprise or commercial company financed mostly from the state budget	Fine in the amount of 100 to 300 conventional units

Article 3133. Excess of Power in Relation to Authorization Documents	
(1) Unjustified delays and/or exceeding the legal deadline for issuing authorization documents, as well as issuing authorization documents the validity of which is shorter than stipulated by the List of authorization documents	Fine imposed on individuals in the amount of 50 to 75 conventional units, on officials – 75 to 100 conventional units with (or without) deprivation of the right to practice certain activities for a period of 3 months to 1 year
(2) Demanding and/or issuing authorization documents, not included in the List of authorization documents, establishment of a fee for issuing an authorization document in excess of the prescribed by the List of authorization documents, unreasonable refusal to issue an authorization document, making and application of contrary-to-regulations demands and procedures for issuing authorization documents, as well as unreasonable cancellation of an authorization document	Fine imposed on individuals in the amount of 100 to 150 conventional units, on officials – 150 to 200 conventional units with (or without) deprivation of the right to practice certain activities for a period of 3 months to 1 year
Article 314. Concealing Acts of Corruption or Failure to Take Necessary Measures	
Concealing acts of corruption or failure to take necessary measures against subordinates who are guilty of committing such actions	Fine imposed on officials in the amount of 50 to 150 conventional units
Article 314[1]. Failure to Take Measures for Protection of Public Servants	
Failure to take measures prescribed by law for protection of a public servant who reports acts of corruption and acts related to corruption, facts of corrupt behavior, non-compliance with the rules of income and assets declaration and violation of legal obligations on conflict of interest	Fine imposed on officials in the amount of 50 to 150 conventional units
Article 315. Receiving Illegal Rewards or Financial Benefits	
Receiving (taking) while exercising one's functions illegal rewards or financial benefits, if such actions do not constitute a crime	Fine imposed on officials in the amount of 100 to 500 conventional units, and their dismissal, and deprivation of the right to hold positions in public service for a period of 3 months to 1 year
Article 319[1]. Failure to Comply with Requirements of the National Integrity Commission	
(1) Failure to submit data, information, acts or documents requested by the National Integrity Commission in accordance with paragraph (3) of Article 11 of the Law No. 1264-XV of 19.07.2002 "On Declaring and Control over Income and Assets of State Officials, Judges, Prosecutors, Civil Servants and some Managers"	Fine imposed on individuals in the amount of 100 to 150 conventional units, on officials – 100 to 250 conventional units, on legal entities – 200 to 350 conventional units
(2) Failure to impose a disciplinary action or to issue an act on termination of powers (mandate), labor or service relationships when ascertaining act of the National Integrity Commission became final	Fine imposed on officials in the amount of 100 to 250 conventional units
Article 330[2]. Failure to Meet the Deadline of Declaring Income and Assets, or Personal Interests	
Failure to submit a declaration of income and assets, or a declaration of personal interests in the terms established by law by persons obliged to submit them	Failure to submit a declaration of income and assets, or a declaration of personal interests in the terms established by law by persons obliged to submit them

Direct references to the possibility of imposing disciplinary, administrative or criminal liability on a civil servant are included in the provisions of the current legislation of the Republic of Moldova (e.g., Article 14 of Law of the Republic of Moldova No. 1264 of 19.07.2002).

Authorities competent to solve cases of contraventions, in accordance with Article 393 of the Contravention Code, are: a) courts of law; b) prosecutors; c) administrative commissions; d) official examiners (specialized authorities specified in Articles 400-4235).

Article 449 of the Contravention Code stipulates, that if during a proceeding it is established that the act considered a contravention was committed in conditions that place it under the jurisdiction of criminal law, the case shall be submitted without delay by a reasoned ruling to the prosecutor by competence.

If during a criminal investigation the prosecution establishes that the act that was considered a crime is a contravention, the case shall be submitted without delay by a reasoned ruling to the prosecutor who shall act according to paragraph 2 of Article 396.

2.2.2. *Administrative liability according to legislation of Ukraine*

Administrative liability for corruption offences is regulated by the provisions of Chapter 13-A "Administrative Corruption Offences" of the Code of Ukraine on Administrative Offences.

Corruption offences can be divided into the following three groups: violation of special restrictions aimed at preventing and combating corruption; violation of financial supervision requirements; failure to take measures to prevent and combat corruption.

The first group of violations includes the following acts: violation of restrictions on plurality of offices and simultaneous engagement in other activities, receiving a gift (donation) (Article 172-4, 172-5 of the Code on Administrative Offences), illegal use of information learned by a person in connection with performance of official functions (Article 172-8 of the Code on Administrative Offences).

The second group includes violations of financial supervision requirements, responsibility for which falls within Article 172-6.

The third group of violations includes breach of requirements pertaining to notification on conflict of interests (Article 172-7), failure to take measures to prevent and combat corruption (Article 172-9).

Today, among sanctions imposed for administrative offences are fines and confiscation of illegally obtained benefits (if the offence involved obtaining benefits).

Acts of corruption are considered completed since the moment of unlawful receiving material benefits, violation of specific limitations from the date of performing actions (inactions) referred to in the Article, and the person is subject to responsibility irrespective of whether he received tangible and intangible assets, services, privileges or other benefits.

In accordance with Article 255 of the Code on Administrative Offences, protocols on administrative violations can be drawn up by authorized officials of:

- bodies of internal affairs;
- bodies of the Security Service of Ukraine;

- bodies of the State Tax Service;
- bodies of Military Police in the Armed Forces of Ukraine (on offences committed by servicemen, enlisted men during their meetings and staff of the Armed Forces of Ukraine while performing their duties);
- the prosecutor or his authorized representative from the staff of the Prosecutor office.

According to the new version of Article 5 of the Law "On Principles of Preventing and Combating Corruption", specifically authorized subjects to counteract corruption are: public prosecution bodies, special units to combat organized crime of the Ministry of Internal Affairs of Ukraine, special units to combat corruption and organized crime of the Security Service of Ukraine, unless otherwise provided by law.

In accordance with Article 250 of the Code on Administrative Offences, in proceedings on cases of administrative offences the participation of a public prosecutor in court hearing on the case shall be compulsory.

Sanctions imposed for administrative corruption offences are listed in Table 7.

Table 7

OFFENCES	SANCTIONS
Breach of Limitations on Plurality of Offices and on Simultaneous Engagement in Other Activities (Article 172-4 of the Code on Administrative Offences)	
Breach of Limitations on Plurality of Offices and on Simultaneous Engagement in Other Activities (Article 172-4 of the Code on Administrative Offences)	Fine in the amount of 850 to 2125 UAH concurrently with confiscation of income gained from entrepreneurial activities, or of remuneration for work performed other than at the public office
Breach of statutory limitations on membership in a managing body or a supervisory board of an enterprise or organization which is profit-making (apart from cases stipulated by law)	Fine in the amount of 1700 to 3400 UAH concurrently with confiscation of income gained from such activities
Fine in the amount of 1700 to 3400 UAH concurrently with confiscation of income gained from such activities	
Breach of statutory limitations on receiving gifts (donations) – one gift (donation) worth more than 50% of the minimum wage, as well as gifts (donations) received during a year from a single source worth more than one minimum wage, set on January 1 of the current year	Fine in the amount of 425 to 850 UAH concurrently with confiscation of the gift (donation)
Breach of statutory limitations on receiving gifts (donations) – receiving a gift for decisions, actions or inactions in the interests of the donor, as well as receiving a gift from a subordinate	Fine in the amount of 850 to 1700 UAH concurrently with confiscation of the gift (donation)
Breach of Financial Supervision Requirements (Article 172-6 of the Code on Administrative Offences)	
Failure to submit, or late submission of the declaration on property, income, expenses, and financial obligations	Fine in the amount of 170 to 425 UAH
Failure to notify, or late notification on opening of a foreign currency account in a non-resident banking institution	Fine in the amount of 170 to 425 UAH

Breach of Requirements Pertaining to Notification on Conflict of Interests (Article 172-7 of the Code on Administrative Offences)	
Failure by a person to notify his/her direct superior on existence of a conflict of interests	Fine in the amount of 170 to 2550 UAH
Unlawful Use of Information Learned by a Person in Connection with Performance of Official Functions (Article 172-8 of the Code on Administrative Offences)	
Unlawful disclosure or other use by a person in his/her own interests of information learned in connection with performance of official functions	Fine in the amount of 850 to 1700 UAH
Failure to Take Measures to Prevent and Combat Corruption (Article 172-9 of the Code on Administrative Offences)	
Failure to take measures required by law on the part of an official or an officer of a state authority, an official of local government or of a legal entity or of a structural subdivision thereof, where a corruption offence has been detected	Fine in the amount of 850 to 2125 UAH
Breach of the right to information (Article 212-3 of the Code on Administrative Offences)	
Unreasonable refusal to provide information or failure to provide complete information in due time and manner, or provision of false or misleading information, provided such information is to be delivered upon request of individuals or corporate entities, as established by the Laws of Ukraine "On Information", "On Access to Public Information", "On Citizens' Appeals", "On Access to Court Decisions" and "On Principles of Preventing and Combating Corruption" or upon advocate's request	Fine in the amount of 425 to 850 UAH
Repeated over the year violation of the right to information, for which the person has been subjected to administrative sanctions	Fine in the amount of 850 to 1360 UAH

2.3. *Disciplinary liability for corruption offences*

2.3.1. *Disciplinary liability according to legislation of the Republic of Moldova*

In accordance with Article 57 of Law No. 158 of 04.07.2008 disciplinary misbehaviors shall include:

a) failure to comply with the work schedule, including repeated absence from work, or late arrivals at work without reasonable excuse, or leaving work earlier than the time set in the schedule;

b) involvement in settlement of certain requests beyond the legal framework;

c) non-observance of the requirements on keeping the state secret or the confidential information that the civil servant gets acquainted with while holding his/her position;

d) unjustified refusal to carry out job-related tasks and duties;

e) repeated negligence or permanent delays in fulfilling tasks;

f) actions that damage the image of public authority he/she works for;

g) non-observance of civil servant's norms of conduct;

h) unfolding during working hours actions with political character specified in Article 15 paragraph (4);

i) breaking the legal provisions on the obligations, conflict of interests and restrictions established by law;

j) breaking the rules for organizing and running the recruitment competition and evaluation of the civil servant's professional performances;

k) other actions considered misbehaviors pursuant to the legislation on the public function and civil servants.

It seems that not all of the above misbehaviors can be considered as behavior contributing to acts of corruption.

Thus, misbehaviors contributing to acts of corruption are provided for in paragraphs b, c, e, f, g, i, j, k of Article 57.

In addition to the above mentioned, Article 131 of the Law "On Code of Conduct for Civil Servants" refers to disciplinary offences acts, punishable under the provisions of this Law, except the ones stipulated by part 1 of Articles 11 and 12.

Also, in accordance with part 2 of Article 251 of the Law of the Republic of Moldova No. 16 of 15.02.2008 "On Conflict of Interest", breach of the order of assessment, recording, storage, use or redemption of gifts entails disciplinary liability.

Article 58 provides for disciplinary sanctions, which can be applied to civil servants for disciplinary misbehaviors:

- warning;
- reprimand;
- severe reprimand;
- suspension of the right to be promoted to a higher position during one year;
- suspension of the right to be advanced on salary steps for a period from 1 to 2 years;
- dismissal.

Articles 59 and 60 of the Law establish procedure for imposing disciplinary sanctions, duration and appeal procedure.

Article 59. Application of Disciplinary Sanctions

(1) Disciplinary sanctions shall be applied by the person/body legally competent to appoint a civil servant to a public position.

(2) Disciplinary sanctions shall be applied within no more than 6 months from the date of the misbehavior.

(2) Disciplinary sanctions shall be imposed within no more than six months from the date of the misbehavior, except for disciplinary sanctions for the violation of regulations on declaring income and assets, and conflict of interest, which are imposed within no more than six months from the day, when the final act on disciplinary offence was drawn up.

(3) Disciplinary sanctions, except for the one specified in Article 58 (paragraph a), can not be applied unless a preliminary investigation of the imputed action is conducted and after a fair hearing of the civil servant in front of the disciplinary commission takes place within one month at most after the misbehavior is ascertained.

(3-1) The period specified in paragraphs (2) and (3) shall be suspended for the time of the employee's annual leave, study leave, as well as suspension of the service relationship due to illness or injury.

(4) It shall be compulsory that among members of the disciplinary commission is a representative of the relevant trade union, or in case if the trade union is not representative or the civil servants do not have a trade union to represent their interests, they shall appoint a representative with the majority of votes of civil servants, for which the disciplinary commission is created.

(5) If actions of a civil servant bear attributes of a disciplinary offence and a crime, the disciplinary commission shall suspend its investigation, as well as terms indicated in parts (2) and (3), until decision not to initiate a criminal case or to stop prosecution is taken or until the court finds the civil servant not guilty or ceases the trial.

(6) The disciplinary commission shall ask the civil servant to give the rationales for his/her actions in writing.

(7) Having conducted a preliminary investigation, the disciplinary commission shall suggest the respective public authority the sanction to be imposed on the guilty civil servant.

(8) The administrative act on the application of the disciplinary sanction shall be brought to the knowledge of the civil servant, within 5 days from the date of issuance, against signature.

(9) Civil servant's refusal to show up at the hearing, to bring his/her arguments, or to sign the administrative act on the application of the disciplinary sanction shall be recorded in the minutes.

(10) The reasons and seriousness of the disciplinary infringement, the circumstances in which such infringement has been committed, the conduct of the civil servant within the civil service and other disciplinary sanctions that are still valid shall be taken into account when establishing disciplinary sanctions for each misbehavior of civil servants.

(11) The procedure of creating, organizing and functioning of a disciplinary commission, its composition, duties, and peculiarities of operation shall be established by the government.

Article 60. Validity and contestation of a disciplinary sanction.

(1) The disciplinary sanction shall be valid up to one year from the day it is imposed, except for the cases set by law.

(2) If during the validity period of the disciplinary sanction no other disciplinary sanction is imposed on the civil servant, he is considered as not having been subjected to the disciplinary punishment.

(3) An administrative act of a disciplinary sanction can be appealed by a civil servant in the administrative court, as established by the current legislation.

At the same time, the Law of the Republic of Moldova No. 90 of 25.04.2008 "On Prevention and Combating Corruption" distinguishes between criminal liability for corruption offences and other types of legal liability.

Article 17 of this Law provides that the violation of the provisions of this Law shall, as the case may be, entail civil, disciplinary or administrative liability in accordance with current legislation, including:

a) commission of an act of corruption or any fact of corrupt behavior, if such actions do not contain elements of the offence;

b) failure to comply with the restrictions and prohibitions specified in normative acts regulating the special status of civil servants, high-ranking officials and other persons providing public services;

c) violation of legal provisions on declaration of income and assets, as well as the legal obligations on conflict of interest;

d) failure to report acts of corruption by persons, whose duties include it;

e) failure to implement anti-corruption measures by persons having such authority;

e1) failure of competent persons or bodies to implement protective measures, established by law for public officials, who report in good faith acts of corruption and acts related to corruption, facts of corrupt behavior, non-compliance with the rules of declaring income and assets, and breach of statutory duty on the conflict of interest;

f) other violations stipulated by law.

Article 68 of the Law "On Public Office and Status of Civil Servants" provides that the cases dealing with service relationships fall under the jurisdiction of administrative courts, except the situations for which the law directly establishes the competence of other courts.

2.3.2. *Disciplinary liability according to legislation of Ukraine*

The persons, who have violated the provisions of the Law "On Principles of Preventing and Combating Corruption", may be subject to disciplinary sanctions or disciplinary measures under the Labor Code of Ukraine and other laws. At the same time, according to parts 2-3 of Article 45 of the Disciplinary Regulations of the Armed Forces of Ukraine (in the wording of the Law of 13.04.2012), military men bear disciplinary responsibility for administrative offences under these Regulations, except cases provided by the Code of Ukraine on Administrative Offences. Acts of corruption or other offences related to corruption, committed by military men, entail responsibility in accordance with the Code of Ukraine on Administrative Offences. In case of a criminal offence, military men are subject to criminal liability. Commanders, who fail to report corruption offences to the authorized pre-trial investigation body, shall be liable in accordance with the law.

In accordance with Article 52 of the Law of Ukraine "On Civil Service" No. 4050-VI of 17.11.2011 (which comes into effect on January 1, 2014 and cancels the previous Law), disciplinary liability shall consist in imposing disciplinary sanctions on a civil servant for committing disciplinary offences specified by this Law. A civil servant can be held disciplinarily liable for a disciplinary offence, including:

- failure to fulfill, or improper fulfillment of job duties;
- excess of official powers provided that elements of a crime or an administrative offence are absent;

- failure to take measures to resolve a conflict of interests as specified by law;
- violation of restrictions on a civil servant's participation in the election process as specified by the election legislation;
- violation of the civil servants' rules of professional ethics.

The novelty of the current anti-corruption legislation is that persons, authorized to perform the functions of the state or local governments, who were brought to criminal or administrative liability for violation of the restrictions stipulated by the Law, shall be dismissed from office. The legislation provides for a unified approach to dismissal from office in connection with imposing criminal or administrative liability for corruption offences.

In accordance with this approach, an official can be dismissed from office only if he committed an offence, related to the violation of restrictions established by the Law of Ukraine "On Principles of Preventing and Combating corruption". Thus, dismissal shall not be applied for such corruption offences as untimely submission of declaration or failure to report a conflict of interest. The decision on dismissal of such persons shall be taken, according to law, within three days after receiving by a public authority, local authority, enterprise, institution, organization of a copy of the relevant court decision, which entered into force.

To ensure the constitutional rights of citizens (in particular, to appeal the judgment) managers should refrain from filling the vacancy of the employee, on whom the judgment was passed, till the expiration of the period for appeal in accordance with the procedural law.

Dismissal may be preceded by the suspension procedure: if the employee is held criminally liable for the crime committed on duty, he is suspended from the performance of official duties since he is announced a suspect.

2.4. *Civil legal liability*

Law of the Republic of Moldova No. 90 of 25.04.2008 "On prevention and combating corruption", namely Articles 23 and 231, provides for the elimination of consequences of acts of corruption and responsibility for the damage.

Article 23 stipulates, that in cases of corruption the money, valuables or any other assets that has been given to incite to crime or to reward the offender, or the assets acquired as proceeds of the corruption crime, if they were not returned to the aggrieved person, shall be confiscated. If these assets were not found, the offender must pay their monetary equivalent. In all these cases application of interlocutory injunction is mandatory.

The adopted decisions, concluded contracts and any other actions, or any clause of any agreement, the object of which is an act of corruption, are invalid from the outset and do not have any legal effect for none of the parties, irrespective of their knowledge of such acts.

Any party of any agreement, whose decision was affected by an act of corruption, can demand the cancellation of such agreement, as provided by law, without affecting one's right for compensation of damages.

Article 231 provides that the person, who has suffered damage as a result of acts falling within Articles 256, 324, 325, 327, 332, 333, 334, 335 of the Criminal Code, is entitled to damages in accordance with the provisions of the Civil Code.

After the compensation of damages from the appropriate budget, the defendant has the right of recourse to the guilty party in the amount of compensation paid. Article 20 provides, that public authorities are obliged to inform individuals and legal entities about their rights and duties, about organizations and institutions, functions of which include prevention and combating corruption.

Public authorities, within their jurisdiction in accordance with this Law and other regulations, shall protect and assist the victims of acts of corruption.

Summary of Module III. Current legislation provides for situations, in which one and the same act entails different types of responsibility, having different legal nature, different forms of implementation and different legal consequences. For example, criminal, civil and disciplinary liability or administrative, civil and disciplinary liability. It is impossible to bring the same person to criminal and administrative responsibility for the same offense, as they have similar legal nature.

Offenders are brought to legal liability in conformity with the procedure prescribed by procedural codes and other legislative acts.

Appendix 1. Practical exercises

Teaching materials: tests, situations, extracts from legal acts.

Theme of the seminar. Peculiarities of legal classification of crimes in the sphere of official activities

Discussion points:

1. Legal characteristics of crimes in the sphere of official activities.

2. Classification of offences related to obtaining unlawful benefits.

Objectives:

level of knowledge: learning the peculiarities of criminal liability for offences committed in the sphere of official activities. Reinforcement and deepening of trainees' knowledge on classification of offences related to obtaining unlawful benefits;

level of proficiency: enhancing skills of identifying criminal offences in the sphere of official activities.

Task for trainees – to solve practical tasks.

Task 1.

A. and C., officials of private enterprises "P" and "B", with the assistance of self-interested military officials, through the preparation and use of documents with false data misappropriated non-residential buildings and constructions in cantonment "Zarechnoe" to the total value of 5, 5 million UAH, including fees for use of the land.

Later the documents were presented to the notary, who notarized the agreement on purchasing objects of this military cantonment by the enterprise "B" and gave an extract from the State Register certifying that the private enterprise "B" is the owner of this real estate. The notary was informed about the illegal scheme and certified the documents at cost, which 20 times exceeded the normal fare. On the basis of the notarized agreement, the private enterprise "B" received the ownership certificate for non-residential buildings and constructions in the cantonment. Determine the subjects of this act of corruption. Give legal assessment of their actions.

Task 2.

Officers of "Liman" border guard division of N. border detachment B. and D. assisted citizen T. to carry across the border "De Luxe" alcohol on a large scale without proper control and clearance. For this assistance citizen T. handed captain B. $ 3200 as a reward for both of them.

Give legal assessment of the actions of B., D. and T.

Task 3.

During 2010 – 2013 G., the assistant chief of the petrol, oil and lubricants service, groundless and without proper documents gave out in behalf of private person D. material values entrusted to him, namely: petrol A-95 and A-92 in the amount of 320 l, 1210 kg of diesel fuel, 64 kg of various lubricants. For this he received certain services (free of charge multiple visits to a private seaside hotel for him, his family and his boss). Over this period he entered in the inventory cards data on availability of petrol, oil and lubricants in fuel storage tanks that were actually out of stock, and forged documents

proving that the fuel and lubricants were used for the service needs. Determine the subjects of this offence. Give legal assessment of their actions.

Prepare a report on the theme:

The notion "legally protected interest" in Articles 364, 365, 361, 368 of the Criminal Code (Decision of the Constitutional Court of Ukraine of December 1, 2004 in the case of the legally protected interest).

The essence of the notion "unlawful benefit".

Self test questions:

Question 1.

Is there an offence, stipulated by Articles 354 or 368 of the Criminal Code, in the actions of the doctor who received money from relatives of the patient for the successful operation?

Question 2.

Is there an offence, stipulated by Article 368 of the Criminal Code, in the actions of the official who received a gift not for specific actions in the service, but as fawning in order to establish "good relationships"?

Question 3.

How can be legally classified the actions of an official who received one gift worth more than 50% of the minimum wage, but less than 100 tax-free minimum incomes?

Question 4.

What is the course of actions for an official, who is offered unlawful benefits or gifts (donations), defined by the Law of Ukraine "On Rules of Ethical Conduct"?

Theme of the practical lesson. **Practice in the application of criminal law in cases involving official crimes.**

Objective: study of the peculiarities of the criminal law application in cases involving official crimes. Reinforcing skills of identifying criminally liable actions of officials, consolidation of good behavior skills.

Task for trainees

Solve practical tasks.

Task 1.

Senior warrant officer P., inspector of N. border detachment, on May 27, being on duty "Border Patrol" drew up an administrative offence protocol, an administrative detention protocol, as well as an inspection and seizure of personal things protocol concerning U.S. citizen U., who was allegedly in the frontier zone without proper documents, and thus violated the border regime, i.e. committed an administrative offence under Article 202 of the Code of Ukraine on Administrative Offences.

In addition P. signed these documents for the offender and the witnesses of the offence.

On May 29-31, 2012, P. drew up similar documents, signed them for the offender and witnesses of the crime. In view of the results of his activities P. was encouraged.

Give legal assessment of the actions of P.

Task 2.

On March 29, 2013, P., the chief of inspectors of "Ivankovtsy" border guard division of N. border detachment, was on duty and, implementing the agreement with the person from whom he had received 8000 UAH, deliberately gave illegal order to servicemen on duty at the checkpoint to allow unimpeded entry of the truck without proper examination. This vehicle was used to illegally transport across the border goods amounting to 217 000 USD without border and customs clearance.

Give legal assessment of the actions of P., as well as the border personnel on duty. Determine the type and degree of responsibility of these persons if the order a) was to subordinates evidently illegal, and b) was to subordinates not evidently illegal.

Task 3.

Deputy Chief for investigation and search operations of "N-Airport" border guard division received in his car in the parking lot of the airport from one of the three citizens of Cameroon, students from the National Pharmaceutical Academy of Ukraine, who had just passed border control, cash amounting to U.S. $ 300 for alleged assistance in unimpeded crossing of the state border of Ukraine.

Give legal assessment of the actions of M. and the citizens of Cameroon.

Task 4.

R., expert of the Research Forensic Center of the Ministry of Internal Affairs of Ukraine in Kharkiv oblast, for the preparation of expert opinion in favor of the participant of the road accident Z., demanded from Z. installation of plastic window-frames in the expert's apartment. Z., who worked for a company manufacturing this product, did everything for free, although the cost of the frames and their installation was 6000 UAH. A month later, Z. addressed R. again with a request to prepare an expert opinion in favor of K. R. agreed to it for the sum of 3000 UAH. Z. handed the money to expert on behalf of K.

Give legal assessment of the actions of these persons.

Task 5.

Border inspector warrant officer B., in the duty room of the watchman of professional lyceum № 8 held a conversation with 16-year-old student G., who as a conductor helped citizens of Belarus to cross the state border of Ukraine bypassing the checkpoint. In order to receive answers to his questions B. struck the victim in the chest with his fist, which caused him physical pain. After that, he demanded 1500 UAH from G. for concealing the offence committed by the student at the border.

Give legal assessment of the actions of B.

Task 6.

P., the head of the department of registration of taxpayers of the Shevchenko District Tax Office in Lviv, deleted from the automated information system "Register of Taxpayers" accounts data of the private enterprise "Galich coffee", opened in the Lviv branch of the joint-stock bank "Regional Development Bank". Then, in order to prevent the audit of financial and economic activity of the firm "Galich coffee", assisting the enterprise owners to rapidly terminate and de-register the enterprise from the tax authorities, P. submitted to the tax inspection documents containing false data on the accounts of the private enterprise "Galich coffee".

Based on the official document, submitted by P., inspection managers decided not to carry out the audit of financial and economic activities of the private enterprise "Galich coffee". For this service, in addition to a large sum of money, which was handed to P. by the chief accountant of the private enterprise, he was afforded the opportunity to have a free lunch in the cafe owned be the enterprise. Due to the actions of P. the state budget did not receive from the private enterprise "Galich coffee" mandatory payments totaling 1,350,500 USD.

Give legal assessment of the actions of P.

Task 7.

Senior lieutenant A., warrant officer B., sergeant V. as officials of the border detail at the checkpoint "M" allowed the truck loaded with non-ferrous scrap weighing 20700 kg (total value of 420 800 USD) to cross the border without inspection and documentation. Cargo owner, fellow villager of warrant officer B., used for this their friendly relationships.

Give legal assessment of the actions of the officers. What solution to the problem of using "fraternities" would be, in general, the most consistent with the interests of the society?

Module IV. INTEGRITY. PROFESSIONAL ETHICS

Theme 1. BASIC PRINCIPLES AND STANDARDS OF PROFESSIONAL ETHICS

1.1. *Definition of INTEGRITY, ethical conduct of public officials and professional ethics*

What is integrity? Ethics, integrity and good governance are fundamental pillars that support the organizational culture in government. Performing their duties civil servants take decisions having direct impact on citizens. They set and develop policies, conduct negotiations, administer public resources and have access to sensitive information. Due to these circumstances, citizens have the right to demand professional integrity with respect to ethical standards from a civil servant.

Many people think that a person with professional integrity is someone who is honest, and who can be trusted, the man of his word. But integrity is much more significant. Integrity is a kind of a virtue, which includes a set of moral qualities, such as honesty, fairness, decency. The word "integrity" originates from the Latin adjective "integer" (full), and in this context refers to all the qualities of a fair and consistent individual. In the Romanian language integrity and professional honesty sound the same. Just as the integrity of a building refers to the ability to remain durable for years, the integrity of a bridge indicates the possibility either to function or to ruin when being crossed over, so integrity in decision-making can affect the future of the nation, business, career, family, friendships or person's life. Integrity or lack thereof governs our lives. We know a lot of stories about certain individuals whose integrity was tested. Some of them remained steadfast and firm. Others had problems desiring to gain fame, wealth or power. In everyday life there are too many temptations and circumstances that "promote" wrong decision-making.

Yet there are no certain situations in which one can define integrity of a person, or whether a person has or has no certain quality or, that is more impossible, who can be honest and correct today but not tomorrow. Partial integrity does not exist.

Above we referred only to the personal (individual) integrity, but when it comes to organizational culture, first we need to talk about the values, behavior, principles, norms, health and integrity of the organization. Department integrity may arise, grow and be maintained only in the environment that values professionalism, responsibility and ethical behavior, in which truth, justice and honesty are unanimously accepted moral values.

In the framework of performing official duties, professional integrity is a part of the personal integrity. While personal integrity includes everything that we do, professional integrity is limited by service activity. In view of these considerations, civil servant's honesty also applies to his personal behavior. Personal behavior can sometimes be controversial and thus discredit the department that employs a civil servant.

Individual integrity and organizational integrity are linked, and in this context, organizational culture is the key to integrity within the department.

Effective activity within the Customs and Border police may be possible if the program on integrity is implemented in the above structures. With regard to the Customs, it is necessary to mention 12 principles that should be implemented to ensure integrity in the Customs authorities stipulated by the Declaration of the Customs Co-operation Council concerning Integrity in Customs, signed in Arusha (Tanzania) in 1993.

The Arusha Declaration recognizes the fact that, if Customs is corrupt, it does not bring profit to the state, does not fight against illegal trade, hampers international commerce and economic growth.

As a consequence – the Declaration identifies the key factors that must be taken into account when developing a national Customs integrity program. Below are the factors that in our understanding can be successfully used in the Border Police system: 1) minimum administrative regulation, 2) transparency, 3) automation, 4) strategic segregation of functions, rotation of assignments and relocation of staff, 5) management commitment and responsibility; 6) internal and external auditing; 7) organizational culture and morality; 8) staff recruitment and selection, 9) Code of Conduct, 10) professional advancement; 11) sufficient remuneration; 12) relationship with Customs brokers and business community.

When it comes to the concept of integrity, it is impossible not to mention ethical behavior. Ethical behavior is actually the basic principle of professional ethics, although without respect for ethical principles no one can be sure of professionalism in the department, as in a public institution integrity is a particularly important factor for its trust. The concept of integrity implies the need to respect the following behavioral norms in the service relationship: to be correct, fair and honest, to act with integrity and in accordance with actual conditions, not to use information that contains false or misleading statements (which can deceive consumers of public services) or that was provided in an imprudent manner; not to use the imprudently obtained information.

At the same time, it is possible to identify at least five aspects that relate to integrity, i.e. moral values (such as honesty), motives (such as desires, interests and ideals), liabilities (in thoughts, words and in fact); qualities (such as perseverance and courage); firm position (even with opponents).

Consequently, civil servants should not only behave honestly from a professional point of view, but be perceived as such. It is needed to avoid actions and situations, in which a third party calls into question the integrity of a civil servant. Seriousness, sincerity, transparency, responsibility, empathy and accuracy are just some of the requirements that are put forward to a civil servant. Integrity and its development also depend on intellectual maturity, which is a relevant component for professional activity. Each employee's ethical behavior forms the basis of nation's integrity.

Despite the fact that integrity refers to character traits, the appeal remains the same: "it is necessary to do as required". More than 400 years ago, English philosopher Francis Bacon said, "integrity is not who we pretend, it is how we work".

To be effective, ethical norms should be incorporated in the style of department activity. In practice, success of these actions can be defined by the following indicators: awareness – the department that tries to be professionally honest, will face ethical dilemmas; predictability – honest organization knows how to respond when facing an ethical dilemma, as it possesses and applies clear ethical values in coherent and trustworthy way; transparency – open and honest behavior; people – the desire to support employees in maintaining values; ethics of the organization and the ability to solve any of the ethical dilemmas faced; independence – the key to any public institution, honest professional activity – one of the private companies values.

In the context of the above said, it is true that organizational culture has an effect on the behavior of its employees. Organization integrity is not the result of one person activity. The notion of organization integrity is the basis of the honesty of all individuals, who work in the structure. This process is not focused on one single direction. Identifiable integrity in the organization has been being built for some time, but can be quickly destroyed and depends on the behavior of all members of the organization.

Instead of generalizations and conclusions we offer several famous quotes about integrity: "Integrity is what we do, say and what we say, we do" (Don Galer), "Integrity means what is correct, even when no one pays attention to it" (Jim Stovall), "When looking for the employees to employ, you need to pay attention to the following three qualities: integrity, intelligence and energy. Without the first quality, the combination of the next two is fatal" (Vorenus Bafet).

1.2A. *Mechanisms to ensure professional ethics in government institutions of the Republic of Moldova*

1.2A.1. *Providing professional ethics / integrity in Customs / Border Guard Service of the Republic of Moldova. Codes of conduct and regulations relating to: conflict of interest; nepotism and favoritism; declaration of assets and income, gifts and other benefits; rotation*

The fundamental principle of effective governance is the adoption of high standards of integrity and transparency in public authorities, which at the same time play an important role in preventing corruption. According to the UN Convention against Corruption, States Parties are required to take, in accordance with fundamental principles of their legislation, measures to enhance transparency in their public administration with regard to its organization, functioning, decision-making and / or other aspects. Preventive measures in public sector provide for public service guarantees that improve efficiency, transparency and recruitment based on the criterion of excellent job. In addition, preventive measures include the use of codes of conduct, requirements for disclosure of financial and other information and appropriate disciplinary actions.

The Convention also requires active promoting of adherence to personal standards (integrity, honesty and responsibility) and the performance of professional duties (correct, fair, honorable and proper performance of public functions) for all public officials. This requires guidance how public officials should act when implementing these standards and how they can be called to account for actions and decisions.

Professional codes of conduct are provided for in paragraph 2 of Article 8 of the Convention, which states that each State Party shall endeavor to apply codes of conduct for the correct, honorable and proper performance of public functions. According to paragraph 3, Article 8 of the Convention, each State Party should take into account the relevant initiatives of regional, interregional and multilateral organizations such as the International Code of Conduct for Public Officials contained in the annex to General Assembly resolution 51/ 59 of December 1996. Of key importance are contained in the Code provisions on conflict of interest and the requirement for public authorities' impartiality in decision-making. Other examples of codes of conduct in specific sectors are the Code of Police Ethics, the Code of Ethics and Code of Conduct for Law Enforcement Officials (1999), prepared by Interpol and the Bangalore Principles of Judicial Conduct with the accompanying commentary published by UNODC in 2007.

The Republic of Moldova, as well as other States Parties to the Convention, adopted codes of conduct for public officials or developed standards for their duties and responsibilities. Thus, there were adopted specific codes of conduct for public officials, specific codes of conduct for civil servants. Also there were taken measures to facilitate the submission of information concerning acts of corruption provided by public officials and / or the public, measures on information disclosure, measures on settling conflicts of interest and disciplinary measures.

All measures on integrity, honesty and responsibility promotion among public officials are stipulated by Law No. 158-XVI of 04.07.2008 "On Public Office and Status of Civil Servants". The Law sets forth the principles and the range of tasks for public authority, defines the standards and procedures of public administration and regulates the rights and obligations of civil servants.

Legislation on civil service as a whole, in terms of anti-corruption manifestations, corresponds to the UN Convention against Corruption from 31.10.2003 that came into effect on 14.12.2005 and was ratified by the Republic of Moldova. It took into account the following recommendation acts: UN Guidance "Practical measures to combat corruption" and "Twenty Guiding Principles for the Fight against Corruption", approved by Resolution of the Committee of Ministers of the Council on

11.06.1997. It contains almost the entire set of legal tools to prevent corruption. It clearly defines the rights, duties and responsibilities of civil servants and contains all necessary prohibitions and restrictions related to public service. There were established the requirements for official conduct of public officials, the order of settling conflicts of interest in public service and ethical standards for a civil servant in accordance with morality existing in our society.

International and national laws that form the legal basis for the standards of anti-corrupt behavior include the following:

- Recommendation № R (2000) 10 of the Committee of Ministers of the Council of Europe on Codes of Conduct for Public Officials, adopted at the 106th session of the Committee of Ministers on 11.05.2000;
- the Code of Conduct for Law Enforcement Officials, adopted by Resolution 34/169 at the 106th plenary meeting of the General Assembly of the United Nations on 17.12.1979;
- the European Code of Police Ethics, adopted by the Committee of Ministers of the Council of Europe on 19.09.2001;
- Declaration on Good Governance and Anti-Corruption in Customs, adopted in 1993 by the World Customs Organization, revised in 2003, known as the Arusha Declaration of the WTO;
- Law of the Republic of Moldova No. 25 -XVI of 22.02.2008 “On Code of Conduct for Public Officials”;
- Law of the Republic of Moldova No. 16-XVI of 15.02.2008 “On Conflict of Interests”;
- Law of the Republic of Moldova No. 1264-XV of 19.07.2002 “On Declaring and Control over Income and Assets of State Officials, Judges, Prosecutors, Civil Servants and some Managers”;
- Law of the Republic of Moldova No. 1150-XIV of 20.07.2000 “On Service in the Customs”;
- Decision of the Government of the Republic of Moldova No. 456 of 27.07.2009 “On Approval of Customs Officer Code of Ethics”;
- Law of the Republic of Moldova No. 283 of 28.12.2011”On Border Police” and others.

The main national anti-corruption standards of behavior in the Customs and Border Guard Service of Moldova are the Code of Ethics of a customs officer and the Law on the Border Police. These standards establish binding rules of professional ethics and aim to regulate the basic principles of behavior in order to avoid situations that might affect the reputation of the customs / border officer in particular, and customs / border agency in general. In addition to the basic principles of these bodies – legality, impartiality, loyalty, moral integrity, experience and competence, compliance with human rights and fundamental freedoms, the combination of one-man management and collegiality in leadership, cooperation, transparency, personal responsibility, professionalism – these standards also provide for anti-corruption measures. These measures – declaration of conflict of interest, property and income, regime of gifts, relocation of staff, elimination of protectionism and nepotism – should promote a high level of professional ethics (integrity) in the service.

Conflict of Interest Declaration. The duty of the Customs Service and the Border Police officer to declare the conflict of interest is stipulated by Article 3 “Subjects of declaring personal interests” of the Law No. 16-XVI of 15.02.2008 “On Conflict of Interest”, Decision of the Government of the Republic of Moldova No. 456 of 27.07.2009 “On Approval of Customs Officer Code of Ethics”, and other laws and regulations.

According to the OECD Guidelines, a conflict of interest is a "conflict between the public duty and private interests of a public official, in which his private interests are able to improperly influence the performance of his official duties or functions".

The existence of a conflict of interest does not in itself mean that a public official was involved in corruption. It means only that a public official is in a state of conflict between his official duties and private interests, for example, when the contract for public procurement with the company, which is owned by this official or his close relative, depends on him. He / she may give preference to the public interest at the expense of his own, but, nevertheless, there is a serious risk that an official may succumb to the temptation to the detriment of the public interest. Moreover, the actions taken in the context of the conflict of interests can undermine public confidence in such actions.

Actual conflicts of interest must be differed from false conflicts of interest when "it only seems that private interests of a public official can improperly influence the performance of his duties, but in reality it is not so", as well as from potential conflicts of interest arising in cases "when a public official has private interests that could lead to a conflict of interest if the official performs corresponding (i.e. conflicting with personal) official duties in future".

In accordance with the requirements of paragraph 4 of Article 7 of the UN Convention against Corruption, "Each State Party shall, in accordance with fundamental principles of its domestic law, endeavor to adopt, maintain and strengthen systems that promote transparency and prevent conflicts of interest."

However, the development of specific policy actions to control conflicts of interest is the responsibility of national legislators. Common approaches to the resolution of conflict of interest include:

- conflict of interest definition in general and the instruction to public officials how to identify it and refrain from actions in specific situations;
- identification of a number of specific situations that are incompatible with the performance of official duties (for example, a ban on certain freelance activities and the establishment of categories of persons in respect of whom the officer may take the decision);
- disclosure of the conflict of interest existence, based on the fact that public supervision will force public officials to act in the public interest, contrary to their private interests.

While some countries give greater preference to one of the above approaches, many others use elements of each approach.

In Moldovan legislation conflict of interest is defined as a conflict between the duties of the official position and the personal interests of subjects declaring their position as individuals, that may improperly affect objective and impartial performance of their statutory powers and duties.

Personal interest means any interest of the subject of the declaration. "Personal interest" may be tangible or intangible, arising out of his personal needs or intentions, of his actions that could be legitimate in his position of an individual, of the relationship with his relatives or legal entities regardless of ownership, relationship or personal relationships with political parties, NGOs, international organizations, as well as being a consequence of his preferences or obligations. Close relatives are: spouse (wife), relatives by blood or adoption (parents, children, brothers, sisters, grandparents, grandchildren, nephews, uncles, aunts) or common-in-law partners (brother-in-law, sister-in-law, mother-in-law, father-in-law, son-in-law, daughter-in-law).

Conflict of interest is detected by: initial and periodic declaration of personal interests and prompt reporting a conflict of interests respectively by candidate for the position or by the subject of the declaration, as well as through petitions and appeals submitted by citizens or other statutory methods.

Thus, the subject of the declaration must immediately, not later than three days after detection, inform a superior officer or higher authority in writing on:

- interest – his or of his close relatives – in a decision that must be made by him personally or in making of which he must participate, or in an action that he must do while performing his official duties;

- position – his or of his close relatives – of a founder, shareholder, partner, member of the Administrative Council, a member of the Audit or Control Committee of the legal entity (commercial or non-commercial), if that entity has received from the public body, in which the aforementioned official works, property, including money, loans or orders for state procurements guaranteed by the state or local public authority.

President of the Republic of Moldova, MPs, members of the government and other heads of public organizations inform the National Integrity Commission on a certain conflict of interest they have.

The Law on Conflict of Interest obliges subjects of the declaration to assume responsibility for identifying personal interests that might conflict, or are in conflict with their official duties, as well as obliges subjects and public organizations to take positive steps to resolve conflicts of interest. The conflict of interest is settled by considering the conflict of interest, finding and enforcing the right solution for its positive settling. The subject of the declaration and the head of public organization manage and settle the conflict of interest. Variants of positive conflict of interest settling are the following:

- the subject of declaration refuses from personal interest or eliminates this interest;

- the person involved in the conflict of interest refuses (is prohibited) to participate in the decision-making process without his dismissal from office at low probability of conflict of interest repetition. To refuse from decision-making means to hand over the decision-making responsibility to a third party, or to abstain in the vote with the awareness of all parties, affected by the relevant decision, of the measures taken to ensure the correctness of the decision-making process;

- the person involved in the conflict of interest has restricted access to certain information. Restriction assumes the ban for a person affected by the conflict of interest, to participate in the discussion of proposals and plans related to the conflict of interests, as well as to receive important documents or other information relating to his personal interests;

- the person is transferred to the position that is not fraught with the conflict of interest;

- person's duties and responsibilities are revised if the conflict of interest continues and the dismissing from office is not recommended;

- the person gives up the position that presupposes the performance of conflicting duties.

When taking the most appropriate decision for settling or overcoming the conflict of interest, top officials should take into account the interests of the public, public organizations and the legitimate interests of the employees, as well as other factors, including, in certain cases, the level and type of the position held by the person, the nature of the conflict of interest. The subject of the declaration must comply with any final decision requiring his getting out of the conflict of interest situation, in which he is involved, or refuse benefits that engendered conflict of interest.

If the subject of the declaration disobeys the decision regulating the conflict of interest, all acts or deals issued / received or committed in the situation of the conflict of interest shall be invalid.

Declaration of personal interests. The requirement to declare personal interests is included in all contracts or procedures that regulate hiring, election or appointment in public service. Thus, a candidate for the election, appointment or approval in a public service must identify and declare relevant personal interests. Declaration of personal interests is submitted within 15 days from the date of recruitment, confirmation of the mandate or appointment, and the declaration of personal interest is submitted annually by March 31. And when changes in the information occur, the subjects of the declaration must update the declaration of personal interest within 15 days after the changes.

Also subjects of declaring personal interests are required to file a declaration at the end of the year after the termination of activity until March 31 of the next year.

Organizations that employ officials liable in accordance with the Law on Conflict of Interests to submit declarations of personal interest, appoint from among the employees of the personnel department persons, who are responsible for collecting declarations and perform the following duties:

- to accept and register the declaration of personal interests in a special public register called the registry of declarations of personal interests, in compliance with the form in Annex 2 of the Law on Conflict of Interest. The registry of declarations submitted by information and security officers is not public;
- to issue without delay a receipt to the declarant on getting declaration from him in compliance with the form in Annex 3 of the Law on Conflict of Interest;
- to issue on request of the staff the forms of declaration of personal interest;
- to provide advice on the proper completion and timely submission of the declaration;
- on the request of a declarant, to provide advice on the application of legal provisions on conflicts of interest.

Declaration of personal interests is submitted in writing in accordance with the form in Annex 1 of the Law on Conflict of Interest, on the own liability of the declarant, and contains information on:

- gainful occupation;
- status of a founder or a member of the governing, administrative, audit or supervisory bodies in non-profit organizations or political parties;
- status of a shareholder of an economic entity, a credit institution, insurance company or financial institution;
- relations with international organizations.

The information contained in the declarations of personal interest is public and posted on the web-site of the National Integrity Commission.

The breach of the Law on Conflict of Interests entails administrative liability. The Code of Administrative Offences stipulates in Chapter XVI “Offences affecting activities of public authorities” Article 3132 “Failure to declare a conflict of interest”, that failure to declare a conflict of interest by public office holder, working in a public institution, being in state or municipal service or commercial company with the majority of state capital entails imposing a fine in the amount of 100 to 300 conventional units.

Chapter "Offences in business, tax, customs activities and capital issues" of the Administrative Code, Article 304 "Contravention of the prohibitions on equity market, the provisions on transactions with a conflict of interest, other provisions of the equity market", provides: (6) Contravention of the order of large transactions and / or transactions with a conflict of interest shall be punished by a fine in the amount of 150 to 400 conventional units. (7) Failure to submit or miss the deadline for submission of the information, stipulated by law, by persons interested in the implementation of transactions by joint-stock companies when having a conflict of interest shall be punished by a fine in the amount of 50 to 250 conventional units.

Also the Code provides for administrative liability of public officials:

1. Measures for failing to protect civil servants, namely Article 3141 "Failure to provide for measures stipulated by the Law for protection of a civil servant, who reports the acts of corruption and acts related to corruption, facts of corrupt behavior, non-compliance with the rules of declaring income and assets and contravention of legal obligations on conflict of interest, shall be punished by imposing a fine on officials in the amount of 50 to 150 conventional units."

2. For non-compliance with the demands of the National Integration Commission, Article 3191: (2) Failure to impose disciplinary penalty or issue an act on powers (the mandate), employment or service relationship termination when ascertaining act of the National Integrity Commission became final, officials are fined from 100 to 250 conventional units.

1.2A.2. *Nepotism and favoritism*

Terms **favoritism** (from French favori – favorite) and **nepotism** (from Italian nepote – nephew) nowadays mean a situation when a person, who has the authorities, appoints (or facilitate the appointment) to high positions his favorites, people whose main merit is their kindred to a higher rank holder (favoritism), or godparents and relatives (nepotism). Nepotism (synonyms: affinity, cronyism) is a type of conflict of interest, the situation, when a person uses his authorities in order to obtain benefits for his family members or other relatives. Nepotism appeared in the Middle Ages, when the Popes, worrying about consolidation of their power, began to appoint to the highest church positions, primarily of cardinal, their relatives. At first they were the nephews, hence is the name of nepotism. Later, especially in the XV-XVI centuries, they were illegitimate children. For example, Alexander VI made his son Cesare a cardinal, and the Pope Paul III appointed his grandchildren. Nepotism started outliving its usefulness to the XVIII century. The Pope Innocent XII ordered that there could be only one nepot in the Board of Cardinals. By the XIX century nepotism in the church hierarchy was gradually eroded.

In politics, nepotism reached its peak in the Renaissance, when the Popes turned into Italian princes and sought to acquire principalities and duchies for their numerous progeny. The "Pope" dynasties appeared, such as the Orsinis, the Contis, the Medicis, the Borgias, the Savellis.

In the modern world, experts also note the existence of nepotism. In one form or another it is peculiar to the vast majority of countries. Policymakers usually cannot hand over their power directly to children, but they use the opportunity to provide their close relatives, for instance, with high positions in major business structures. Harm of nepotism is that a person is appointed to a new position without passing through the professional selection and often not being a good specialist. In the corresponding UN Convention nepotism is a kind of corruption.

It should be noted that the fight against nepotism is not directed against the familial relationship. This is a ban for civil servants to use their authorities in order to appoint their relatives to public or state positions. Nepotism prevention is not aimed at the ban for relatives to work together. These

measures are aimed at making public officials unable to show undeserved favor or favoritism in respect of their relatives when employing them and preferring them to other qualified candidates, as well as in the process of their work.

Another term used in this sphere is cronyism (synonyms: clannishness, corporatism). It is broader in meaning than nepotism, referring to a situation when the preference is given to friends and colleagues while making any (management, personnel, etc.) decisions. In the UK, **cronyism** is defined by idioms "old school ties" or "club of old friends".

Favoritism, nepotism, protectionism and malpractice are seen as corrupt dangerous types of management behavior.

Protectionism is a system of patronage, career advancement, benefits granting on grounds of kinship, communities, personal loyalty, and friendly relationship aiming at obtaining mercenary profit.

Favoritism is expressed in an open approaching behavior to the favorites; ostentatious delegating them powers irrelevant to their status; undeserved career development and promotion, rewarding; unjustified granting them an access to tangible and intangible resources.

Nepotism is the high official's moral patronage to his relatives and friends in which the nomination and appointment to positions in the internal affairs are made on the grounds of religion, caste, tribal affiliation and personal loyalty to the high official.

Protectionism, favoritism and nepotism in the selection, placement, training of personnel, as well as other abuse of power (of public position) of a high official, are incompatible with the principles and rules of professional ethics.

Law of the Republic of Moldova No. 90 of 25.04.2008 "On Prevention and Combating Corruption" defines protectionism as an act related to acts of corruption, which entails administrative liability.

Article 313[1] of the Code of Administrative Offences defines **protectionism** as a help in problem solving for individuals and legal entities that does not contain evidence of a crime, but is not stipulated by the regulatory enactments, and provided, regardless of the motives, by an official when performing his official duties in a public authority, a public institution, in a state or municipal body or commercial company with majority of state capital, and is punished by a fine in the amount of 100 to 300 conventional units.

Gifts and other benefits**. Gifts can be considered as a special kind of income. Their distinguishing** feature is usually informal (they are not supported by contracts and are often not subject to taxation) and irregular character. Gifts are monitored to prevent conflicts of interest rather than to control economic conditions. However, in some regions with a strong tradition of giving gifts, they can also be a source of material wealth. As one of the earlier surveys showed, different EU countries have different regulations governing declaration of gifts. In Latvia, gift declaring is compulsory for all public officials (including elected officials and members of the Parliament). In Poland such obligation is imposed only on local elected officials and political appointees, and in Hungary – only on members of the Parliament. In Germany, Spain and the United Kingdom such declaration is required from political appointees and members of the government. Members of Parliament in the United Kingdom are obliged to declare gifts if their value is more than 1 percent of salary. The deputies of the German Bundestag must disclose the information on gifts valued at more than 5000 Euros. In France, the National Assembly members shall declare all gifts, regardless of value. Rules on gifts usually (though not always) apply only to gifts given to and received directly or indirectly in connection with the performance of public duties.

Likewise, the gifts should be declared only if they relate to the official position. At the same time, in some systems there should also be disclosed the information on gifts received by state officials as individuals (e.g. in Latvia officials are required to declare any material gifts, and in Lithuania – gifts received from relatives, if their value exceeds 50 times the minimum salary (or living wages, equal to about 38 Euros) and from other parties, if their value exceeds five minimum salaries). Since gifts often (but not always) have little material value, the obligation to declare them usually involves a minimum threshold (in fact, absence of such threshold may indicate inefficiency of the system). As gift-giving traditions vary considerably depending on the region, any requirement to declare gifts should take into account cultural differences, i.e. when small symbolic gifts are an established norm in the dialogue between the society and the civil servants, only unusual gifts such as recreational trips or cars should be the subject to declaration.

Legislation in many countries provides that the receipt of gifts, awards, prizes, as well as providing different honors, services, except of cases stipulated by law, may create situations of ethical uncertainty, facilitate the conflict of interest.

Accepting or giving a gift the value of which exceeds the limit set by current legislation, a civil servant gets into real or imaginary dependence on donor (recipient) that is contrary to professional ethical standard of anti-corruption behavior.

Bribes can take the form of a gift. A gift can be a dinner in a posh restaurant, a ticket for a variety show, an expensive watch, stocks, vacations abroad and many other things, and can also be flowers, souvenirs, books, etc. Some gifts are acceptable, others are not. The line between them lies where accepting a gift makes an acceptant obliged to the donor. In different societies this line is different, but usually it has a certain monetary value. If the value of a gift is above that amount, it is to be declared.

In the legislation of the Republic of Moldova the institute of a gift is provided by several laws, namely the Law No. 16-XVI of 15.02.2008 “On Conflict of Interest” and the Law No. 25 -XVI of 22.02.2008 “On Code of Conduct for Public Officials”.

Article 23 “Gifts and other benefits” of the Law on Conflict of Interest provides as follows:

Subjects to the declaration of conflict of interest are forbidden to solicit or accept gifts, services, benefits, suggestions or any other benefits intended for them personally or for their families. This prohibition does not apply to symbolic gifts, gifts received in accordance with the rules of courtesy or within the protocol, the value of which does not exceed the limits set by the government.

The gifts, the value of which exceeds the limit, are handed over to the public authority and registered in a special registry that every public authority keeps and the information in which is public. If an official pays for the received gift as much as it costs, he can keep the gift making the correspondent record in the registry and signing it.

The procedure for assessing, registering, storing, using and reimbursing the gifts is regulated by the government.

If the person, specified in Article 3, is offered a gift, service, favor or any other benefit that is not stipulated by law, in order to ensure his protection he should take the following measures:

- to reject such benefit as there is no need to use it in future as an evidence;
- to try to find witnesses, including colleagues at work;

- to describe these actions in detail in a special registry;
- to immediately report such an attempt to the competent authorities;
- to continue to perform his duties properly, especially those in respect of which the benefit was offered.

In response to these demands the government of the Republic of Moldova approved Decision No. 134 of 22.02.2013 "On Establishment of Admissible Value of Symbolic Gifts, Gifts Received in Accordance with the Rules of Courtesy or Protocol, and Approval of the Regulations on Assessing, Registering, Storing, Using and Reimbursing Symbolic Gifts, Gifts Received in Accordance with the Rules of Courtesy or Protocol".

According to the Decision, the admissible value of symbolic gifts, gifts received in accordance with the rules of courtesy or protocol, is established as MDL 1000.

The Regulations on assessing, registering, storing, using and reimbursing of symbolic gifts, gifts received in accordance with the rules of courtesy or protocol, determines the activity of the Commission on assessment and registration of gifts, as well as the order of assessing, registering, storing, using and reimbursing symbolic gifts, gifts received in accordance with the rules of courtesy or protocol (hereinafter – gifts) by the subjects of the Law on Conflict of Interest and Code of Conduct for Public Officials.

The Commission on accounting and assessing gifts is established in public institutions employing officials listed in Article 3 of the Law on Conflict of Interest and in paragraph (3) of Article 1 of the Code of Conduct for Public Officials (hereinafter – the beneficiaries) by the administrative act of the head of the institution. It consists of three members, including a chairman and a secretary. The commission must include an employee from financial and economic department of the public organization, who, as a rule, is the secretary.

The Commission shall:

- account the gifts;
- assess the gifts;
- give the gift to the beneficiary;
- offer the head of public organization, if necessary, to store a gift in public organization, hand over the gift to a profile public agency or as a gift donation (donation) for charitable purposes;
- ensure safety and security of gifts sent to the Commission;
- conduct an inventory of gifts;
- annually publish on the website a list of gifts for public organizations and their beneficiaries.

Commission assesses the gift, taking into account an approximate value specified in the declaration of the beneficiary or the documents attached to the declaration. If there is no information on the value of the gift, its value is determined depending on the market price for similar items on the date of gift donation. If the value of the gift is known in a foreign currency, a gift is assessed at the official MDL exchange rate, established by the National Bank of Moldova on the date of assessment.

If the Commission concluded that the gift has a historical, scientific, artistic or other cultural value and assessment cannot be made because the gift is unique, as well as if there is no consensus about its value, the Commission receives a mandatory consultation of experts, who within 30 business days should submit to the Commission a report on gift assessment.

After assessment, the Commission shall take one of the following decisions:

1) to return the gift to the beneficiary – if the value of the gift does not exceed MDL 1000;

2) to reimburse the gift – if the value of the gift exceeds the amount of MDL 1000;

3) to hand over the gift to public authority for usage:

a) if the value of the gift exceeds the amount of MDL 1000 and the beneficiary has not submitted within the stipulated period the proof of payment of its value;

b) if the beneficiary in the declaration of receiving the gift directly requires the gift to be handed over to a public organization for usage.

The beneficiary is obliged to declare gifts and give them undamaged to the Commission within 7 business days of their receiving. If the gift is received by the beneficiary during the period of his trip, the gift must be declared within 7 business days from the date of his return to work.

The beneficiary in writing submits to the Commission the declaration of a gift, drawn up in accordance with Annex 1 to this Regulation, along with the received gift and, if necessary, other documents associated with it.

Gifts are registered in a special registry of a public character – the Gift Registry, which is recorded in handwriting and / or electronically. Gifts of historical, scientific, artistic or other cultural value, as well as cult objects are handed over to public organizations, can be handed free of charge to the management of museums, libraries and other organizations informing the Ministry of Culture. Simultaneously with gift handing over a corresponding entry is done in the Registry, indicating the date of handing over. Each year the Commission conducts an inventory of gifts under the jurisdiction of public organizations, and the head of the public organization offers the list of gifts that can be alienated or given free of charge to charities. The head of a public organization approves the corresponding list.

Rotation. Staff rotation can prevent systemic corruption. Systemic corruption uses long-term, strong relationships between a large number of employees. In fields with high level of corruption hazard employees do not hold one position for more than 7 years. Changing the job position means changes in official tasks that should guarantee a change in terms of the persons with whom the employee contacts.

Longer work in the same position is possible only under special official circumstances. In this case it is necessary to strengthen other anti-corruption measures. Operational need, as well as additional security measures (for example, to strengthen the control) should be recorded in writing. Operational cause may be, for example, absence of a suitable employee for the position or absence of equivalent positions for transfer. Official's personal interests must be taken into account as much as possible, especially in relation to the time of rotation.

Rotation requirement follows from the data of investigative bodies: in the revealed cases of corruption, if they are not listed as situational corruption (also called spontaneous or petty corruption), the criminals in public service performed the same functions for a long time, and corrupt ties could appear and be strengthening for many years. According to the Order No. 423 of 29.11.2010 the Customs Service

adopted Regulations on the staff rotation in the Customs Service. To ensure integrity of the Customs authorities and to establish a mechanism to prevent corruption elements in vulnerable activities related to the internal organization and external obligations of departments, the Customs Service has developed and enforced the Regulation on staff rotation as a measure to prevent corruption in the Customs Service. According to it, the principles, mechanisms and procedure of rotation are established as the basic element of the personnel management in Customs Service. Rotation is used as a measure for preventing corruption in the Customs Service, which is aimed at preventing the abuse and misuse of power, contraventions of ethical behavior and effective enforcement of authorities. At the same time, rotation can be used to support the objectives of personnel management policies, including optimal use of human resources according to the needs and strategic goals of the Customs Service and its subsidiaries, effective implementation of the management process, adaptation of the department activity and / or its units to new requirements and standards, introduction of modern practices and technology of work implementation; to ensure effective functioning of a department or its units in situations of risk, consolidation of staff professional capabilities by sharing experiences and knowledge with other members of the staff, including sharing experience with new employees, developing the staff adaptive capacity to new working conditions, preventing and resolving situations connected with conflicts of interest, as well as for other goals. Accordingly, to ensure legality and correctness of the rotation process, it should be done in a coherent and transparent way and cannot be used as a form of staff discrimination. Rotation is done in correspondence with the powers and responsibilities of the position, which is a subject to rotation, professional abilities and personal qualities of the employee undergoing rotation, other relevant conditions; thus, the involved units should function normally without interruptions. So, the Customs Service provides regular assessments of rotation effectiveness, which is based on an internal assessment carried out by the Head of the Human Resources Department, by developing proposals to ensure effectiveness of the staff management program and by external assessments carried out by government agencies according to competencies, involving non-governmental organizations, civil society and specialized international organizations.

Use of public resources. In his career activity any public official has no right to use entrusted to him public and government funds for his personal benefit.

These provisions are an accepted norm of behavior in public service in almost all countries.

Based on Recommendation № R (2000) 10 of the Committee of Ministers of the Council of Europe on Code of Conduct for Public Officials (adopted by the 106th Session of the Committee of Ministers on 11.05.2000), Moldovan legislators introduced this rule in the Code of Conduct for Civil Servants.

According to Article 9 of the Law 25/2008, a civil servant is obliged to protect public property and prevent its damaging.

Based on the content of this article, public property is:

1) working time that should be used only for activities related to official duties;

2) property of public authorities (furniture, computer equipment, copiers, information from the database to which there is an access, other service information, internet, telephone, cars provided by the employer, etc.) are used only for official duties. It is forbidden to use official property for personal purposes in journalistic, teaching, research and other lawful activities;

3) budget funds are used effectively and according to their intended purposes or the set goals;

4) staff – it is forbidden to engage the colleagues and / or subordinates in activities contradicting to official duties.

It should be noted that the standard of behavior is also reflected in the professional Code of Conduct of Customs and Border Police officers, approved by government decisions.

According to Article 15 of the Law of the Republic of Moldova on Prevention and Combating Corruption, the illegal use of public property provided for the performance of official duties in personal interests or interests of other persons is a factor of corrupt behavior. Violation may result in disciplinary, administrative, civil (damages) or criminal liability.

1.2A.3. *Declaration of assets and income*

International Standards. In the 1990s, declaring assets became a frequent practice in countries with transitional economies; also appeared "soft" / recommendatory international standards in this sphere. One of the first international instruments, stipulating submission of the declaration of assets by public officials, was the Inter-American Convention against Corruption, adopted in 1996. The Convention sets out requirements for Member States to consider measures to create, maintain and strengthen, among other things, "systems for registering the income, assets and liabilities of persons who perform public functions in certain posts as specified by law, and if necessary for the public disclosure of such registries".

The very first European standard in this sphere is included in **the Recommendation № R (2000) 10 of the Committee of Ministers on Code of Conduct for Public Officials,** addressed to the Member States. Article 14 of this Recommendation is about declaration, in particular: "Public officials who occupy a position in which their responsibilities may be affected by their individual or private interests, should, in accordance with law, submit a declaration on appointment and at regular intervals thereafter, as well as any changes in the nature and size of interest." Note that this recommendation emphasizes only control function of the declaration, which is associated with the conflicts of interest, and not to control financial welfare, which is also considered an important issue in a number of countries.

Conditions applicable to countries wishing to join the European Union, as a rule, do not provide unequivocal demands for the introduction of a declaration system for public officials (there is no law on declaration in the EU or general code of laws). The position of the EU as set out in the broad sense includes the requirement that "the candidate country has achieved stability of institutions guaranteeing democracy, the rule of law, human rights (...)."

At the same time candidates are expected to comply with the corresponding international standards and introduce a range of treatments for the prevention of corruption. In addition, individual countries have specific requirements for the implementation or strengthening of controls over conflicts of interest and verification of assets of public officials under the general anti-corruption requirements of the EU.

Thus, even without compulsory legal framework and compelling evidence of the effectiveness of these systems the declaration of assets by public officials has become a de facto standard of the European Union in relation to the candidate countries. All ten countries of Central and Eastern Europe that joined the EU in the XXI century, introduced such systems, characterized by a greater or lesser degree of efficiency, long before their actual entry into the EU.

Nowadays the declaration of assets by public officials has become part of a global standard, embodied in the United Nations Convention against Corruption, adopted in 2003. Paragraph 5 of Article 8 of the Convention contains a "soft" standard, which requires each State Party to endeavor, where appropriate and in accordance with the fundamental principles of its domestic law, to establish measures and systems requiring public officials to make declarations to appropriate authorities regarding, inter alia,

their outside activities, employment, investments, assets and substantial gifts or benefits from which a conflict of interest may result with respect to their functions as public officials. The Convention again raised the issue of information disclosure in connection with the return of the property, set the requirement that "each State Party shall consider establishing, in accordance with its domestic law, effective financial disclosure systems for appropriate public officials and shall provide for appropriate sanctions for non-compliance. Each State Party shall also consider taking such measures as may be necessary to permit its competent authorities to share that information with the competent authorities in other States Parties when necessary to investigate, claim and recover proceeds from offences established in accordance with this Convention" (paragraph 5 of Article 52).

This requirement of the UN Convention is no more than a recommendation to consider this obligation, but, nevertheless, according to the Legislative Guide for the implementation of the United Nations Convention against Corruption (UN, 2006, Paragraph 12, p. 4), it becomes clear that States are encouraged to consider the introduction of such systems of declaration and to make a genuine effort to identify opportunities of such systems to be compatible with their legal systems.

Additional recommendations are contained in the Technical Guide to the UN Convention against Corruption (UN, 2009, pp. 25-26), in particular the following:

- disclosure is required for all significant items of income and assets of public officials (all or from a certain level of service or sector and / or their relatives);
- disclosure forms allow monitoring of public officials' financial position comparing with the previous year;
- disclosure procedures preclude possibilities to conceal officials' assets through other means or, to the extent possible, held by those against whom a State Party may have no access (such as overseas or held by a non-resident);
- availability of a reliable control system of income and assets of individuals and legal entities, such as in the framework of the tax system, to provide access to information about individuals and legal entities associated with government officials;
- obligation of public officials to substantiate / prove the sources of their income;
- to prevent as much as possible, public officials declaring of non-existent assets, which subsequently can be used to justify the wealth, the origin of which has no other explanation;
- adequacy of human resources, professional competence, technical capacity and legal authorities of monitoring bodies for effective control;
- availability of appropriate preventive sanctions for the contravention of these requirements.

Another goal, often stated or implied in the asset declaration systems, is to test the legality of income and financial position. International standards do not establish a direct link between the declaration and the need to monitor the assets of public officials. In addition to the prevention of conflicts of interest and accountability in the public sector, states usually endeavor to establish control over income of all, not just of some individual citizens. At the same time, some countries are sure that the declaration of public officials should serve as a tool for monitoring specific financial situation. In such cases, dominates the idea that government officials shall be subjected to a more severe test than the general population.

Income. Income is one of the most common types of data, the disclosure of which is required in the declarations of public officials. The requirement to declare income has at least two reasons. First, information on income of public officials shows their interests and relationship with specific third parties (hence the requirement usually includes declaration of the source and type of income – such as wages or capital gains), and also the level of such interests (therefore usually the amount of income is indicated). Second, the relative share of official and unofficial income gives some idea of whether the official position is a sufficient priority for this person. This aspect is usually more important for elected officials, such as members of parliament, whose official duties are established primarily by constitutional principles rather than by detailed rules of law. Third, in the course of possible investigations or audits the information on income is needed to determine whether the welfare of a person is received from legal sources. At the same time, this latter aspect may be of little value in systems where legitimate income of public officials in any way is controlled by the state – usually for tax purposes.

Income can be declared in several ways. The most rigorous approach is to declare the exact amount of all income (salary, fees, interest, dividends, income from the sale or lease of property, insurance payments, lottery winnings, inheritances, material gifts, etc.) specifying the sources. This approach is typical of many former socialist countries. Such requirements can be softened by setting a threshold of income, the excess of which must be declared (for example, for the members of the Bundestag in Germany), by the request to indicate income in selected categories, and not the exact amount, by limiting the disclosure of the source of income mentioning its type without indicating a specific source, or specifying the source without the exact amount of income. An example of the latter approach is the system used in Ireland, where "there is no need to specify an amount of remuneration for any activity, occupation, employment, profession or other occupation included in the Declaration" (Commission on standards in public office, paragraph d) and in the Interest Registry of Lords of the United Kingdom, for example, remuneration for work with the Boards of directors in corporation and ordinary employment. For members of the Bundestag in Germany the amount of income related to part-time work or work on contract is declared when the total income of one contract exceeds EUR 1,000 per month, or EUR 10,000 per year.

Some systems require detailed information about the benefits received by public officials from third parties, which in the strict sense is not considered income. For example, these are such favors as travel expenses covered by third parties (but not by the official or his department), various kinds of expense accounts, etc. Typically, these benefits should be declared only if they are provided and taken in connection with performing official duties (such requirements can be found in completely different systems, such as in Bulgaria and the United Kingdom). In such systems, as a rule, threshold amounts are generally applicable.

Assets. In many countries, government officials have to declare not only their income but also assets. A wide range of assets – real estate, various types of movable property (road vehicles, ships, antiquities and works of art, animals, for example, in Croatia – shares and other securities, loans, savings and bank deposits in cash) may be the subjects to declaration. Like information on public officials' income, asset data speak on specific interests: for example, the fact that one or another member of the Parliament is the owner of real estate in a particular location can help get an idea of his / her position on the issue in any way connected with the status of the place, and similarly the information on his / her securities allows us to give a critical evaluation of his / her initiatives in some sectors of the economy. At the same time, in some systems, the reason for requiring the declaration of assets is more important, i.e. to control financial situation. In particular, data on the assets and income help to assess whether the changes in officials' financial position are caused by their declared legitimate income. In such cases, it is important that all possible types of asset accumulation were stated in the Declaration. As in the case of income, assets can be declared in a variety of forms.

Among the major options the declaration of assets with the indication of their value or without it (the value is more important to monitor the financial position) should be mentioned. One of the sub-options of this system is the requirement to declare certain types of assets only if their value exceeds the threshold. Option to consider is the declaration of assets which are owned by or in constant use (rent, trust management, etc.) – for example, the house provided by a third party as a place of permanent residence of a public official (in the first case it is easier to control, but the second option creates a more comprehensive framework for the control of conflicts of interest). This approach, in particular, is implemented in Latvia: officials must declare their assets under their ownership and constant use.

Expenses. Expenses of public officials are an unusual article in the declarations of assets, although the information on expenses may well be used for purposes of monitoring financial position. Theoretically, public officials can use illegal profits by spending them in such a way as to avoid a significant increase in their assets, and therefore such income cannot be set on the basis of asset declarations, but they can be tracked on the basis of expenses declarations. Expenses control may be a particularly important tool in cases when public officials have significant financial commitments and repayments of liabilities far exceed their official income.

Systems existing in Latvia and Lithuania are quite rare example when individual expenses are to be declared due to the requirement to inform about financial transactions done by officials. In Latvia this information is used mainly to control conflicts of interest, as public officials are prohibited to perform official duties in relation to their business partners.

Tangible and intangible interests. The main types of tangible interests are employment on a reimbursable basis, professional activity, joining the Boards of corporations etc., in addition to official position (when and in some cases before and even after holding an official position). In most systems, when public officials have to declare their income, their source is also declared, that is their second job. Sometimes second job is considered as the main item of the declaration by public officials (for example, a declaration system for judges in Denmark and Norway).

Tangible interests, in addition to the actual income, assets and second job, include debts, guarantees provided, formal and informal agreements related to future income, insurance procedures, pension plans, etc. In cases when the value of such interests in monetary terms is essential, they generate a high risk of conflicts of interest and even corruption. Moreover, there is an option when public officials are required to declare certain income and assets only when the income or assets may be of interest, that could potentially affect the implementation of official duties (for example, some interests to be recorded in the Interest Registry of Lords in the United Kingdom “depending on their importance”). At the same time, it is more typical when public officials are required to disclose conflicts of interest in each individual case, and not only in the format of regularly submitted declaration. By definition intangible interests have nothing to do with financial benefits of officials and their relatives.

Typical interests of such type are membership in organizations or voluntary work, such as with Boards of political parties, other organizations, funds, etc. It may also be voluntary work without compensation or gratuitous authority to represent other people.

Some systems provide a general requirement for public officials to disclose all private interests that may somehow affect the performance of their official duties. For example, in Lithuania, government officials are required to disclose “other circumstances that may create conflicts of interest”. To decide whether a particular interest in fact affects the performance of official duties, may have different interpretations. Typically, these questions are ultimately unlikely to be solved with detailed instructions, that’s why general rules take into account cultural life of the society in each country.

Selection of candidates for checking. Most declaration systems cover such a large number of persons that to set the task of checking all the declarations is simply impossible. Because of this, if there is a check at all, it is inevitable to make any selection. With regard to the criteria for such selection, there are several options.

Checking ex officio, i.e. checking all declarations submitted by officials who hold certain positions. Often these are officials who hold the highest position, and their number is relatively small. A clear advantage is the emphasis on senior officials, although the selection criteria "ex officio" may be too insensitive to the real risks of corruption, which are often associated with formally subordinate officials. This approach is used in the following countries: Albania, Estonia, Lithuania, Slovenia and Montenegro.

Checking on the basis of random selection – usually in this case a pre-defined percentage of the total number of submitted declarations is a subject to verification. This approach shares the probability of equal checking among all the officials in the system, and in principle can have a preventive effect, unless the probability of selection for checking is not too small. At the same time, it is clear that the random selection is insensitive to the risks characteristic to particular officials. This option was used in questionnaires of the following countries: Albania, Belarus, Estonia, Latvia and Slovenia.

Model on risk assessment basis is a principle of selection, when the declarations to be checked are selected on the basis of risk analysis, but not automatically as, for example, in the case of applying the principle of "ex officio". Number of declarations to be checked may vary depending on the circumstances, either to be firmly established as a certain proportion or a specific number of declarations. If the risk assessment is done properly, the system can be very purposeful, although it must be admitted that a proper assessment is a heavy administrative burden. Perhaps for this reason, this approach is not widespread.

Checking based on the risks identified in connection with the disclosure of information, for example, containing signs of significant improvement in the material state, significant differences between the declared assets and legitimate sources of income or large interests in activities unrelated to the position. This approach is similar to the previous one, but risk assessment is based only on the content of declarations. This may be one way of maintaining a system based on risk assessment, without overloading it with comprehensive risk assessment associated with each official position.

Declarations of officials, who were reported as suspected in contraventions, or whose fortune sources were unidentified, in particular, on a notification or request of an authorized public authority. In this case, declarations are "the evidence of a delayed action" in case of situations when non-compliances – for example, overly luxurious lifestyle – have been found otherwise. Such use of declarations can be justified, but if the declaration is not verified in other cases, there is a risk of accumulating heaps of declarations containing useless information. Officials may decide that the declaration completion is not related to any liability in practice, if only they are not caught on any particular contravention.

Checking in case of notifications or complaints from citizens is the approach that is generally similar to the previous one. Systems that admit the beginning of checking procedure on complaint may differ from each other in terms of the requirements for the degree of complaint grounding, whether the complaint may indicate the contravention and if it is so, which in particular. For example, in Romania such notifications must contain the evidence and the information on which they are based, as well as sources where this information can be requested. In addition, the notifications must be dated and signed, that is, apparently, they cannot be anonymous (notifications that do not meet the requirements are not considered).

Access to checking results. Usually whether to publicly disclose the results of checks (audits) in respect of income and financial position of public officials is not discussed much. At first glance, it seems logical to publicly disclose the results of checks, for example, income of public officials, as long as their declarations, containing the source data (which, in fact, are checked), are already public. Nevertheless, Latvian experience shows, that this is not necessary. Although data on income and property, contained in the declarations of public officials, are freely available in the Internet, in case of doubt their audit is performed in accordance with the procedures provided for individuals, taxpayers and according to the tax law the results of such tests are confidential, and the public can have access only to the distorted information provided in the declaration of a public official.

At the same time, this issue is important and requires attention when assessing the transparency of any declaration systems for public officials. Some countries still adhere to the principle of confidentiality. For example, status information, access to which is limited, is provided in relation to declarations in such countries as Belarus, Kazakhstan and Kosovo. In Slovenia, the law also states that the data obtained in the course of the financial audit of officials, as well as other data, established by the Commission for Prevention of Corruption, must be kept confidential. Examples of data access restrictions can be found in Western Europe. For example, in France the declarations of ministers, members of Parliament and civil servants are not subject to public disclosure.

In Moldova, declaring income and assets is regulated by Law No. 1264-XV of 19.07.2002 "On Declaring and Control over Income and Assets of State Officials, Judges, Prosecutors, Civil Servants and some Managers".

This Law establishes the obligation, as well as the procedure of declaring and controlling income and assets of persons, it is aimed at establishing measures to prevent and fight against unjust enrichment of public officials, judges, prosecutors, civil servants and some executives.

According to the Law, the subjects of declaration are:

- Public officials, stipulated by the Annex to Law No. 199 of 16.07.2010 "On the Status of Public Officials";
- members of the Supervisory Board of the National Public Broadcasting Company "Teleradio-Moldova", the deputies of the National Assembly of the Autonomous Territorial Unit of Gagauzia, General Deputy Director of the National Health Insurance Company;
- heads and deputy heads of the administrative authority (public institution) subdued to central specialized body, of the state or municipal enterprise, commercial company with majority of state capital, of the financial institution with the state or predominantly state capital;
- persons performing management and control functions in the institutions of public education and public health systems;
- cabinet staff of the high-ranking officials;
- civil servants, including those with special status, must declare: **property** – movable and immovable property, including the one that is outside the country; **income** – any property growth, addition or increase in the form of property rights, or any other property benefit obtained by the subject of declaration or members of his family in the reporting period both within the country and abroad, regardless of their source.

Declaration is provided according to the Declaration of income and assets and is a personal irrevocable document submitted in writing under the sole responsibility of the declarant. Declaration is a public act, excluding information relating to personal data.

Declaration shall be submitted within 20 days from the date of appointment or election to office. If elected to the position, which implies recognition of the mandate, the declaration is submitted before the appointment. Upon mandate expiration or termination of the activity the declarants must submit a new declaration of income and assets they possess on this day.

Also, the declaration is submitted annually by March 31 next year.

Failure to submit the declaration on unreasonable excuse within 20 days from the date of activity termination entails control procedures. The check of income and assets specified in the declaration is done by the National Integrity Commission in accordance with the provisions on the Commission approved by the Parliament.

In the process of checking the National Integrity Commission is entitled to request from the corresponding bodies and public authorities, individuals or legal entities the documents and information necessary to perform its control functions. Upon reasonable request of the Commission the heads of corresponding institutions of the public authorities, as well as legal entities are required within 15 business days to provide it – on paper or in electronic format – with data, information, statements and documents that could help resolve the case.

Disregard of this Law requirements entails legal liability of the declarant or of the person responsible for implementing the Law.

Thus:

1. Failure of a person responsible for collecting declarations to perform his duties provided by this Law is a disciplinary offence and shall be penalized in accordance with the legislation applicable to this person.

2. Failure to submit the declaration in the terms established by Article 8 of the Law is an offence penalized under Article 3302 of the Code of Offences “Delays in declaring income and assets or personal interests”, imposes a fine from 75 to 150 conventional units.

3. Deliberate stating of inaccurate or incomplete information in the declaration is a crime and is penalized under Article 3521 of the Criminal Code “False statements in the declarations”: untrue statements in the declarations submitted by the competent authority in order to produce legal consequences for himself or a third party in the case when by law or circumstances declaration serves as the basis for the production of these effects, is penalized by a fine to 600 conventional units or by imprisonment for up to one year with deprivation of the right to occupy certain positions or engage in certain activities for up to 5 years.

4. Disclosure or publication of information that is not public or constituting state secrets is a crime and is penalized under Article 3301 of the Criminal Code “Contravention of the confidentiality of the information contained in the declarations of income and assets”: the intentional disclosure or publication of information contained in the declarations of income and assets, by persons to whom the information has become known when performing official duties or control – is penalized by a fine from 150 to 300 conventional units with or without the deprivation of the right to occupy certain positions or engage in certain activities for a term from 1 to 5 years.

5. Failure to comply with the provisions of subsection (3) of Article 11 of the Law is an offence penalized under Article 3191 of the Code of Offences: “Failure to comply with the demands of the National Integrity Commission”:

(1) Failure to submit the data, information, acts or documents requested by the National Integrity Commission in accordance with Part 3, Article 11 of Law No. 1264-XV of 19.07.2002 "On Declaring and Control over Income and Assets of State Officials, Judges, Prosecutors, Civil Servants and some Managers", is penalized by a fine for individuals from 100 to 150 conventional units, for officials from 100 to 250 conventional units, for legal entities in the amount of 200 to 350 conventional units.

(2) Failure to impose a disciplinary penalty or issue an order on the termination of powers (the mandate), employment or service relationship when ascertaining act of the National Integrity Commission has become final, entails imposing a fine on officials in the amount of 100 to 250 conventional units.

1.2A.4. *Restrictions and prohibitions*

Besides the rights and duties, the public official, going to work for public office, voluntarily accepts a number of established legal restrictions and prohibitions. They aim at providing a high moral character and employee freedom of action within his office. Such restrictions should prevent possible abuses or corrupt practices.

Incompatibility regarding public positions is established by the Constitution of the Republic of Moldova, the laws regulating activities of public authorities, in which officials occupy government positions, the law on conflict of interest, public service legislation and other regulations.

The Law on Conflict of Interests provides for restrictions related to the termination of activity, limitations for signing commercial contracts, constraint of representation, advertising restrictions. Each of these is relevant to all categories of public office holders.

Restrictions relating to the service in the Customs authorities are reflected in Article 6 of the Law of the Republic of Moldova on Service in the Customs Authorities of 20.07.2000. According to this article, a person dismissed earlier from the customs authorities for unlawful acts discrediting the name of a customs officer, a person with a criminal record check, a person recognized by a final judgment incapable or partially capable, a person who is in a relationship of kinship, property or affiliated with the governing bodies of the founders or legal entity possessing a license of a customs broker, as well as the person who has concealed at the entry the facts obstruct the service in custom, cannot be accepted at the service and cannot serve in the Customs authorities.

Persons affiliated with the legal entity are:

- sole executive body, shareholders, members of the collegial executive body and officials of the executive body of the legal entity;
- members of the supervisory board, board of directors, as well as members of the audit committee of the legal entity;
- legal entity or an individual who, alone or together with its / his affiliates, holds the control stock in the capital of the legal entity;
- entity, in the capital of which the given legal entity, as well as its affiliates, individually or jointly, keep the control stock;
- legal entity or an individual acting on behalf of and at the expense of this legal entity;
- legal entity or an individual on behalf of which/whom and at the expense of which/whom this legal entity acts;

- legal entity or an individual acting in concert with the legal entity;
- legal entity that, together with the given legal entity, is under the control of a third party;
- a person affiliated with the persons stipulated in clauses “a” through “h” of this paragraph;
- a person whose affiliation is proved by the Customs Service or by the court.
- Also a customs officer shall be forbidden:
- to engage in other paid activities (apart from teaching, scientific or creative activities;
- to engage in entrepreneurial activities personally or through third parties;
- to be a member of the management body of the commercial organization;
- to be an attorney or representative for third parties in customs;
- to use means of logistical and information support, funds, other state property and proprietary information in unofficial purposes;
- to receive from individuals or legal persons gifts, awards, loans, services, funds for recreation, entertainment, transportation costs and other fees associated with the performance of his official duties;
- to travel at the expense of individuals and legal entities in foreign business trips, except for trips undertaken in accordance with the international agreements of the Republic of Moldova or on a reciprocal basis by agreement with other states or by agreement of the public authorities with international organizations;
- to use his position for the benefit of parties, public associations, including religious ones.

In the national customs authorities it is unacceptable to form parties, public associations, including religious ones, with the exception of trade unions. The customs officer, while serving in the customs authority, must transfer his share (shares) in the authorized capital of commercial organizations in trust for another person in the order stipulated by law.

With regard to restrictions and prohibitions in the **Border Police,** today, for admission to the service, according to law, a person should become familiar with the restrictions and prohibitions imposed by regulations governing the activities of the police and prove it with his/her signature.

According to the Law of 27.12.2012 (Article 28) “On Activities of Police and Status of a Policeman”, the police are prohibited:

a) to be the members of political parties, political formations or organizations or to conduct propaganda in their interests;

b) to organize a strike or participate in it;

c) to organize meetings and other gatherings of a political nature;

d) to express political opinions or preferences in the performance of or in connection with their official duties, at workplace or during working hours;

e) to join religious cults that are not registered under the law;

f) to use for personal benefit or for any other purpose except the service, financial, logistical and information tools, other state property and proprietary information, which are at his disposal to perform functions or to which they have access in connection with them;

g) to abuse their official positions and compromise the prestige of their positions or body for which they work with their private or public activities;

h) to demand or accept gifts, services, benefits, suggestions or any other benefits intended for them personally or for their family;

i) to take other actions prohibited by the police law.

A policeman, with performance of his duties, cannot be in direct subordination to his relatives (parent, brother, sister, son, daughter) or common-in-law partners (husband / wife, parent-in-law, brother-in-law, sister-in-law).

The law prohibits simultaneously to perform other paid activities:

a) in public authorities;

b) in a responsible public office or in the position of government official, except for the case when service relationships are suspended for the corresponding period in accordance with the law;

c) on the individual labor contract or other civil contract in business associations, cooperatives, state or municipal enterprises, and private non-profit organizations or public sector, except for teaching or research activities.

A policeman shall not be engaged, directly or through third parties, in business activity or be a member of the management body of any enterprise.

A policeman cannot be the attorney for the third party in public authority, in which he works, including the actions related to his position.

In the case of non-compliance with these conditions, the guilty person shall be dismissed.

1.2B. *Moral and professional standards provided by legislation of Ukraine and mechanisms for their implementation*

1.2B.1. *Ethical conduct of public officials and professional ethics*

Ethical conduct of public officials is considered in the framework of professional ethics. Therefore, it's necessary to analyze the main aspects of professional ethics.

The generally accepted definition is: **professional ethics** is, firstly, t**he codes of conduct** that dictate a **certain type of moral relations** between people, and are optimal in terms of the performance of their professional duties and, **secondly, ways to justify such codes.**

This definition contains **three key phrases,** which reveal the essence of professional ethics and the mechanism of its functioning. So, the essence of professional ethics is "**a certain type of moral relations",** approved by a professional group.

"The type of moral relations" is provided for by the "code" of conduct (form Latin: codex (book) – a set of moral norms to be observed by a professional group). Norms of the code as a set of moral standards that meet professional roles and determine qualitative characteristics of the desired type of moral relations, enable the integration of professional actions of employees in joint activities aimed at achieving a common goal.

"Ways to justify the code." The phrase indicates that the document called the Code of Conduct (ethics, honor) acquires moral regulatory quality only if it is properly justified. Justification can be based on the integrity principle or on the agreement of the members of the professional group.

Participation of employees in the development of a code forms not only awareness of the personal significance of certain norms, but also joint responsibility for their implementation.

Certainly, the definition of professional ethics should be supplemented with two other elements: a) **instruments that give effect to the code and b) a set of moral and professional qualities and skills** through which the values and norms of the code are adequately perceived and implemented in communicative, professional and other relations.

The first element characterizes values, requirements, rules and regulations, which describe ethical conduct of a professional group, the second – requirements for individual moral qualities (morality) of a representative of a particular group as a condition of proper professional activity.

Professional ethics has two constituents: the ethics of professional groups and individual ethics of every employee.

Professional ethics regulates:

1) decision-making in typical and atypical professional situations;

2) solution of ethical problems of team work;

3) analysis and identification of common moral principles of professional activity;

4) solution of moral problems with application of knowledge from other fields: political, administrative, behavioral, organizational, legal, economic, etc.;

5) promotion of moral ideals, approval of desired values and samples, for which professional groups and workers strive in their service activities.

Specific morality is acutely needed in the professions, such as civil service, which have a significant impact on a human, society's development, safety of people, cultural level and morality.

Professional ethics should be considered at four levels:

1) social, which defines the system of social values (human and democratic) and standards of civil service;

2) institutional – specific values and norms of civil service as a public institution;

3) the level of the personnel – moral and professional standards, communication and relationships, which define behavioral norms, corresponding to the idea of perfect civil service;

4) the individual morality level of a subject of professional activities and a citizen.

Ethics in the civil service characterizes professional morals as a spiritual and practical phenomenon, which regulates professional activities and relations on the principles of universal, public, professional values and norms, as well as personal needs and interests.

The universal values include those relating to the meaning of life: a human being as an ultimate value, his liberty, justice, solidarity, tolerance, etc. The content of social values is also determined by the focus on the democratic type of the social system (Table 8).

Democracy as a public self-government, carried out by equal citizens through direct participation in discussing and resolving social problems by free choice (voting), appears in two forms: political – as a way of organizing and implementing the state government and management; social – as involvement of citizens in resolving social problems.

Table 8

Values of democracy	Content of the value
Nationality, citizenship	Formal affiliation of a man to the state, political and legal connection with its structures, development of social consciousness and personal dignity, ability to realize his/her own interests and to protect them, taking into account the interests of the society
Human dignity	A citizen is the carrier of dignity and its protector; awareness of his/her own importance, his/her own mission, uniqueness and inexhaustibility of abilities is one of the main virtues of a democratic world outlook and at the same time civic duty; dignity is the consequence and condition of freedom
Moral autonomy	State recognition and guarantee of inalienable rights of every citizen, primarily the right to be oneself, personal choice of life and ways of self-realization
Freedom as a combination of "negative" and "positive" freedom	Space in which a person belongs to himself and can take any decision, which doesn't harm others; independence from any interference: autonomy, individualism, formal legal equality, which is ensured by providing certain rights; equal opportunities for the development of personal skills and realization of life aspirations: equal-for-all freedom (social equality)
Freedom of conscience	The right to freedom of conscience is the basic democratic human value; reflects the sphere of individual choice, inner beliefs, and therefore is inviolable and shall by no means be enforced

Competence, responsibility	Knowledge of the ways to protect rights and freedoms; ability to protect his/her own interests; obligation to be fully responsible for the decisions and actions
Privacy	Guarantee of human sovereignty: non-interference of others (individuals, state) in the matters that do not relate to his/her public activities, and in the private sphere, which is ruled only by himself/herself
Constitution and constitutional system	"Superhuman" instance, which sets limits on freedom and responsibility of each member of the community; defines the principles of social coexistence in a democratic society
Freedom of speech, free media and civil thought	Values and conditions of citizen's self-fulfillment; their consequence is the emergence of the public sphere – the sphere of openness, in which public opinion acquires legitimacy and becomes an important factor of a democratic state policy; like other freedoms, freedom of speech and public opinion can not exist without moral responsibility
Civil association	Democracy as a form of socially-oriented worldview directs a person at conscious and active social life; it provides for the basic need in unity with others, spirit of reciprocity, responsibility, participation in public life; associative values (solidarity, trust, mutual support, readiness to concurrently protect social interests, etc.) form the ethical basis of democracy
Social order	Universal human value, which ensures stability, orderliness, safety of life on the basis of laws, procedures, public awareness, balance and experience of community life

Identification of specific values of civil service needs analysis of its nature as a professional activity.

Civil service as a kind of professional activity in Ukraine was legalized in 1993 by the Law of Ukraine "On Civil Service": **"Civil service in Ukraine shall be understood as the professional occupation of persons holding positions in state bodies and apparatus thereof that practically implement tasks and functions of the State for pay from state funds in return. These persons shall be referred to as civil servants and shall have appropriate official authority."**

Specifics of the civil servants' professional activity is, that it is a kind of management, which is carried out within the state as a legal institution of society.

The main feature of a moral state is that it acts fairly.

The state serves the whole society, that's why it must treat its citizens as equal before the law, ensure the conditions in which they can safely interact, prevent harm to one person (group) from another person or group.

Consequently, justice is one of the fundamentals of civil service, moral and professional feature of civil servants.

In modern scientific literature **ethics of civil servants is most often defined as a set of moral standards of civil servants' conduct, which help to evaluate their activities in terms of such values as fairness, honesty, conscience, dignity, humanity, sensitivity, integrity, loyalty to the state and law, etc.**

The authors do not clearly distinguish between "ethics of civil service" and "ethics of civil servants". So, we'll try to define these notions.

Ethics of civil service is a kind of professional ethics that studies the state of professional ethics and problems of its operation: the system of values, norms, relationships and moral principles, culture and institutions of this professional group, which ensure humanity, professionalism and integrity of civil servants in their service to the citizens, society and state.

Ethics of a civil servant characterizes professional moral consciousness and self-consciousness, a way of thinking and peculiarities of conduct that meet the criteria of universal morality, social values, special professional moral requirements and life goals of civil servants, and ensure the proper performance of their moral obligations.

The main categories of civil servants ethics are:

- professional moral consciousness (including self- consciousness),
- moral activity,
- moral act,
- moral relationships,
- moral duty, etc.

Each of them, in its turn, has its own subcategories.

Moral and professional standards are set forth in the Law of Ukraine "On Civil Service", the oath of a civil servant, the Code of Ethics, professional and collective traditions, rules of professional activities organization, etc.

Ethical behavior of civil servants can not be reduced to a set of principles and standards of conduct or to the Code of Ethics. It is the basis of professional activity and relationships, it is also considered as the index of the government's authority in the society, provided that civil servants have certain professional moral traits of character, which enable moral conduct, as well as a set of internal and external objective factors that determine its permanent ethical character.

We consider the model of ethical conduct of a civil servant as a generalized characteristic of ethical culture of professional activity, the basis of which is the official's morality as the essence of his personality.

Its structure corresponds to the structure of morality. Therefore, the model of ethical conduct of a civil servant is a system of values, motives, principles and standards, personal character traits that determine his relations, activities and communication on the principles of reciprocity, as well as work methods and forms of relations, etc. It defines the limits of objective and subjective moral responsibility of a civil servant; characterizes his attitude to his social role, to colleagues, partners and citizens, to himself; determines general guidelines for creative solutions and criteria for moral "weighting" of goals, means, relations and search for "the golden mean".

The model of ethical conduct is based on the ideas and principles, derived from the essence of ethics as a science:

- universality of ethical principles and standards, their operation in all spheres of civil service at all levels of the service hierarchy;
- compliance of the purpose and means of professional activity with the highest values; conformity of the results with the goals;
- principles of humanism, justice, expediency, optimum and aesthetic appeal of actions (decisions);
- compliance with national customs and traditions of conduct.

Internal factors of ethical conduct include groups of personal factors, which determine the moral choice of a civil servant in a particular situation.

These include **characteristics of professional moral consciousness:**

1) values – a human being, Motherland, freedom, justice and solidarity;
2) motives – service, participation, self-realization;
3) principles of conduct – legality, loyalty, initiative, responsibility, accountability, cooperation, transparency, openness;
4) standards of conduct – legality, cooperation, non-partisan, distinction between business and government, declaration of expenditures, etc.

To subjective factors also belong abilities, as well as moral and professional qualities – professionalism, integrity, leadership, intelligence, honesty, responsibility, self-control, tolerance, communicativeness, etc.

Factors of coping behavior include knowledge and experience in the major areas of competence – a high level of management expertise, anthropological knowledge, legal knowledge, culture of communication and interpersonal interaction skills, ability to work in a team, etc.; algorithms and criteria of moral choice; forms of moral and professional interaction, etc.

Factors of internal environment (groups and civil service institutions) carry a stimulating effect and control activity and behavior of civil servants. These include: organizational structure, methods of collective labor organization, business communication, morale, organizational culture, leadership style, etc. Factors of external (social) environment include: social values, interests and expectations, public opinion, trust in government, standards and requirements of the international community, etc.

The term “formation of professional ethics”, as well as the term “professional ethics”, applies not only to individual civil servants, but also to labor collectives of state bodies and the civil service as a whole. Therefore, morality of a civil servant can not be separated from moral principles of an organization or service.

The model of ethical conduct also contains general characteristics of algorithms for ethical assessment of a situation and moral choice, shows the steps and mechanisms of ethical conduct formation.

Civil servants ethics may form spontaneously or purposefully and relies on the relevant regulations of the state, state institutions and civil society. However, in each case it is based on moral freedom.

Moral freedom of an individual – "freedom for" (achieving socially important collective goal) makes it possible to consciously perform professional duties as moral ones. It provides morals with the status of the regulator of professional conduct of an official.

Real limits of moral freedom are defined by the limits of free choice:

1) socially approved norms of official conduct;

2) rights, given by the society to civil servants to perform their duties and meet their needs and interests;

3) adequate working conditions that ensure standards of official duties performance.

These components of moral behavior are provided for in the Law "On Civil Service" and specified in the regulations of state authorities and job descriptions.

Knowledge of the rights, with which the civil servant is endowed in accordance with his positions, and ability to use them are the subjective conditions that enable moral choice. As for the ethical principles and standards defined in legal acts, they give only general guidelines for action rather than prescriptions for behavior. That is moral behavior depends not only on the knowledge of ethical principles and norms, but also on the possibility, ability and willingness to choose the right methods and tools for their applications and to be responsible for the consequences of the choice. This subjective factor depends on the level of moral consciousness of the civil servant, his will and experience of moral behavior.

In professional activity there are three patterns of behavior, depending on goals, values and motives of a civil servant. They characterize link between the attitude towards ethical requirements (values), freedom of choice and the action.

The first type of behavior, so-called "adaptation", meets ethical standards under the pressure of external control.

The second – "consent and individual rights" – characterizes behavior compliant with moral obligations.

The third – "moral autonomy" – is the behavior, motivated by the inner need to act morally.

In accordance with the presented model of ethical conduct of a civil servant, the process of professional ethics formation is considered on the basis of alteration of ethical environment, which is an extensive legal, regulatory and institutional framework for implementation of ethical policies of Ukraine. This approach ensures manageability and efficiency of the process.

Moral principles reflect special moral requirements for performance in the most general form.

Moral activities (actions) – a free moral act, directed and experienced by the subject (as the author and participant), who is solely responsible for its consequences.

Moral professional relationships – the sphere of professional ethical relations between: civil servants and the state; civil servants according to their hierarchical subordination, coordination; civil servants of different branches of government; civil servants and the civil society, individual civil servants and citizens, etc.

Moral relations in the civil service occur in the form of requirements (principles, standards, rules), set by the subjects of professional relationships to each other on fulfillment of professional moral duty: moral principles of civil service; moral responsibility, moral and professional qualities, moral

control. Specific manifestation of moral relations is the attitude of a civil servant to himself, i.e. moral consciousness, self-esteem, self-control.

Moral culture – the culture of moral consciousness, moral behavior and moral relations.

In the field of ethics of civil servants a number of functions, revealing its specific role in professional activities, should be considered.

Cognitive-evaluative function of civil servants ethics is aimed at forming a new democratic perception of the society and rethinking of the role of the state and the profession of civil servant.

Regulatory function is aimed at introducing ethical principles in professional activities through respective organization of collective labor and regulation of professional relations.

Control function of civil servants professional ethics is implemented in the form of internal and external control of professional ethics.

Preventive function of civil servants ethics aims to address two tasks:

- promotion of ethical behavior;
- identifying moral deformations, dysfunctions in management, ethical conflicts, their causes, resolution and management.

Socialization function provides a comprehensive adoption by civil servants of the system of social values and morality, special moral standards of civil service and the team, as well as individualization of public servants in the process of collective labor and self-realization for the public good.

The concept “formation of professional ethics” describes the process of developing professional moral consciousness, experience of moral activity and communication, as well as moral self-education.

Experience of some of the most developed countries of the world proves that professional ethics is a pragmatic tool aimed at transition from the ethics of obedience to the ethics of beliefs and accountability to the citizens.

Increased attention of the European states to ethical challenges of civil service is predetermined by the alteration of the “common European home”.

In search of consensus the European community realized that there are no alternatives to mutually respectful dialogue of cultures, and therefore as a means of achieving universal understanding was chosen discursive ethics. Today, the universal pragmatic ethics of responsibility earned proper recognition and became a kind of ideology, which is embodied in the internal affairs of the EU Member States, and in the international relations.

The key notion of discursive ethics is the “joint political responsibility”.

The basic moral values of discursive ethics: respect for dignity; equality; responsibility of everyone.

If someone gains exclusive rights at the expense of others, it creates a favorable environment for manipulation.

Principles of “good living” must be common to all, that is why “good living” of an individual, group, community and humanity as a whole needs conscious and voluntary consent to self-restraint.

The mechanism for regulating relations and interaction between the subjects of voluntary consent – is the ethics of debate, which is the "common language", representing the general procedural rules of discussion. Ethical norms of interaction between subjects arise in a debate as a compromise reached according to universal rules of a well-reasoned discussion.

The basic ideas of discursive ethics are embodied in the collective values of the Council of Europe, the Copenhagen criteria for the EU countries and in the recognition of consensus as the main decision-making tool.

In 1993 at the summit of the heads of governments of the EU Member States were adopted basic standards of interstate cooperation, based on the Christian principles, such as: natural human rights, fundamental freedoms, democracy, rule of law, peace, cruelty exception, respect for others, the spirit of solidarity in Europe and the world in general, equal opportunities for development, equality, cooperation, environmental protection, personal responsibility.

In the Copenhagen criteria, which are undisputed for every EU candidate state, the values are grouped into three clusters:

- stable institutions, which guarantee democracy, the rule of law, human rights, protection of minorities;
- competitive market economy within the EU;
- opportunity to take on the obligations of the EU membership, including political, economic and monetary.

Ethics of civil servants in the EU is formed in line with alteration of ethical environment as a response to the requirement of harmonization of official ethics and fight against corruption.

Recommendation of the Committee of Ministers of the Council of Europe (Strasbourg, May, 2000) with respect to standardization of civil servants conduct introduced a model (sample) of the Code of Conduct for Public Officials (Annex to Recommendation No. R (XX) XX), according to which national codes were to be developed.

This document contributed not only to the adoption of national codes, but also to establishment of special state institutions on ethics, introduction of ethical education, etc.

Consider the main characteristics of the Model Code of Conduct for Public Officials of the Council of Europe, as this very document discloses the nature and content of professional ethics.

The document consists of two sections:

1) interpretation and application;

2) general principles.

The first section contains three articles, which define:

1) persons, to whom the Code is applied – all public officials employed by a public authority; the provisions of the Code may also be applied to persons employed by private organizations performing public services; the provisions of the Code "do not apply to publicly elected representatives, members of the government and holders of judicial office" (Article 1);

2) the status of the Code – this document is part of the provisions governing the activities of public officials, because everyone is obliged to adhere to the provisions of the Code (Article 2);

3) the purpose of the Code – the document has three objectives: a) to specify the standards of integrity and conduct to be followed by public officials; b) to help them meet these standards; c) to inform the public about the conduct it is entitled to expect of public officials (Article 3).

The second section "General principles" includes the principles that outline the ethical limits of performance, as well as the rules and regulations for their implementation. These are: loyalty, legality, political neutrality and fidelity to lawful policy and public authorities; honesty, impartiality and efficiency in serving the public interest, politeness in official relations, proper respect for the rights, duties and interests of others; impartiality and objectivity in decision-making; avoiding conflict of interest, abuse of power; concern about public confidence; accountability to immediate supervisor; the right of access and confidentiality when dealing with official information and documents; efficiency and effectiveness in the use of personnel, public and official resources, etc.

The main requirements of the Code – integrity checks of the candidates for employment, promotion or appointment in the public service (Article 24), as well as monitoring compliance with ethical requirements (Articles 25, 28).

The characteristic feature of the Code is the emphasis on the obligations reciprocity of public officials and those who supervises and manages them. Thus, Article 25 "Supervisory accountability" provides for the obligatory hierarchical accountability in the public service. It stipulated the responsibility of the public official, who supervises or manages other public officials, firstly, for the performance of his functions in accordance with the policies and objectives of the public authority; secondly, for acts or omissions by the staff if he has not taken necessary measures to prevent them; and thirdly, for taking reasonable steps to prevent corruption among subordinates. Article 28 strengthens the responsibility of the public official, who supervises or manages other public officials, for the observance of the Code by subordinates, and for taking appropriate action for breaches of it.

The Code standardizes the procedure of leaving the public service (Article 26). This Article, as well as other articles, defines the rules of fair conduct after leaving the public service or when moving to another job. It stipulates the prohibitions related to prevention of possible abuse. It is complemented with Article 27, which prohibits public officials to give preferential treatment or privileged access to the public service to former public officials.

The Code also settles the problem of efficiency of civil servants professional ethics. As noted above, certain articles (24, 25, 28), define the rules for its operation. The main burden is placed on the personnel management and immediate supervisors. Article 28 deals with political and legal aspects of the Code of Conduct. Firstly, it defined the procedure for the adoption of the Code, which is approved by the minister or the head of a public authority, and secondly, it demands from public officials to behave in accordance with the Code. This means, that public officials need to be familiar with its provisions and amendments thereto, and in case of uncertainty in the correctness of supervisor's actions they should refer to the appropriate source. Thirdly, the Article states that the provisions of the Code are part of the terms of the employment agreement, and their violation entails appropriate disciplinary sanctions. Therefore, the ethical rule of the personnel service is to familiarize the candidate with the Code of Conduct at the stage of negotiating the terms of employment. Another important provision of this Article – regular revision of the Code – indicates that it is not a static document, it must answer to the specifics, actual tasks and performance conditions.

Thus, the European integration, based on the idea of joint political activity, is now carried out in four directions.

The first three: economy, efficiency and effectiveness are supplemented with the fourth – ethics.

To ensure compliance with the established rules of the civil service, it is necessary to develop tools and procedures to control undesirable behavior and encourage effective management.

The EU pays special attention to legislative and institutional means of approving ethics in the public service, which forms the ethical environment. Its elements, as proved by the analysis of the experience of Great Britain and France, are similar to those that exist in the U.S. system of ethics.

Western countries are unanimous that the basic conditions for professional ethics of civil servants are, first of all, the level of moral culture of the society, political traditions of management, active civil society, professional integrity of the free media, which cover the activities of the authorities and civil servants, etc.

As for ethical standards, they must also reflect social and political values of the particular state and have normative legal background.

Thus, professional ethics in developed democratic countries of Europe is considered as the main goal of the human resource management.

"New ethics" of civil servants focuses on three central issues: liability; openness and transparency of public services; integrity.

Emphasis is made on changes in regulations and legislation, structures and organizational culture. Achieving the goal requires creation of proper working conditions for public officials.

Monitoring of compliance with the rules of professional ethics by public officials of the EU candidate countries is carried out within the annual assessment of public service according to the core indicators of OECD / SIGMA: legal status of civil servants; legality, responsibility and accountability of civil servants; impartiality and integrity of civil servants; efficiency in management of public service and human resources; stability and professionalism of civil servants; opportunities of public service in the area of the European integration.

1.2B.2. *Moral and professional standards provided for in Ukrainian legislation and mechanisms for their implementation*

The new Law of Ukraine "On Civil Service", which comes into force on January 1, 2014, commits public officials to comply with the standards of professional ethics established by law (paragraph 7, part 1, Article 11).

Article 13 of the Law of Ukraine "On Principles of Preventing and Combating Corruption" stipulates that general requirements to the conduct of persons, authorized to perform the functions of the state or local governments, by which they shall be governed in discharge of their duties, the grounds and procedures for their liability in case of violation of these requirements, shall be established by law.

Paragraph 3b of Chapter V of the National Anti-Corruption Strategy for 2011-2015, approved by Decree of the President of Ukraine No. 1001 of 21.10.2011, provides that the principles of ethical conduct of persons, authorized to perform the functions of the state or local governments, shall be based on the provisions of the Model Code of Conduct for Public Officials of the Council of Europe Member States.

The issues of ethical conduct of public officials are set forth in the international anti-corruption standards: the tenth principle of the Twenty Guiding Principles of the Council of Europe for the Fight against Corruption; Article 8 of the United Nations Convention against Corruption; the International Code of Conduct for Public Officials.

These questions are also raised in recommendation XXII of the Group of States against Corruption (GRECO) and the 16th recommendation of the Istanbul Anti-Corruption Action Plan of the Anti-Corruption Network for Eastern Europe and Central Asia of the Organization for Economic Cooperation and Development, which still remain unfulfilled.

The Law of Ukraine "On Rules of Ethical Conduct" is in force in Ukraine. The purpose of the Law is to define the guiding rules of conduct for persons, authorized to perform the functions of the state or local governments, while performing their official duties and the procedure for bringing these persons to legal liability for their violation.

In order to achieve the intended purpose, persons, authorized to perform the functions of the state or local governments, shall follow the following rules of conduct: legality, priority of interests; political neutrality; tolerance; objectivity; competence and efficiency; promotion of public's trust in authorities; confidentiality; deterrence from performing illegal decisions or orders; avoiding conflict of interest; preventing receipt of unlawful benefits or gifts (donations); declaration of assets, income, expenses and financial obligations.

In this area the following legal acts are considered as basic: the Constitution of Ukraine, the United Nations Convention against Corruption (ratified by Law of Ukraine No. 251-V of 18.10.2006, Ukraine is a party to the Convention from 2.12.2009), the Law of Ukraine "On Principles of Preventing and Combating Corruption".

The Law of Ukraine "On Rules of Ethical Conduct" defines: 1) the term "personal interests"; it is also determined that the terms "conflict of interest" and "unlawful benefit" shall be used in the meanings defined by the Law of Ukraine "On Principles of Preventing and Combating Corruption"; 2) subjects, to whom this Law applies; 3) legal regulation of relations with regard to ethical conduct; 4) validity of the Law; 5) rules of ethical conduct.

1.2B.3. *Standards of ethical conduct of officials of the State Border Guard Service of Ukraine*

Order of the Administration of the State Border Guard Service of Ukraine No. 315 of 11.04.2008 approved the Code of good conduct of the personnel of the State Border Guard Service of Ukraine.

The Code of good conduct of the personnel of the State Border Guard Service of Ukraine (hereinafter – the Code) sets forth general rules of good conduct of the personnel of the State Border Guard Service of Ukraine and defines ethical principles of professional activities, compliance with which guarantees the high quality and efficiency of the operational activities of the State Border Guard Service, its authority in the society.

Article 13 – Ethical standards of conduct of an official of the State Border Guard Service of Ukraine – outlines the standards of conduct of an official.

1. The official is obliged to comply with the ethical principles and standards set forth in the Code and to show model ethical behavior to his/her subordinates and citizens.

2. The official must: select personnel for units of the State Border Guard Service of Ukraine, ensure their promotion, taking into account moral, professional and business qualities; provide conditions for performance of service duties by the subordinates; take care and defend before the higher management the right of the personnel to decent remunerations, salaries and pensions on the basis of a comprehensive assessment of risks, tension and working environment; ensure strict observance of the right of the personnel to weekly rest and annual leave; take all legal measures to fully fulfill legal requirements of the personnel.

3. The official must: be fair in evaluating the work of subordinates, apply moral and material incentives; give instructions and orders to subordinates only in accordance with current legislation, consistent with the level of their knowledge, experience and professional skills; respond to the facts of subordinates' misconduct, including facts known from reports (appeals) of citizens; prevent conflict of interest among subordinates, and in case of its occurrence – take necessary measures to resolve it.

4. On receiving information from the personnel regarding innocent infringement of the Code, receiving gifts and hospitality, the official must take comprehensive measures to settle the situation.

5. The official has no right to use his power to compel subordinates to unlawful acts.

1.3. *Duties of the head and management of state institutions of the Republic of Moldova*

1.3.1. *Duties of the person holding management position*

A manager is a person who directs and coordinates activities of executors, who must necessarily obey him and his orders within prescribed limits. A manager can take upon himself the functions of executors only to understand the specifics of the work.

The essence of manager's duties is to organize the work of subordinates. This is a special kind of creative activity, and such creativity increases with career progression.

The main task of a manager is to organize the execution of work by subordinates, to manage, monitor, evaluate, reward. The real chief should also be able to manage his superiors, giving such recommendations, which can not be rejected.

With the growth of educational and cultural level of subordinates, awareness of themselves as individuals, the manager acquires a new role, not only to give orders, punish or reward, but also to create favorable morale, to resolve interpersonal conflicts, to support his subordinates at work and sometimes in everyday life. He organizes the independent work of executors, united in teams. Dictatorship and paternalism in this situation are virtually ruled out, because the application of these methods by someone, who is the first among equals, is unacceptable, that's why their place is taken by business cooperation and consultation.

According to modern concepts, the work of a manager focuses on performing a number of functions, the primary of which is the strategic function, consisting in setting goals, developing a strategy and planning. Normally it is considered as paramount.

Another managerial function is the administrative function, including a number of sub-functions: control (performance evaluation, necessary adjustments); organization (distribution among executors of office tasks, resources, briefing, etc.); guiding (direct coordination of work); personnel (recruitment, orientation, training, staff development); stimulating (persuasion and inspiration of executors, incentives for successful completion of work, punishment for misconduct).

In the information age increases the importance of the communicative function, which consists in conducting of meetings, reception of visitors, answering letters and phone calls, dissemination of information, conducting of negotiations, business representation.

The ever-growing importance of the human factor in the life of an organization increases the relevance of the social function, performing which the manager creates the favorable morale in the organization, the atmosphere of comfort, supports existing traditions and standards of behavior and creates new ones, helps subordinates in difficult situations.

Based on the above, we'll try to group the duties of a manager, being guided by the recommendations of experts.

Organization of performance. Good work starts with c**areful organization.** In order to have the job done properly and on time, one must pay special attention to the organization of this process through decomposition of the mission to simple tasks, taking into consideration a number of conditions – from the level of subordinates' qualification to the priority of a specific task in the framework of the general mission.

It is also necessary to set priorities and optimal work flow, to draw up a schedule and to mark the dates of current control and the dates of discussing and clarification of further job sequencing. The task itself may suggest the necessity of assessing internal / external risks and development of appropriate preventive or reaction measures.

All of these procedures should be consistent with both the task specifics and the term of its performance. Otherwise, after a fast start executors begin to stumble over unaccounted obstacles. Faults in planning can also result in failure to execute or late execution of some tasks.

One of the reasons for the manager's overload is the fact that he does not allocate responsibilities.

Well-organized work is done quickly, intensively and... imperceptibly. In turn, screams and vanity are indicative of low quality of governance, rather than enthusiasm of subordinates.

Ensuring interaction. No matter how carefully the work is organized, the executors can face certain obstacles, unaccounted at the preliminary stage, or new factors can appear. All they need consideration, additional information, and adjustment.

Previously distributed authorities can not account unknown factors, and the right to independently solve incipient problems may be delegated only to reliable employees. Therefore, employees need to periodically contact the manager.

Moreover, subordinates need to interact with their colleagues within one structure, as well as the colleagues from other units.

If the standards of executive discipline of subordinates are high, the task is somewhat simplified. When the responsibilities are distributed, the subordinates are instructed to inform the supervisor about any obstacle and / or unexpected factor.

It is important to remember that **any work must be monitored** – even the work, the execution of which does not require joint actions. If the manager is inclined to neglect it, the final or intermediate results may be not achieved, even for objective reasons. Methods and intensity of control depend on the level of proficiency and discipline of the subordinates, and the specifics of the task.

Building interpersonal relationships. Depending on the purpose and nature of the challenges facing the institution, any type of relationships in the team may be both good and bad. This factor is rather relative and depends on the contribution of these relationships to effective work. So, the aspiration for a mythical morale in the team is erroneous. Perhaps, even a greater mistake would be to assume that the better the relationship is, the more efficient the work will be.

Why does such delusion arise? It is believed that if employees are in with each other, they easily discuss business issues, calmly and constructively agree on disputable problems, there are no quarrels and gossips in the team, the work is pleasant and joyful, employees don't get tired and no one wants to quit. However, in the teams with such type of relationships, inevitably arise other problems: reduced mutual demands; mutual obligations become more important than obligations to the company and the supervisor; information is hidden from the supervisor, and if he is part of the "team", then it is hidden from the higher authorities (organizations); thriving mutual cover-up.

The manager must be able to maintain proper balance between cooperation and competition in the team.

Analysis of the results. The human psyche is arranged in such a way that he always subconsciously tries to avoid unwanted lowering of self-esteem and therefore is inclined to attribute faults to various external reasons. And results are seen as optimal and the only possible ones. In this regard managers are recommended to regularly analyze intermediate and final results by scheduling it as a mandatory procedure. Such a habit though sometimes spoils the mood, but significantly increases the efficiency of management.

Efficiency audit. The manager must measure and evaluate correctness of the work organization.

If the manager finds out that the incentive system is not conducive to quality performance of the assigned tasks, he must either arrange developing of specific proposals in order to change the situation or draw necessary external resources.

If the manager doesn't use any management tool, his subordinates with high probability won't do so, i.e. if the manager himself does not use management technologies, the monitoring of its use by the subordinates will require additional efforts and is likely to gradually come to naught. Without constant monitoring the technology is likely not to be applied, and will only create appearances of its use.

Efficiency audit is not a hobby, but an obligation. The results of its implementation should be: the list of objects of analysis, description of assessment methods and access to the results.

Peculiarities of duties performance. In time unit a person can effectively deal with only one task. Anyone, who tries to simultaneously perform several important tasks, won't succeed in either. Therefore, performing managerial duties should be included in the activities schedule of the manager. Managerial duties should be included in the activities schedule not on a par with other matters, but giving them a particular priority. Learn to allocate time in accordance with priorities so, that the words meet the actions.

The manager is responsible for ensuring the regular performance of the tasks, whereas executors and their roles may change according to the situation. It is also necessary to consider the fact that all the duties in the process of their performance are connected with an invisible chain of feedback. In the process of organizing the work, it may turn out that the task itself requires further reflection, and it might need reformulation. This often happens, for example, due to lack of resources, which at the stage of formulation of the problem is not always possible to foresee.

Studying the duties of a manager, it should be noted that to perform them correctly and properly, the manager must comply with the ethical standards of conduct.

1.3.2. *Ethical conduct of a manager*

Managerial ethics is a discipline that studies the standards of conduct and responsibilities of a manager towards employees of the organization, as well as towards those, with whom he has personal contacts outside it.

Managerial relations, to which belong people from all social spheres including economic, are psycho-social interpersonal relationships, conditioned to a large extent by the structure and quality of the human factor, personal qualities of the manager and subordinates, the level of their competence and culture.

Despite the fact that in the past were published some works on achieving success in public bodies, as well as on manners and etiquette in the society as a whole, only in the last decade was noticed connection between behavior and productivity. Modern managers are guided by the systems, focused on a person, which suggest special attention to familiarization with the psychology of people, their inner world, addressing their problems and treating them as subjects, not as objects, thus creating a positive psychological climate, the only possible for the motivation and self-organization at work, initiative and creativity. Respect for others is a priority principle of the ideal social conduct.

People admire those, who express interest towards other people; those, who have a strong sense of justice; and those, who adhere to moral principles in workplace relationships. Good manners relate to intelligent work and consist in the following: one-third of logic, one-third of common sense and one-third of courtesy.

Managerial ethics consists of a set of standards, which dictate the conduct of a manager in the workplace.

Managerial ethics usually focuses on two constituents: principles and policies. Based on ethical principles, it is possible to define, what is proper and ethical in the workplace. Managerial ethics, based on policy, applies to a conflict of interest, ability to properly respond to the gifts, received from partners, or manipulation of service information.

In Western countries, ethics is often subdivided into managerial ethics and etiquette.

It is reasonable that the ethical aspect of the manager's behavior is considered as the main moral constituent of the management function.

Knowing the basics of managerial ethics is a necessary condition for modern management activities, ensuring its mandatory implementation, although this is not a legally established criterion. Ethics of official conduct is an individual matter.

Russian scientists pay special attention to subordination and other moral aspects of manager-subordinate relations, referred to as "ethics of the manager" and "ethics of subordinates". In this context "ethics" is understood as the practice of moral communication between managers and subordinates. As for the "ethics of the manager", it should be regarded as an element of professional ethics and the profession of a manager.

Formal rights and responsibilities of managers, as well as their relations with subordinates, are regulated by the Charter of the organization, the Statute of the organization or its unit. But apart from official duties stipulated by these documents, managers have also informal obligations towards their subordinates, such as fair treatment and respect for employees, taking care of their personal interests and concerns, health, success, team relationships, assisting them if necessary, up to taking over their guilt. The manager should not unnecessarily give orders over one's head, even if it takes extra time, he should avoid favoritism, take an interest in the subordinates' attitude to him and from time to time set himself the question whether he would like to work in place of his subordinates.

The above factors are very important because, in practice, not only subordinates depend on their supervisor, but he is also dependent on them, their knowledge, skills, experience, readiness to execute his orders and informal requests. Besides his subordinates, the manager is also dependent on his colleagues and superiors, who help to properly perform his duties.

Every act of the manager towards his subordinates is seen not just as an act of one person towards another, but as an act of the person vested with powers over others. The manager will never gain credibility and respect, if he builds service relationships based on personal likes or dislikes. He must be impartial to his subordinates and moderate in his actions, cultivate the habit and need to comply with these rules in all situations.

For a good manager arrogance, haughtiness, irritability, moodiness, desire to impose certain manners and habits on subordinates are unacceptable. He avoids situations, in which he might humiliate a subordinate, insult his dignity and honor.

The manager must exercise restraint in everything – in decision-making, in words and in actions. In case of an accidental blunder, the only proper way out is to admit his mistake. Authority will not be harmed. It is much worse, when the person, who has made a mistake, doesn't apologize, but aggravates the situation with stubbornness and continues to maintain the original position.

Even if the subordinate is at fault, he should not be dressed down. The manager should be able to correlate the severity of punishment with the degree of guilt. It is also important to remember the difference between reprimanding in private and in the presence of other employees, as the latter does not always help to achieve the desired result. One shouldn't take too much to penalties.

To inflict a penalty the manager needs tactfulness and reasonableness. It is better to start with positive qualities of the subordinate and then to explain the essence of the violation and inform about the penalty. In this situation it is necessary to remember the words of the Greek philosopher Plato, who said: "The wise punishes not because the offence has been committed, but to ensure that it won't be committed in the future".

A manager can not do without criticizing his subordinates. Particularly important is that this criticism is well-deserved.

Service relationships are diverse, and, therefore, the manager must adhere to a number of conduct standards.

The following is a kind of Code of conduct for a manager, compiled by experts in the field of management and extracted from the textbook "Ethics of the Law Enforcement Personnel".

The genuine authority of the manager is based on the knowledge and skills, integrity and humanity, competence in official matters and decency in behavior. He should be bold and decisive; nothing compromises the manager more, than lack of initiative and cowardice, unwillingness to take responsibility and constant waiting for instructions from above.

A virtual manager, not a figurehead, should take the initiative and responsibility in difficult situations. Only under such conditions he leads the team, and doesn't have to push or force, using rude words, humiliating with distrust and prejudice.

If the team fails to fulfill the task, the cause must be sought in the manager, but not in his subordinates.

The manager must constantly study his subordinates, know their business, moral and other qualities, marital status, living conditions, etc. This information is helpful in distribution of tasks. No matter how

difficult the task may be, it should be feasible and therefore accomplishable. Entrusting subordinates with tasks, the manager should explain their essence and purpose. He mustn't give several important and urgent tasks at the same time.

The manager doesn't do anything, what can be done by the subordinates, except when it is necessary to set an example. Unwise is to load himself with all the work, believing that the subordinates are unable to perform it.

Performance of each task must be monitored. Lack of control, as a rule, leads to the thought about the uselessness of the work performed. It is necessary to be demanding, and not captious.

The manager should thank the employee for a good job in the presence of all the colleagues.

Do not be afraid if the subordinate is more competent in any matter. Good reputation of a subordinate is the praise to the manager.

A good manager never uses his power until he is convinced that all other levers have been already used. It is important to find an individual approach to each employee, taking into account his character, knowledge, experience and attitude to work.

One should be unpretentious and accessible to communicate. He should avoid familiarity.

For the manager it is unacceptable to justify roughness by the need to enhance rigor and by complexity of the situation.

The manager must be able to objectively evaluate the results of his work, to admit his mistakes and not to be afraid to cancel wrong decisions.

Any criticism or any proposal of subordinates is to be heard with restraint, carefully and friendly.

It is important to be particular in speech, as the manner of speaking manifests literacy, general culture, professionalism and ethics.

Criticizing a subordinate, the manager must specify his concrete actions, but not criticize his personality, avoiding ironic assessments of the actions of his subordinates, especially in the presence of third parties.

The manager is immune to flattery and adulation, he avoids immoderate praise and rejects favoritism.

The manager is an optimist, who does not lose courage in difficult situations. A timely joke would create an atmosphere of trust and goodwill.

Speaking about the conduct standards of a manager, we can not ignore typical mistakes.

1. Screaming and rudeness. Some managers believe that it is necessary to shout often and loud to intimidate and suppress the will of subordinates. They are likely to have no idea of a respectful dialogue in a conflict situation.

2. Using obscene language is one of the worst mistakes of the manager. Usually, those who do not accept insults and foul language are put off their working stride.

3. Unpunctuality. Subordinates may suffer because of unpunctuality of the manager. Being late for a meeting, delay of documents, etc.

4. Discrepancies in appearance. Untidy, unkempt and scrubby appearance of a manager can make him not only a laughingstock, but also undermine his authority. The importance of clothes for achieving success in business was noticed as early as in the XVIII century.

5. Favoritism and open hostility can not only give rise to jealousy in the team, but also undermine discipline.

6. Office romance is a common mistake of managers of all ages. They interfere with effective professional activities, and in case of failure they may end in "losing" a valuable employee.

7. Inappropriate behavior in an informal setting is the best way to undermine one's authority. Do not forget that even in a cheerful company the manager should remain the chief, avoiding both watching his subordinates like a hawk and "drunken dances on the table".

It should be noted that the above standards of conduct for a manager, as well as typical mistakes in behavior are based on the practical conclusions of scientific-theoretical studies. Speaking about theory, we should note that in the Republic of Moldova and in the neighboring countries there is no specialized normative act regulating solely the behavior of a manager in civil service. At the same time the question arises whether such an act is needed or whether there are any prerequisites for its introduction. Most likely, no. The legislator devoted a separate article of the Law on the Code of Conduct for Public Officials to the manager. Article 13 of this Law states:

- (1) The civil servant holding a management position shall promote and ensure observance of the rules of conduct by the subordinated civil servants.

- (2) While performing the management duties, the civil servant shall:

- ensure equal treatment and opportunities for all subordinated civil servants in career development;

- examine and objectively apply assessment criteria for evaluating the professional competence of the subordinated staff when proposing or approving promotions, transfers, appointments or dismissals from public functions, and providing pecuniary or non-pecuniary incentives, and shall exclude any form of favoritism or discrimination;

- avoid discriminatory, family relationship, or other criteria in breach of the Code for access to or promotion into a public function;

- take necessary actions to prevent corruption among subordinated civil servants, as well as to bear responsibility for the failures as a result of a bad performance of the respective actions;

- take protective measures established by law in respect of a civil servant who reports in good faith acts of corruption and acts related to corruption, facts of corrupt behavior, non-compliance with the rules of declaring income and assets and violation of legal obligations on conflict of interest.

In the light of the foregoing, the recommended standards of conduct in the Law are treated as "duties". The identical situation is observed in the existing regulations governing the conduct of customs officials in Moldova.

According to paragraph 9 of Chapter III of the Customs Officer Code of Ethics, approved by Decision of the Government of the Republic of Moldova No. 456 of 27.07.2009, a customs officer holding a senior position shall: enforce standards of conduct and ensure their observance by the subordinated employees; ensure equal rights and opportunities for all subordinated employees in career development; examine and objectively apply assessment criteria for evaluating the professional competence

of the subordinated personnel when proposing or approving promotions, transfers, appointments or dismissals, and providing pecuniary or non-pecuniary incentives, and shall exclude any form of favoritism or discrimination; avoid discriminatory, family relationship, or other criteria in breach of the Code for access to or promotion into a public function; take necessary actions to prevent corruption among subordinated employees.

Discussing the standards of behavior of the head of customs structures, it should be noted that in the Republic of Moldova there is another normative act regulating the conduct of senior officers of the Customs Service – Disciplinary Statute of Customs Officers, approved by Decision of the Government No. 746 of 07.08.1997.

According to the Statute, one of the necessary conditions for performing service duties by the customs authorities is service discipline, based on the consciousness of the personnel, understanding of the duty of a public employee, loyalty to the people of the Republic of Moldova. In accordance with paragraph 8 of Chapter II of the Statute "service discipline in the customs bodies is based on the consciousness of the personnel, unconditional performance of their service duties and personal responsibility for fulfillment of the tasks. Each employee shall: strictly observe the Constitution of the Republic of Moldova, the legislation and this Statute; timely and accurately fulfill orders and instructions of supervisors, show personal initiative and perseverance in the service, constantly improve the competence level; actively combat contraband and administrative violations of the customs legislation; be vigilant, keep state secrets and other classified official information used in the performance; respect laws and traditions of other countries and peoples, not abase dignity of citizens; while organizing and conducting customs clearance maintain necessary contacts with law enforcement officials, border guards, sanitary and quarantine services, posts of phytosanitary control of imported products and authorities controlling the export of Moldovan objects of art and culture; provide necessary customs control, preventing violations of customs legislation; comply with the standards of professional ethics; study best practices and apply them in the performance of official duties; wear uniform and insignia prescribed by regulations; take care of the public property (customs buildings and equipment, service vehicles, technical means of customs control and other property), ensure safety of accountable documents, as well as valuables and items detained or confiscated as a result of customs control; respect the rules of labor protection, safety, sanitation and fire safety."

Duties and responsibilities of the head of the customs authority are set forth in Chapter IV of the Statute "Duties of the Head".

The head must: promote among subordinates conscious attitude to the performance of official duties, high professional and moral qualities; support initiative of subordinates; set an example of maintaining discipline, rule of law, decent behavior; encourage subordinates for taking initiative, independence and diligence; organize efficient work of subordinates, ensure upgrading and improving of customs control; promote among subordinates respect for material values, identify and eliminate causes and conditions conducive to their loss or damage; comply with laws and other regulations, issue clear orders, verify accuracy and terms of their implementation; take necessary measures to enhance order and discipline, reduce personnel turnover; find balance between demands and care of subordinates; protect subordinates from attacks on their honor and dignity; in every possible way promote social protection of employees; timely identify causes and circumstances contributing to commission of offences, take measures to prevent them; stir up intolerance to violators of discipline, using for this purpose the social influence of the team; analytically evaluate the results of the subordinates' activity; promote development of foreign economic relations between subjects of foreign economic activity; timely inform subordinates about legislation relating to customs activities; ensure safety of accountable documents, as well as valuables and items detained or confiscated as a result of customs control; check whether subordinates wear uniforms and insignia.

In the interests of the Republic of Moldova managers must demand from their subordinates strict compliance with service discipline and order, not ignore any misconduct of the subordinates, and remember that the manager is personally responsible for the subordinates' observance of discipline.

In cases of misconduct the manager's duty is to warn the employee about inadmissibility of such violations and, if necessary, to impose disciplinary sanctions depending on the offence.

As for the Border Police of the Republic of Moldova, at the moment there is no separate regulation governing the conduct of its employees, including managers. As this agency falls within the jurisdiction of the Ministry of Internal Affairs, the Code of Ethics and Deontology of Policemen, approved by Decision of the Government of the Republic of Moldova No.481 of 10.05.2006, can be used as the source of ethical conduct standards for border police officers. However, this document doesn't contain the norms regulating the conduct of managers. We are sure that these rules will be reflected in the new Code of Conduct for Border Policemen, which is being developed.

1.3.3. *Leadership*

Leadership is associated with such attributes, as far-sightedness, dignity, courage and moral stances. These characteristics were traditionally used to describe outstanding people, who faced extraordinary challenges, influenced the course of events and shaped history, such as, for example, Lincoln, Gandhi, Ataturk, Mandela.

Over time, experts began to claim that attributes of these great people can be studied and adopted, arguing that leadership can be learned. Thus, leadership emerged as a field of research to illuminate organizational culture and give managers competitive advantages. As a result, leadership became the subject of the growing system of trainings for managers and education for senior managers.

Leadership theories multiplied: the trait leadership theory stated that leaders must learn and adopt techniques of great leaders; behavioral theory divided leaders into categories – those, who paid attention to people, and those, who focused on solving problems, and leadership styles were divided into directive and participative, i.e. involving others to reach a consensus.

However, other experts argue, that no matter how exalted management may be, it is not leadership. They state that leadership is the concept based on values, unlike management and governance, which do not include evaluation coloring and should be characterized as good or bad management.

Further developing this theme, it should be noted that leadership is normatively apprehended as a set of values with connotations evocative of the higher achievements of the human spirit, such as enthusiasm, courage and limitless possibilities, ability to create a positive environment, which promotes creativity and synergy.

Professor Warren Bennis, author of several books on leadership, differentiated between leaders and managers, according to the people-orientation factor and illustrated it as follows: the manager focuses on systems and structures, the leader – on people, the manager accepts the status quo, the leader challenges it. "Leaders are people who do the right thing; managers are people who do things right."

Every change in any organization or institution faces resistance of the status quo and its supporters. In order to succeed, those promoting changes need change agents, acting as a catalyst to overcome resistance, to promote changes and their benefits, to enhance loyalty and feeling of ownership among employees.

Civil service, focused on serving people, is a necessary part of democratic governance and can be characterized by the following: professional ethics, including the ethics of civil service; accountability; responsiveness to people's needs.

Therefore, experts suggest that all programs of civil service, dedicated to the principles of good governance, should include elements of leadership as a force for change. According to them, "we do not need more management. We need leadership", which is associated with vision, integrity, courage and human dignity.

1.4. *Whistleblowers and their protection*

Reporting on professional integrity is a recognized system of timely informing and effective tool in the fight against corruption, plunder and mismanagement. The United Nations Convention against Corruption obliges to protect whistleblowers, and the Organization for Economic Cooperation and Development (OECD) has made similar recommendations concerning various tools to facilitate the process of informing.

In the English language for informers is used the term "whistleblower", which originally defined a person, who set off an alarm using a whistle when he saw any disorder.

In the Romanian language, the term "integrity warner" appeared not long ago. It refers to individuals representing any public agency or individuals, financed from the state budget, those, who administer budget or public resources and in good faith report on violations of law, professional ethics or principles of good governance, efficiency, effectiveness, and transparency.

In the democratic society, individuals who inform about violations of the law are protected from possible reactions on behalf of those, who are interested in keeping the violations secret.

The whistleblower may file a complaint in the presence of the immediate supervisor of the person, who has violated the law, the management of the agency, the person works for, the Disciplinary Commission and / or other similar agency, the media, representatives of the trade union or the employers' organization, the parliamentary committee or criminal prosecution bodies.

Despite the fact that whistleblowers are to protect public welfare, they are taken by most people as unreliable and disloyal. The main reason for this is the conflict between loyalty to the employees and clearance of crimes within the organization. At the same time informing about professional integrity is an important tool for risk management within the organization.

According to the study conducted by national branches of Transparency International in ten EU Member States, on the territory of which there are offices of the organization, the term "whistleblower" is associated with an informer (e.g. in the Czech Republic, Ireland, Romania and Slovakia), a traitor or a spy (Bulgaria, Italy) and / or a "leaker" of information (Estonia, Lithuania, Latvia).

According to the aforementioned study, cultural and political factors are important barriers for protection of whistleblowers. On the territory of the 10 EU Member States, half of which are situated in Central and Eastern Europe, where the relics of the secret police networks of the communist epoch still exist, integrity warners are taken negatively. Instead of being a good example to follow and an advocate of social welfare, a whistleblower is considered as untrustworthy: the term "whistleblower" is associated with an informer, a traitor or leaker of information. Laura Stefan, anti-corruption coordinator of the Romanian Academic Society, believes that "in the countries with the past in which informing was intensely used, such a system has to fight not only legal and institutional barriers, but also the social mentality that associates denunciations made by integrity warners with informing".

Despite the fact, that corruption, embezzlement and other offences must be detected, lack of protection, limited legal framework and sometimes the attitude of the manager to the information provided create a dilemma for the person reporting violations.

Russian anti-corruption researchers point out three reasons or three obstacles that make potential whistleblowers doubt.

The first obstacle concerns junior level employees who report the activities of their supervisors. The junior employee must be sure that it is in his own interest to take decisive action, even if it is unpleasant to his colleagues (and perhaps to himself). And whether it makes sense to report corruption to managers if they themselves are corrupt and can block any communication channel and pitiless revenge, if there are no strong evidences to confirm the charge.

The second obstacle relates to the very nature of corruption denunciations. Many employees do not want to inform on their friends and colleagues, however conscientious workers can be of great service to the employer (or society in general) if they do so. Since recently, in the public and private sectors "hot line" has been used to report corruption – in such a way anonymity and security are ensured.

The third obstacle is that no organization wants to be involved in a scandal. Instinctive desire "not to wash dirty linen in public" is typical of a human, although in this case it is evidently unproductive. One must have great courage and believe in his innocence to take responsibility for the information about corruption risking a scandal. Top managers should be proud that in the subordinate organization or institution corruption has been suppressed (even if it causes temporary inconveniences), and maybe even present the forced actions of the subordinate as the utmost virtue.

Returning to whistleblowers protection, the issue dealt with in many international anti-corruption instruments, the Recommendation of the Committee of Ministers of the Council of Europe on the Code of Conduct for Public Officials should also be mentioned. According to Article 12 "Reporting" the public administration "should ensure that no prejudice is caused to a public official who reports any violation on reasonable grounds and in good faith".

In Moldova, there is no unitary law regarding protection of whistleblowers, but this issue is mentioned in different existing laws.

In some cases the Code of Conduct for Public Officials, as well as internal codes and regulations, can protect whistleblowers without any national legal framework. For example, the Code of Ethics of Policemen obliges to inform the immediate supervisor and other competent authorities about all cases of corruption. According to the Customs Officer Code of Ethics, customs officers shall report to his immediate commander any illegal act which he has faced while performing official duties. Both documents were adopted by the government's decisions in 2006 and 2009 respectively and stipulate only the duty to inform / detect. At the time, the measures to protect in case of performing obligations remained unclear. The person was not legally protected.

During the Second Evaluation Round of the Council of Europe Group of States against Corruption (GRECO), Moldova was recommended "to introduce clear rules for encouragement of public officials to report corruption and to ensure proper protection of whistleblowers (persons, who provide information)".

To implement the recommendations of GRECO the Parliament of the Republic of Moldova by Law No. 277 of 27.12.2011 introduced a number of amendments:

I. In accordance with amendments made to Article 17 of Law No. 90 -XVI of 25.04.2008 on Prevention and Combating Corruption, "failure of competent persons or bodies to ensure protective measures

provided by law for public officials, who in good faith report acts of corruption and acts related to corruption, facts of corrupt behavior, non-compliance with the rules of declaring income and assets, and violation of legal obligations on conflict of interest" shall entail civil , disciplinary or administrative liability according to current legislation.

Also in the new version was presented Article 18 "Reporting in good faith acts of corruption and acts related to corruption, facts of corrupt behavior, non-compliance with the rules of declaring income and assets, and violation of legal obligations on conflict of interest.

(1) The public official who becomes informed of acts of corruption and acts related to corruption, facts of corrupt behavior, non-compliance with the rules of declaring income and assets, and violation of legal obligations on conflict of interest should in good faith, orally or in writing, inform the higher supervisor, the specialized body, the head of the public authority or public institution, the body authorized to verify accuracy of the information included in the declarations of personal interest, the prosecuting authority, the prosecutor, non-governmental organizations, the media.

(2) The public official who in good faith reports acts of corruption and acts related to corruption, facts of corrupt behavior, non-compliance with the rules of declaring income and assets, and violation of legal obligations on conflict of interest, shall enjoy protective measures provided for in Law No. 25-XVI of 22.02.2008 on Code of Conduct for Public Officials."

II. The Law on Code of Conduct for Public Officials was supplemented with Article 121 as follows: "Article 121. Protective measures.

(1) The public official, who in good faith reports acts of corruption and acts related to corruption, facts of corrupt behavior, non-compliance with the rules of declaring income and assets, and violation of legal obligations on conflict of interest, enjoys the following protective measures applied individually or collectively:

a) presumption of good faith until the contrary is proved;

b) confidentiality of personal data;

c) transfer in accordance with Law No. 158-XVI of 04.07.2008 on Public Office and Status of Civil Servants.

(2) Disciplinary sanctions shall not be imposed on the public official, who in good faith reports acts, provided for in paragraph (1).

(3) Failure to apply protective measures provided for in paragraph c) of part (1), as well as non-compliance with the provisions of part (2) shall entail legal liability of the supervisor, the specialized structure, the head of the public authority or public institution, the head of the body authorized to verify accuracy of the information included in the declarations of personal interest."

At the same time, according to amendments to part 2 of Article 13 of the Code, the manager must:

"e) ensure application of protective measures provided by law for public officials, who in good faith report acts of corruption and acts related to corruption, facts of corrupt behavior, non-compliance with the rules of declaring income and assets, and violation of legal obligations on conflict of interest."

III. The legislator introduced administrative responsibility, having supplemented the Contravention Code of the Republic of Moldova No. 218-XVI of 24.10.2008 with Article 3141 "Failure to take measures to protect public officials" as follows: "Failure to take legal measures to protect public officials, who

report acts of corruption and acts related to corruption, facts of corrupt behavior, non-compliance with the rules of declaring income and assets, and violation of legal obligations on conflict of interest shall be punishable by a fine in the amount of 50 to 150 conventional units."

Study of the above offence falls under the jurisdiction of the National Anti-Corruption Centre.

Thus, in addition to developing procedures for reporting and verification of information concerning offences and application of protective measures to persons, who in good faith, on their own and in public interest, report offences, the National Anti-Corruption Centre recommends public organizations to adopt internal regulations on protection of whistleblowers, while developing the Framework Regulation on this issue.

Although there are legal provisions providing for protection of whistleblowers, experts remain skeptical in regard to bringing the activities of potential whistleblowers to public discussion.

Muhammad Ali, boxing world champion, said: "Silence is gold, when there is no appropriate answer." In the framework of the social campaign "Your silence is expensive", recently conducted in Romania, the campaign promoters appealed to the citizens not to remain silent:

- No, when corruption is concealed!
- No, when people's money is dissipated!
- No, when conflict of interest is suppressed!
- No, when freedom of information is opposed!
- No, when decision-making is not transparent!
- No, when political benefit is protected!
- No, when official offences are committed!

So, is it really difficult to find an answer to the question torturing thinkers: "Is silence gold?"

Module V. PRINCIPLES OF GOOD GOVERNANCE AS A TOOL FOR COMBATING CORRUPTION

Theme 1. PRINCIPLES OF GOOD GOVERNANCE

1.1. *Concept and principles of good (proper) governance in the European Union*

"Bad or disastrous governance occurs when government body cannot act in accordance with the law, does not respect the principles of good governance or violates human rights"

(European Ombudsman)

Governance is the process of decision-making and the process, in which decisions are implemented (or not implemented). The process involves both formal and informal structures.

Good (proper) governance ensures political, social and economic priorities that are based on broader social consensus, and that the voices of all are heard in decision-making on resource allocation.

The concept of good governance is used in different meanings. It dates back to the XVIII century in Prussia. Governance, as well as any branch of law, conforms to a single coherent set of principles. These principles are the integral part of the system, the legislator has the right to develop them, but cannot make the decision contradicting to them.

After World War II guiding legal principles are considered by the states of Western legal family as a source of law, and their hierarchy (legal power) is higher than of laws and Constitution.

With regard to state government, "good governance" as a general principle of law has external and internal dimension. External dimension is the relationship between a state and an individual. Internal dimension is the internal organization of government. In both cases, the concept is used in both narrower and broader senses.

The external dimension of good governance in a broad sense includes all general legal principles, which are defined as the principles of the administrative process. In a narrower sense, it includes the concepts which haven't been recognized yet as an independent principle.

It would be more correct to name the internal dimension of good governance as proper governance. In a broader sense, it covers all general legal principles on which state government is based. In a narrower sense – only those that are already recognized as independent principles.

The right to good governance as a subjective right of an individual should be considered as a human right of this century in the process of its development.

As a part of European governance reforms in 1999, the European Commission issued a "White Paper on European governance" in order to: 1) change the state system of the EU, 2) make institutional system of the EU closer to European citizens.

The Commission has established five principles of "Efficient, good governance" implementation:

1) openness – the requirement for institutions to work more openly;

2) participation – justification of decisions;

3) accountability – institution should explain each and all what they are doing and why;

4) coherence – congruence between different spheres of cooperation;

5) effectiveness – clear principles concerning time (timeliness), decisions and their consequences should comply with the principle of subsidiarity.

Openness and transparency:

- decisions and their enforcement occur in accordance with established rules and regulations;
- information about made decisions is free and directly accessible, especially to those whose interests are affected by such decisions and their enforcement;
- sufficient information is provided in an easily understandable form and in the media.
- In order to ensure greater transparency and accountability to clients, the administration should, as a minimum:
- publish annual reports on its activities;
- place on its websites all regulatory enactments and by-laws relating its activities, functions and competence;
- strictly follow the laws of information freedom and actively participate in the provision of information;
- apply the principle of "a single window" (the basic principles used in the Council of Europe Convention on Access to Official Documents).

Participation can be either direct or through legitimate intermediate institutions or representatives. It ensures that the views of minorities are taken into account and that the views of the most vulnerable groups in society are taken into account while making decision. It is important to note that representative democracy does not necessarily guarantee the interests of the most vulnerable groups of society in decision-making.

Participation must be informed and organized. It means the freedom of association and view expression, on the one hand, and organized civil society, on the other hand.

Reporting or accountability is one of the key requirements of good governance. Not only government institutions but also private sector and civil society organizations must be accountable to the public. In general, an organization or institution is accountable to someone who will depend on its decisions or actions. Accountability cannot be achieved without transparency and the rule of law.

Effectiveness of governance means that the processes that meet the demands of a society, use the resources at their disposal most effectively. The concept of efficiency in the context of good governance also means sustainable use of natural resources and environmental protection.

Coherence or consensus on good governance requires mediation of different interests to reach a broad consensus in the public interest and to define broad, long-term prospects for sustainable development. This is possible only if understanding and considering historical, cultural and social conditions of a given society or community.

For more objective understanding of good governance it is necessary to dwell on such specific principles as the rule of law, sensitivity, justice and inclusion.

The rule of law in good governance requires fair legal approach that is applied impartially. Impartial application of laws, in its turn, requires an independent judiciary and incorruptible police. The rule of law also requires full protection of human rights, especially of minorities.

Sensitivity of good governance means that institutions try to serve all the interested parties within a reasonable timeframe.

Justice and inclusion of good governance means that all citizens consider themselves to be a part of a society and do not feel excluded from its life. This requires all groups, especially the most vulnerable, to have the opportunity to improve their well-being.

1.2. *Good governance: some aspects of practical application*

To ensure freedom and welfare of the population it is needed to consider how to put good governance into practice in contemporary political life. For Customs and Border Guard institutions the following key responsibilities are important:

- improving state governance;
- providing quality services by Customs and Border Guard authorities, which is vital for sustained economic growth, and for the principle of the rule of law;
- maintaining a balance of powers between central and regional governments;
- effective implementing of duties by Customs and Border Guard Services in full accordance with the interests of the population;
- challenges set by the State before the Partner Services must be solved by public authorities at the most appropriate level;
- it is important for the public to have an opportunity to contact with local high-ranking officials while solving their local problems;
- modern economy is unthinkable without civilian support at local, regional and national levels. Public authorities will be too limited in their possibilities if they are forced to provide all required services to citizens by themselves.

The question of “how to achieve good governance” is still open. One can simplify administrative procedures and encourage the development of personal accountability. In addition, the standards of conduct should be reflected in the legal documents not only as the rules for the staff, but also for the public to be informed.

There must also be a clear understanding that the legal structure, whether it is the law, for example, a code of ethics or internal instructions that regulate appropriate behavior, only creates the framework conditions. The Code provides practical tools for the principle of good governance implementation in daily work. It is useful for the staff and promotes public understanding of governance and public appreciation of the administration that sets a goal of providing adequate public services.

Furthermore, ethical standards should be accepted by society, including the staff of Customs and Border Guard authorities. Therefore, high-ranking officials should demonstrate and promote ethical behavior. In addition, ethical behavior should be encouraged by governing body's administering policy, procedures and practices.

Organization for Economic Cooperation and Development (OECD) adopted the following main principles for drawing up the Code of Ethics:

- ethical standards for public service should be understandable;
- ethical standards should be reflected in legal documents;
- civil servant should have an access to ethical rules for learning them;
- civil servants should know their rights, duties and responsibilities in case of possible violations;
- political adherence to ethics should be supported by ethical behavior of civil servants;
- decision-making process should be transparent and open;
- there must be clear rules on the interaction of public and private sectors;
- conditions of the civil service and personnel policy should promote ethical behavior;
- public authorities should have adequate mechanisms of accountability;
- there should be appropriate procedures and sanctions for misconduct.

These principles include a variety of approaches. On the one hand, they define the orientation of the staff, on the other hand, they inform the public of what it is entitled to expect of "good governance". For them to be successfully implemented, the right to appeal against the actions of officials is required. This will create pressure on the administrative authorities. On the other hand, well-defined sanctions to combat improper administrative behavior are required.

To achieve democratic control over Border Guard and Customs Services an especially receptive environment is required. Methods for this idea promotion are in the concept of good governance.

Balance of interests. Since the Border Guards and Customs provide services, they should be fairly distributed among the groups and individuals (evenly distributed along the frontier according to the needs of passengers and national security), and the order of law enforcement should be fair.

Providing services. It has to be relevant, effective and efficient (although the effectiveness is a questionable value with reference to restraining forces / factors).

The ability to response. In determining priorities (which in practice is the distribution of resources between different actions, objectives and measures) Border Guards and Customs officers need to respond to the decision of the central authorities.

Distribution of power. For the formation of Border Guard and Customs policy the power should be concentrated, but at the same time be distributed among various bodies.

Information. The information on funding, costs, activities and results should be regularly published in all available forms. Representative bodies also need to be well informed and able to identify certain information.

Correction / legal protection. Representative body should be able to dismiss incompetent or corrupt high-ranking officers, or those who have exceeded their authorities.

Some means of legal protection must be available in case of illegal or unauthorized actions of individual employees or in respect of individual employees.

Participation. As much as possible, "citizens" should take part in discussing local policy with managers. The subject of discussion is the sequence of process, as well as the identification of critical / major markers and relevant targets.

In accordance with Law of the Republic of Moldova No. 229 of 23.09.2010 "On Public Internal Financial Control", the principles of good governance are transparency and accountability, economization, efficiency and effectiveness, legality and justice, ethics and integrity in the activities of a public body. Managerial responsibility for ensuring good governance is laid on public body manager.

In order to facilitate proper governance public bodies implement internal state financial control, including financial management and control, internal audit, central coordination and harmonization. The responsibility for ensuring it is laid on a public body manager who organizes the system of financial management and control to obtain assurance that the objectives of a public body will be achieved through efficiency and effectiveness of operations, compliance with legal enactments and internal regulations, reliability and optimization of assets and liability, reliability and integrity of information.

At the same time a public body manager implements a system of financial management and control in accordance with national standards of internal control in public sector, taking into account complexity and the scope of a public body activity. Implementation is done on the basis of the control environment (management of quality characteristics and risks, control activities, informing and communication, monitoring and assessment).

A public body manager maintains a favorable environment for the operation of the financial management and control system through personal and professional integrity and ethics of management and staff, leadership style, organizational structure, distribution of responsibilities and liability, personnel policy and practice, personnel competence.

Also a public body manager establishes objectives and indices of a public body quality activities, being responsible for their implementation, assesses and registers the risks that may affect the achievement of objectives and the implementation of planned quality characteristics, carries out their systematic monitoring and develops measures to reduce the probability of risks and / or their impact.

To achieve the objective a public body manager organizes and conducts monitoring activities on all operational processes and at all levels of a public body. Public body staff, including a public body manager, conduct monitoring activities, including the procedures for authorization and approval, segregation of duties, inspections, surveillance, counter checks, control of access to resources and others. Effective, in terms of costs, control measures are being held as part of the operational processes. These measures consist, according to the time of implementation, of ex ante (preliminary) checks organized prior to the operation by means of internal control procedures in order to prevent errors, significant distortions, as well as inefficient or inappropriate activities, routine checks, organized

during the operation to identify and eliminate errors or significant distortions, and ex post checks (subsequent), organized after the operation.

Informing and communication is a separate issue. A public body manager establishes the basic sources of information needed for tasks performance, as well as quantity, quality, frequency and recipients of the information. He organizes the system of internal and external informing and communication, providing fast, complete and timely flow of information.

A public body manager organizes monitoring to assess and timely update the management and control system, as well as to register and correct the revealed significant distortions. Monitoring and assessment are based on continuous observation, self-assessment and internal audit.

Financial management and control system is organized by means of:

- setting tasks, quality indices and the development of annual and strategic plans;
- risk management associated with the achievement of objectives and the implementation of planned quality characteristics;
- planning, administration and accountability for achieving the objectives and implementation of quality characteristics in accordance with resources;
- effective personnel management and ensuring the power needed for performing the duties;
- development and approval of the organizational structure, corresponding to the objectives and implementation of quality characteristics;
- delegating responsibility for decision-making, monitoring and enforcement;
- documenting and describing the basic operational processes, work processes and procedures;
- ensuring ethics, integrity and transparency in the framework of a public body;
- distribution of duties and responsibilities;
- taking adequate measures to prevent, detect and correct significant distortions, fraudulent actions and eliminate their consequences;
- anti-corruption procedures;
- development of internal regulations on financial management and control, taking into account the specifics of a public body activity.

A public body manager is responsible for the organization of financial management and control system in the framework of a public body. Each employee of a public body contributes to the organization of financial management and control system, performing the duties and assignments set by a public body manager.

Meanwhile, a manager assesses the financial management and control system on the basis of self-assessment, and publishes an annual declaration on the proper governance for the previous year.

Annex 5 to Regulation of assessment, accountability of financial management and control system and issue of Declaration on Good Governance

DECLARATION ON GOOD GOVERNANCE

In accordance with the provisions of Art. 16 paragraph (1) of Law No. 229 of 23.09.2010 "On Public Internal Financial Control", the undersigned

_____,
(surname, name, patronymic name)

in the position of _____,
(position, name of the public body)

certifies that _____ has the financial management and control system, the framework and functioning of which

_____
(fully enable / enable/ partially enable/ do not enable)

reasonable assurance arrangements that public funds allocated to the achievement of strategic and operational objectives were used in conditions of transparency, efficiency, effectiveness, legality, ethics and integrity.

The financial management and control system _____
(fully includes / includes / partially includes / does not include)

mechanism of self-control and measures to enhance its efficiency _____ on risk assessment.
(based /not based)

On the basis of self-rating I assure that dating December 31, ____
(year)

the financial management and control system _____ is
(name of the public body)

_____ with national
(in full compliance / in compliance / in partial compliance / in no compliance)

standards of internal control in the public sector.

This assertion is based on true, correct and complete assessment of financial management and control system of the body and is issued being aware of management responsibility and has as its base data, information and statements, recorded in self-assessment documents, as well as in reports of internal and external audit.

Date _____ **Signature** _____

Speaking about the principles of institutional control in the system of the Customs and Border Guard authorities of Ukraine the following can be stated: competences of official controllers; the presumption of innocence of controlled bodies; legal protection of controlled bodies in administrative and judicial bodies.

The principle of official controllers' competence means that they are appropriately qualified and experienced to implement control activities in the relevant spheres of control.

The presumption of innocence of controlled bodies means that controlled bodies are innocent unless their guilt is proved in accordance with law. The controlling body must state the fact of violations that occurred through the fault of the supervised body after its activity monitoring.

The principle of protection of the controlled body according to administrative procedure and in court means that if the rights of controlled body are violated by controlling bodies or officials or such body believes that its rights have been violated, it has the right to appeal against the actions of the controlling body in established by law order (administrative or judicial). This principle applies to the departmental control activity (the right of a customs official to demand the conduction of an internal investigation to refute groundless, in his opinion, accusations or suspicions, as well as the appeal of actions of officials and Customs administration concerning prosecution) and external control activity of Customs Bodies (appeal against Customs officials' actions as for administrative and criminal sanctions, interference with the operational activity of the FEA subject (suspension of customs bonded warehouse (CBW), suspension of license for opening and operating CBW, cancelling of license for brokerage, cancelling of customs broker's qualification certificate, etc.

Theme 2. APPLICATION OF GOOD GOVERNANCE PRINCIPLES IN NATIONAL CONTEXT

2.1. *Provision and access to information*

> *"Everyone has the right to freedom of opinion and its expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers" (Universal Declaration of Human Rights, adopted by the UN General Assembly on December 10, 1948, Article 19)*

An important condition for the development of a society is the creation of modern, efficient system of public administration, which will be close to the needs and demands of the people, and its main objective is to serve the interests of the people.

The Republic of Moldova and Ukraine determined the entry into European structures for creating a highly developed, legal, civilized European state with a high standard of living, culture and democracy as one of their foreign policy trends.

Level of human rights and freedoms, their amount and nature speak about the level of a civil society development. Both Ukraine and Moldova implement a new "philosophy" of governance based on the interests and rights of a person and a citizen. For a long time the public service was considered to be an institution ruling over citizens, and the citizens were subordinate to it.

Therefore one of the main objectives of good governance is to embody in life a fundamentally new paradigm of relations between state and society, according to which the government is, above all, the realization of the obligations to a citizen, and not only the implementation of powers obliging the citizen.

The important issue for all public authorities today is the establishment of rapport with the public through the development and the implementation of an effective mechanism of informing about their activities – from relationships through the media to the study and implementation of citizens' appeals.

An important factor in the progressive development of modern society is a high level of public awareness of all political, sociological, technological, economic, environmental and other processes occurring in the state and around the world. At the same time, citizens are guaranteed the right to receive accurate and timely information from public authorities at all levels. Informatization of life actualizes the problem of developing legal and democratic state.

Analysis of international experience shows that the system of regulatory support of government openness has a three-level structure. The first level of system formation includes international conventions on human rights and constitutional norms on human rights. The second level consists of laws specifying constitutional provisions. The third level includes the regulations of the state authorities and local self-government, aimed at implementing the provisions of the Constitution and of existing laws.

The Constitution of Ukraine established a sufficient legal framework for information activities of an individual, society and the state, proclaimed political, economic, ideological pluralism (diversity) and the prohibition of censorship. While developing its provisions, a number of laws on the information were adopted (in recent years there was a real legislative boom in the field of media regulation: Ukrainian media activities are regulated by nearly 300 legal acts, among CIS countries Ukraine occupies almost the first place in terms of these acts), The National Television and Radio Broadcasting Council of Ukraine was founded; the State Committee on Television and Radio in Ukraine is responsible for information security of Ukraine, establishes liability for violation of the law on freedom of information.

In 2011 the Law of Ukraine "On Access to Public Information" came into effect. This law defines the procedure for ensuring the right to obtain information from public authorities and other public information providers. This right is guaranteed by Article 34 of the Constitution (and is one of the fundamental rights that ensure freedom of expression and realization of other human rights and freedoms, transparency and openness in state and local government authorities, prevention of corruption).

The provision of public information on request is one of the most important elements of public access to information on the State Border Guard and Customs Service of Ukraine, of ensuring their transparency and accountability to the society.

The law is intended to provide both business and citizens with information from government authorities that previously could be obtained only by some officials or else it should have been paid for. This also applies to information on the allocation and expenditure of budget funds, funding of various programs and on tender procurement, on plans of building administrative units, the distribution of land, etc.

It is envisaged that even for incomplete provision of information, according to the law, officials should bear administrative responsibility. In order to work legally in full force, it is necessary to change the set of legal acts which contradict to new rules. In addition, it is necessary to provide the practice of law-enforcement by government agencies, as well as court ruling of appeals against rejection of information request.

According to the Law, information is public if it was drawn up or received by public authorities (government authorities, local authorities) during their performance of lawful duties or held by them. Now the data belonging to other managers of such information are also considered public. They are legal entities that are financed from state or local budgets. We are talking about information related to the use of budget funds. But not only.

The information should be public if it concerns the activity of commercial entities with dominant position in the market, natural monopolies, the terms of goods and services supply and the prices and charges on them. Public is also the information about the quality of food and household items, accidents and catastrophes, other data that "are of public interest". Also, now requestor can get not only the information that directly relates to him, but also any other information stipulated by the law. There is no need to justify the reasons for which such information is requested.

To receive public information it is necessary to make a corresponding request (not to be confused with citizens' appeal according to the Law "On Appeals of Citizens"). It may be submitted in writing, by mail, fax, phone, e-mail. In this case, although a written request is sent in free form, to simplify its preparation and processing government authorities should develop a standard form. However, the request must contain requestor's name, mail or e-mail address, and phone number if available, a description of the information requested, signature and date, if the request is submitted in writing.

Revolutionary could be called the norm of the Law according to which information providers should address the request no later than within 5 business days following receipt of request, but not within 30 business days, as it was before. Moreover, if the information request concerns information required for protection of person's life or freedom, or it is related to the environmental situation, quality of food and household products, accidents, disasters, natural hazards and other emergencies, that threaten people's security, response should be given immediately but no later than within 48 hours following receipt of request.

However, if the request is for a large volume of information or requires processing of a large amount of data, information providers may extend the term for addressing the request to 20 business days specifying the reason for such extension. Besides, the Law provides the extension of response terms for an unlimited time, if the information cannot be provided in the statutory period due to force majeure. This rule can also be used by officials, who can recognize force majeure in various events.

According to the Law, information on request is free of charge. However, should the information request require producing copies of documents amounting to more than 10 copies the requestor shall be obliged to reimburse the cost of copying and printing. The maximum cost shall be determined by the Cabinet of Ministers of Ukraine.

The Law defines four exhaustive cases in which the request may be declined: if the information provider does not possess such information, if this information is qualified as restricted information, if the requestor has not paid the fees for copying or printing documents, if the request does not contain the information stipulated by the law. The denial must be done in writing and explain the reasons.

Probably most officials will deny on the grounds that the requested information is qualified as restricted. According to the Law, it is confidential, secret (government, banking, professional and other secrets) and service information.

Thus, according to the Law, access to such information may be restricted only in the interests of national security, the prevention of offenses and crimes, the protection of the reputation or the rights of people.

Without well-grounded jurisprudence, the qualifying of certain information as the one having restricted access will be based on subjective criteria of a particular civil servant.

However, the law gives the list of data that cannot be attributed to the restricted information. In particular, this is the information about the expenditure of budget funds, possession and usage of state and communal property, the conditions of obtaining these funds or property, etc. In addition, this norm has the clause – a ban on "secrecy" of the information does not apply to cases, when the disclosure of such information may harm the interests of national security, defense, investigation or prevention of a crime.

It is also worth noting that, according to the Law, the information has restricted access, not the document.

The Law establishes liability for such violations as denial to provide reply or information on request, ungrounded denial to grant the request, provision of false or inaccurate information, or its untimely provision, deliberate concealment of information, etc. The violators face such an administrative punishment as a fine.

According to the Law, information providers' decisions, actions, or lack thereof may be appealed with the head of the providing entity or a higher authority or a court. At the same time appeal to a court is done according to administrative proceedings. However, to defend the right to information will not be easy.

In such a situation the government agencies, particularly local ones, will either try to deny to provide information or to get away from a substantive response. Thus, it is possible to predict that complaints against public officials, who deny providing the information submitted to the head of this entity will basically remain unsatisfied. It will not be easy to defend the right in court. Obviously, the courts will be overwhelmed with such complaints, so the claimant will have to wait, perhaps, for months. The practice of hearing civil cases in administrative courts shows that the decision can be waited for several years. The information that is necessary today will hardly be just as relevant in years.

In Moldova, this issue has also received adequate legal regulation. But for the Constitution and departmental normative acts this sphere is regulated by a special law from 11.05.2000 No. 982 "On Access to Information". This normative act regulates the relationship between information providers and individuals and / or legal entities in the process of realization of their constitutional right of access to information, and also provides the principles, conditions, methods and procedures for the access to official information and personal information in possession of information providers.

Also, this Law provides methods of information security in dealing with the issue of access to it, the requestors' rights of requesting information, including personal information, obligations of information providers while ensuring access to official information and the mechanism of protecting the right of access to information.

Thus, public policy in this area allows any person to receive and review official information. However, this right does not in any way imply discrimination and can be restricted for specific reasons that correspond to the principles of international law, including the protection of national security or the lives of individuals.

The principle of access to information does not regulate: collection, processing, storage and safeguarding of information privacy; compulsory provision by individuals of the information stipulated by the Law to government authorities and public institutions; access of government authorities, public institutions, individuals and / or legal entities authorized to manage public affairs to information held by other similar public authorities, public institutions, individuals and / or legal entities; provision of information about their activities by individuals and legal entities, parties and socio-political groups, foundations, public associations.

According to the Law, the information providers are the holders of official information that are obliged to provide it to those who request it. These are central and local public authorities, central and local public institutions, individuals and legal entities that by law or contract with public authority or public institution are authorized to manage public affairs and collect, select, hold and store official information, including personal information.

Official information can be requested by: any citizen of the Republic of Moldova, the citizens of other states residing or staying on the territory of the Republic of Moldova, as well as stateless individuals permanently residing or staying on the territory of the Republic of Moldova.

In order to avoid misinterpretation and misuse of terms the Law "On Access to Information" regulates such things as: official information, official information of restricted access, personal information.

The information is considered official if it is held and controlled by information providers, compiled, selected, processed, systematized and / or approved by the authorities or individuals or is provided at their disposal in accordance with the law by other subjects of law.

Official information of restricted access is possible while observing rights and preventing attacks on the reputation of an individual, protecting national security, public order, health or morals of the society. Access to official information cannot be restricted, except for the information constituting a state secret, commercial secrets, personal information, information relating to operational activities and criminal prosecution, information reflecting final or intermediate results of scientific and technical researches.

Personal information is the data relating to an individual whose identity is established or may be established, the disclosure of which may violate the privacy of a person and which belongs to the category of confidential information about a person. The data for personal identification (the information contained in identification documents) are not treated as confidential information.

The requested information is provided on the basis of written or oral request. Written request must contain sufficient and accurate data in order to find the requested information, the acceptable way of obtaining information and personal data of the requestor.

Means of access to official information are: listening to the information that can be provided orally, looking through the document (or its part) on the premises of a public authority, issuing copies of requested documents or information (or their parts), issuing copy of the translated document or information (or its parts) in the language that is not the original one, sending a copy of the document or information (or its parts) by mail (including e-mail) for additional fee, as well as the copy of the document or information translated into the other language on request for fee.

Information is provided to the requestors in the official language or the language in which it is written. If the information and / or documents are not written in the state language, the information provider shall, upon the request, provide a copy of a valid translation of information and / or document into the state language. Official information, documents, their parts, extracts from registries, copies of translations are signed by a responsible official.

Denial to provide official information or document is given in writing specifying the date of denial, name of the responsible official, motivated reason for denial with reference to the normative act (title, number, date of adoption, and source of official publication), procedures for appealing against denial, including the deadline. Information providers are not required to provide a proof of non-existence of undocumented information.

A person who believes that his legal rights or interests are infringed by information provider may appeal against the actions of the latter both extrajudicially and directly to the competent administrative court. He also has the right to apply for protection of his legitimate rights and interests to the Human Rights Commissioner. A person who believes that his legitimate rights or interests are infringed, may appeal against any action or omission of an official responsible for receiving and processing of requests for the access to information, particularly with respect to unjustified denial to accept and register the request, denial to provide a free and unconditional access to public records, violation of terms and procedures for request registration, unprovided or improperly provided requested information,

ungrounded denial to provide the requested information, unreasonable qualification of the information as state or commercial secret, or as other official category of information with restricted access, unreasonable making the information secret, charging fee for the provided information volume, inflicting material and / or moral damage by illegal actions of the information provider.

To resolve disputes on access to information, the competent authorities take measures on protecting rights of all people whose interests may be affected by the disclosure of information, ensuring their participation in the proceedings as of third parties. The court hearing the disputes on access to information takes all reasonable and sufficient precautions, including the convening of closed meetings, in order to avoid the disclosure of information, the restricted access to which can be justified.

Depending on the severity of the consequences caused by illegal denial of the civil servant responsible for the provision of official information to provide access to the requested information, the court decides to apply sanctions in accordance with the law for damages caused by illegal denial to provide information or other actions violating the right of access to information, as well as immediate satisfaction of the requestor's complain.

2.2. *Consultation procedures and decision-making*

Decision-making process is complex and multifaceted. It includes a number of stages and operations. Questions about the quality and quantity of steps which a process of decision-making must undergo, about the specific content of each of them – are controversial and solved differently. It depends on the qualification of a high-ranking official in charge, the situation, management style and organizational culture. It is important for every high-ranking official in charge to understand the strengths and limitations of each approach and decision-making procedure and to be able to choose the best option to suit the situation and his own management style.

In Moldova, Law No. 239-XVI of 13.11.2008 "On Transparency of Decision-Making" regulates the process of decision-making within central and local government authorities and other public authorities, taking into account the basic principles of good governance.

The Law does not only sets the standards applied to ensure transparency in the decision-making process in the above mentioned authorities, but also regulates the relations of these authorities with citizens, associations established in accordance with the law and other parties interested in the participation in decision-making.

The scope of the Law is a set of legal relations established in the decision-making process between citizens, associations established in accordance with the law and other interested parties, on the one hand, and public authorities – on the other.

The Law operates on: central public authorities, local councils, mayors of villages and towns, regional governors, decentralized public services and local institutions, legal entities of public and private law that administer public funds and use them.

The provisions of the Law are not applied to decision-making and meetings held by public authorities while considering the official information, the access to which is restricted by law.

The pursued objectives ensure full awareness of decision-making by public authorities, direct participation of citizens and other stakeholders in decision-making, enhance the effectiveness of decision-making by public authorities, increase responsibility of the public authorities to citizens and society, encourage active participation of citizens, associations established in accordance with the law and other stakeholders in the decision-making process and ensure transparency of public authorities.

Transparency of decision-making is based on informing citizens and other interested parties on the beginning of decision-drafting and holding public consultations on a draft decision providing equal opportunities for citizens, associations established in accordance with the law and other stakeholders to participate in decision-making process.

Regarding the rights of interested parties, citizens, associations established in accordance with the law and other stakeholders have the right to: participate, in accordance with this law, in decision-making process at any stage; request and receive the information relating to the decision-making process, including the access to draft decisions along with supporting materials; offer public authorities to initiate the decision drafting and making; provide public authorities with recommendations on draft decisions.

Public authorities are required, depending on the circumstances, to take necessary measures to enable the participation of citizens, associations established in accordance with the law and other stakeholders in the decision-making process. To do this they spread information on annual programs (plans) of their activities by placing it on official web-site of the public authority, posting it in a public place where it is located and / or distributing it, depending on the circumstances, through central or local media to inform about the initiating of decision-making process, establishing the mechanisms for cooperation and partnership with the community, acceptance and consideration of recommendations from citizens and other stakeholders in order to use them in making draft decisions, consulting with all stakeholders while making draft decision.

The main stages of ensuring transparency in decision-making are: informing public about initiating of decision-drafting, providing stakeholders with draft decision together with supporting materials, holding consultations with citizens and other stakeholders, considering the recommendations of citizens and other stakeholders in making a draft of decision, as well as informing the public about the decisions taken.

When initiating the process of decision-making, the public authority no later than 15 business days prior to the decision consideration places an announcement on the official web- site, sends it by e-mail to interested parties, posts it in a public place where it is located and / or distributes it, depending on the circumstances, through central or local media.

Announcement on initiating decision-making should include a mandatory justification for the decision-making, deadline, place, order of access of citizens and other stakeholders to the draft decision and the way of presenting or directing recommendations and contact data of those, who accept and consider the recommendations.

Consultation with citizens and other stakeholders is provided by the public authority responsible for drafting the decision through public discussion, public hearing, public opinion poll, referendum, requesting the views of experts in the relevant sphere, creation of permanent or ad hoc working groups with the participation of representatives of a civil society. Consulting is done on the initiative of the public authority responsible for the development of a draft decision on the initiative of the public authority in accordance with its competence or on the recommendation of a citizen or other interested party.

Recommendations are accepted by the public authority responsible for the development of the draft decision in the following order: a) oral and written recommendations submitted during the consultation by duly citing them in the minutes of the relevant meetings and b) written recommendations obtained individually by registering them in accordance with law.

The draft decision is submitted for consideration, along with a set of recommendations. If citizens did not provide recommendations in due time, and the public authority for the right reasons does not

consider it necessary to organize the consultations, a draft decision may be directed for adoption procedure.

Meetings of the public authorities on taking decisions are open, except for cases stipulated by law. The announcement of the public meeting is placed on the official web-site of the public authority, e-mailed to interested parties, posted in a public place at the location of a public authority and / or spread, depending on the circumstances, through central or local media and contains date, time and place of the public meeting and its agenda. Stakeholders participate in the public meetings within available seats in the boardroom and in the order of priority determined by the chairperson of the meeting, taking into account the interest of citizens, associations established in accordance with law and other stakeholders concerning the subject of public meeting.

The public is informed about taken decisions by providing access to such decisions through placing them on the official web-site, posting them in a public place where the public authority is located and / or spreading them, depending on the circumstances, through central or local media.

Public authorities make and publish annual reports on the transparency of decision-making that contain the number of decisions taken by the relevant public authority for the reporting period, the total number of recommendations received in the decision-making process, the number of consultative meetings, public debates and public meetings and the number of cases when the actions or decisions of public authorities were appealed against because of their non-compliance with the requirements of this law and the penalties imposed for the violation of this law. Annual report on the transparency of decision-making is published no later than the end of the first quarter of the following year.

Currently in Ukraine, there is no law that establishes the rules applicable to ensure the transparency of decision-making within central and local public authorities and regulates relations of these authorities with the citizens, associations and other stakeholders when they participate in the process of taking such decision.

It should be noted that the institution of preliminary decisions of the Customs authorities of Ukraine is one of the pillars of modern implementation of WCO (World Customs Organization) recommendations and the requirements of the new Customs Code of Ukraine. This is due to the existing practice of developing the ways to improve the implementation of the individual elements of the customs control on the basis of prior decisions of the Customs authorities of Ukraine in their relationship with the whole system of customs control and involvement of Customs Services of foreign states into this process.

The new Customs Code of Ukraine set and specified the place of preliminary decisions of the Customs authorities in the mechanism of customs control. It is shown that a preliminary decision depends on the level of the hierarchy and the competence of the Customs authority that makes the decision, powers of the Customs official, performing his functions in accordance with the customs legislation, subject-object relations “Customs authority – subject of FEA”. Preliminary decisions of the Customs authorities are part of customs technologies used when FEA subject crosses the Customs border.

Also the new Code conventionally classified previously taken decisions of Customs authorities, identified the types of preliminary decisions, and on the basis of this classification set potential targets for making preliminary decisions on the system of customs control.

Preliminary decisions of Customs authorities are the basis for pre-customs clearance and pre-customs control. The previous stage of the customs control – development of customs technological processes – is combined with the basic and the next stage of the customs control – automation of information processing.

Having the ability to check the entrepreneur's transaction after its accomplishment, the goods are not detained by the Customs till the end of the check, but are allowed to pass quickly.

Risk management system reduces the time of customs clearance, improves customs control and avoids undue Customs interference in entrepreneurs' export-import operations.

This is the situation when computer actually determines the need for customs clearance, attentive cargo inspection or the absence of such a need. That is, the human factor is significantly reduced, and the Customs officer cannot take a subjective decision using his own discretion.

On the basis of a systematic approach, the new Code highlights the main elements of the system of customs control and structures them, foreseeing steps, procedures and decision-making processes in order to release the FEA subject in accordance with the Customs regime.

It is shown that the mechanism of decision management by the Customs authorities during customs control is an independent function of the Customs authority of a corresponding hierarchy, that requires subject's responsibility for the quality of decision and object's locality in the system of customs control.

2.3. *Effectiveness, coherence and accountability to society*

Effectiveness. It reflects the appropriateness of executive authority functioning. Effectiveness of Customs and Border Guard authorities is achieved by unification of customs and border guard procedures, reducing the time for customs clearance, mobility of customs and border guard control, implementation of preventive objectives, protection of national economy.

In order to improve the effectiveness of the corresponding units, the competence of which is to take measures for prevention, detection, suppression of corruption among officials of the partner services, as well as to fix them according to the procedure, common orders, instructions and flow diagrams are accepted.

Coherence. Geopolitical position of Ukraine and Moldova in the central eastern part of Europe plays an important role in ensuring stability and security in the region. Partner services take active measures on the development and the reconstruction of the state border, the creation of an integrated system of its protection, the organization of border crossing by people, vehicles and goods.

Integrated border management provides: coordination of the competent state authorities activity on providing security and openness of the state border, ensuring protection of the state border, possibility for people, vehicles and goods to cross the state border in the stipulated order; information and operative crime detection activities; risk analysis and measures fostering; integrated border management for the prevention, detection, disclosure (investigation) of cross-border crimes; creation of four-level system to control the entry and stay of foreigners and stateless persons; international, cross-border and inter-agency cooperation.

Accountability. In order to ensure appropriate relationship with the public and the media, as well as to implement the principle of accountability, partner services developed and approved a communication mechanism.

Modernization of Border Guard and Customs authorities of Ukraine and the Republic of Moldova, among other things, led to transparency, openness and dialogue with the public and the media. In recent years, it is a priority for the management of the partner services.

The main purpose of accountability in the Customs and Border Guard Services is the deliberate, planned and long-term impact on the creation of external and internal social, political and psychological environment that would be conducive to a positive image of the partner services of Ukraine and the Republic of Moldova, as well as to obtain the desired behavior of this environment in relation to the Customs and Border Guard Services through information systems and feedback.

This objective is achieved by optimization of public relations and media services, reflection of action in the media of local and national significance, publication of specialized magazines (magazine "Vama" (RM), newspaper "Prykordonnyk Ukrainy" (Ukraine), information-analytical bulletins, constant updating of pages of the official websites of the partner services, involvement of civil society and business in the development and coordination of decisions, provision of public access to information.

The Customs and Border Guards Services are making maximum efforts to ensure transparency and efficiency of the feedback for the public to have full information on what was done and what is planned to do. However, the mission of communication is to strengthen the capacities of services in the sphere of development and provision of consistent and convincing information about the activity and achievements, providing information to the public to promote participation in decision-making, in implementation of reforms, and to promote voluntary compliance with the rules of border crossing.

For successful implementation of the principle of accountability Partner services develop communication infrastructure, create effective mechanisms to ensure internal dialogue within the framework of these services, as well as between the central administrations, including the development and promotion of consolidated reports that provide multilateral communication, efficient and modern, while improving the access to information and the comprehensive development of dialogue with society, business and the media.

Simultaneously, the main objective of the communication concept is to highlight the activity of the Customs services, improving public knowledge and awareness about customs regulations with reference to the role of the Customs in providing international trade assistance, in creating a holistic picture of the Customs Service, and also to inform the public about the challenges facing the Customs to exclude erroneous views on the role and place of the Customs service in society.

Communication and accountability provide, on the one hand, the representation of the interests of Border Guard and Customs control authorities, on the other hand - provide feedback based on the analysis of the evolution of public opinion, which allows to define information needs of society and as a consequence - to take the necessary measures for public participation in decision-making. Accordingly, the flow of information should promote transparency in the activity to create an atmosphere of mutual understanding and trust.

Accountability is based on the principles of transparency and flexibility, durability, affordability and accountability. Correctness of the account is provided by timely supply of information, correction of which is based on analytical studies of quantitative and qualitative researches, consisting of checks, personal interviews, focus groups, testing concepts, etc. Account may be in oral, written or electronic form. Priority characteristics of account are: clarity, simplicity of presentation, timeliness and constant updating. Simple provision of messages or information that is not of accountable nature should be avoided. To provide access to the information messages must be published in languages of international communication. Accountability is the responsibility of the partner services leaders. However, according to the official duties and authority, to maintain this sector is the responsibility of each official. Let us say that the implementation of all the above-indicated measures is aimed at developing professional and transparent administration, ensuring good (proper) governance, implementing international standards for simplifying Customs procedures and protecting campaign on universal and impartial application of Customs legislation.

Practical Exercise 1. What is governance (good or bad)?

Objective(s)

To understand the concept of governance

To apply the concept of governance in various spheres of public life

Methodology

Questions and answers, "brainstorming" and group discussions

Materials needed

Training materials, flipchart, markers

Duration

1 hour

PART 1. Divide trainees into groups of 4 or 5 people. Give each group a large sheet of paper and markers. Ask trainees to try to explain their understanding of governance. Ask them the following questions:

- What is governance when you hear this expression in daily life?
- What does governance mean to you?

Ask trainees to come up with a maximum of options and emphasize that there are no right or wrong answers. After finishing work in groups, ask each group to present its ideas. At the end, you may wonder whether the ideas were the same or different.

Use this discussion to start the presentation of the value of the governance concept, which covers the following issues:

- The concept of governance is not new. To make it simple, governance is defined as the process of decision-making and the process, in which decisions are implemented (or not implemented), or as a set of values, policies and institutions used by society to govern its social, political and economic processes through interaction between sectors of state government, civil society, private sector.
- Explain that there are two sides of governance. The technical aspect: how and what to do (or not to do), and the representative aspect: how decisions are made, who makes them.

PART 2. Start with the statement that governance can be used in different contexts such as international governance, national governance and local governance. Ask trainees if they can use the concept of governance in the family. Do the "brainstorming" and write options on a flipchart. After the "brainstorming", introduce different levels of governance: international, national (government, private sector, civil society), local and family.

The government is one of the governance participants. Other members of governance will vary depending on the level of the governance discussed. For example, the other members can be influential

landowners, farmers' associations, cooperatives, NGOs, research institutes, religious leaders, financial institutions, political parties, military organizations, etc. At the national level, in addition, the media, international donors, multinational corporations, etc., which may play a role in decision-making or influence the decision-making process.

Since governance is the process of decision-making and the process in which decisions are implemented, while analyzing governance attention is paid to formal and informal participants in the decision-making and decision implementing, as well as formal and informal structures that have been created in order to make and implement decisions.

PART 3. Ask trainees to think about formal and informal decision-making participants in their spheres. Then explain the following points.

- All participants, except for government and military structures, are grouped together as part of a "civil society". In some countries, organized crime syndicates, in addition to civil society also affect decision-making, especially in urban areas and at the national level.

- Similarly, formal government structures are a means of decision making and implementing. At the national level there may be informal decision-making structures, such as "kitchen" cabinets or unofficial advisers. In cities such organized crime syndicates as the Mafia, may affect the decision-making process. In some rural areas powerful families may make decisions or influence the process of adoption. Such informal decision-making is often the result of corrupt practice or leads to it.

Ask trainees to list the activities that, in their opinion, lead to "bad" governance in their sphere. After some "brainstorming" write ideas on a flipchart and refer to them while explaining the following statement.

Good governance ensures political, social and economic priorities based on a broader social consensus, and that all voices are heard in decision-making on resource allocation.

Practical Exercise 2. Principles of good governance

Objective(s)

To understand trainees' perceptions of the concept of good governance.

To explain basic principles of good governance.

To offer practical ways to incorporate the principles of good governance in the activity of the organization

Methodology

Questions and answers, "brainstorming", group discussions and visual presentation

Materials needed

Training materials, flipchart, markers, sufficient number of copies of a good governance map

Duration

1 hour 30 minutes

PART 1. Divide trainees into groups of 4 or 5 people. Give each group a large sheet of paper and markers. Ask trainees to try to explain their understanding of good governance. Ask them the following questions:

What is good governance when you hear this expression in daily life?

What does good governance mean to you?

Ask trainees to come up with a maximum of options and emphasize that there are no right or wrong answers. After finishing group work, ask each group to present its ideas. At the end, you may wonder whether the ideas were the same or different.

Use this discussion to start the presentation of the basic principles of good governance.

Principles of good governance.

There are eight basic principles of good governance. These are: consistency, the rule of law, transparency, sensitivity, focus on coherence, fairness and totality; efficiency and effectiveness; responsibility.

These principles ensure that corruption is minimized, the views of minorities and marginalized groups are taken into account, voices of the most vulnerable sectors of society are heard in decision-making. They also respond to current and future needs of society.

Before you begin to explain these principles, ask trainees about their understanding of each principle. After some "brainstorming" write ideas on a flipchart and refer to them during the presentation.

PART 2. Divide trainees into groups of 3-4 people, with the total number of groups – 8. Give each group a large sheet of paper and markers. Each group gets one principle. Ask trainees to explain their understanding of how the principle they got can be practically applied in their organizations. Ask them such questions as:

- How can this principle be applied in your organization?
- What mechanisms can ensure the implementation of this principle?

Encourage trainees to develop the maximum number of ideas, and emphasize that there are no right or wrong answers. After the end of the group work, ask each group to present their ideas.

Use this discussion to explain the following.

Good governance is an ideal which is difficult to achieve in its entirety. Very few countries, societies and organizations have come close to the full achievement of the principles of good governance. However, to ensure the sustainable development of the society certain measures must be taken in this direction.

COMMENTS

TRANSLATION

№ 4-01-4982 August 14, 2013

Mr. Udo Burkholder

Head of EUBAM

65012, Odessa, Ukraine, ul. Uyutnaya, 13

Dear Mr. Burkholder,

Theme: Joint Anti-corruption Manual (№ 01.410/HoM/130726/OUT/SIS_LT/CBU/AC/JV)

I would like to express my sincere gratitude for the opportunity to get acquainted with the Joint Anti-corruption Manual for Partner services that was written by the Ukrainian - Moldovan working group.

Special Investigation Service in cooperation with the State Border Guard Service under the Ministry of Internal Affairs and the Customs Department of the Ministry of Finance of the Republic of Lithuania studied the anti-corruption training material. They unanimously concluded that the material is informative and given in detail, it covers all the subject areas required for anti-corruption training programs.

Taking into account that all of the above mentioned anti-corruption institutions conduct training activities that are constantly in need of improvement, they will find the Anti-corruption Manual really useful, based on the experience of Ukrainian and Moldovan partners.

Sincerely,

/ signature /

Saulius Urbanavikius / Director

For András Hugyik, **Adviser on Good Governance**

European Union Border Assistance Mission to Moldova and Ukraine

Dear Mr. András Hugyik,

in response to the letter from Mr. Udo Burkholder, Head of the Mission, from July 26, 2013 to Mr. Yuri Lavreniuk, Chairman of the All-Ukrainian Special Board on Combating Corruption and Organized Crime (Board) requesting a professional appraisal of the "Manual for the training course on prevention and combating corruption in educational establishments of the Border Guard and Customs agencies of the Republic of Moldova and Ukraine", written by EUBAM, I wish to inform you of the following.

Taking this opportunity, I want to thank you for addressing our organization with such a request and express our willingness to continue the assistance in the work of EUBAM. I want also to inform you that Mr. Yuri Lavreniuk is on vacation and will be able to send a formal reply to Mr. Burkholder only after August 26, 2013. Taking into account the urgency of the issue, your appointment as a contact person and your desire to get an answer before August 20, I send you the following reply on the merits of the proposed draft manual:

The draft manual is written on a sufficient factual material, contains the necessary information for study, is well structured and covers the main aspects of the claimed theme. The strong point of the manual is a detailed description of training practical aspects and organization of group work. At the same time, a detailed analysis reveals a number of significant shortcomings that must be corrected before formal approval of the manual as an educational aid. Some of these shortcomings are listed in the Attachment to this letter. After revising and editing the draft manual, it is recommended to arrange professional presentation of the manual and its discussion. The Board is ready to help with its organization. We believe that taking into account the recommendations, and after eliminating the shortcomings, the manual will be an effective tool in the process of comprehensive personnel training for the Customs and Border Guard Services.

Let me one more time express my respect to the EUBAM, Head of the Mission and to you personally and assure my confidence in further fruitful cooperation.

Sincerely,

Head of the Board Petr Pavlichenko

Analysis of the proposed draft manual revealed the following shortcomings:

1. The target audience of the course

Based on the stated objectives of the course and the content of the proposed materials, the manual is aimed at primary training. In this case, the course should be aligned to the requirements put forward by the Ministry of Education and Science to educational manuals for higher educational establishments. At the same time, as practice shows, practical anti-corruption courses are conducted mainly in the framework of programs to improve the skills or for retraining. In this case it is also necessary to take into account a number of formal requirements to training programs for civil servants.

2. Presentation of the material

Virtually the entire presentation of the material requires further editing of style and grammar. Furthermore, the material is presented mainly as disputable. This is an important positive factor in cases when you want to make the audience think and work actively while studying. At the same time, it is recommended to precede or finish each such unit with a conclusion or a summarizing phrase, which can be easily perceived by the audience, revised and, as a result, will help them with the formation of knowledge system. In the proposed draft manual there is no such a mandatory element of educational literature as questions for self-control. They should be formulated and given at least at the end of each module, but at the end of each block of information would be better.

3. Balance in terms of size, content sufficiency of parts (modules) of the course and correctness of information presentation

A significant amount of introductory part of the course is not appropriate. Much of the information (pp. 38-67) can be easily found in the internet sources and in popular literature on the topic, that's why its duplicating in the manual is not recommended. If necessary, most of the presented compilation material should be moved to appendix. Module II is one of the most detailed. However, this module can be substantially improved if instead of direct chronological narrative of international standards to show their formation in development. For example, the authors point out that "In the end, international standards do not provide for any order of creation and organization of specialized anti-corruption institution, nor any single most effective or universal model of anti-corruption body." This statement was true in relation to Ukraine until 2006. Since that time there are GRECO Recommendations for Ukraine on this issue, expert analysis and subsequent reports that already allow to set clear requirements for such an anti-corruption body in Ukraine. In all such cases, the theme must be presented fully and fairly. Besides, when describing institutional structures it is necessary not only to mention their names and describe their basic functions, but also to define the way, in which the representatives of the Customs and Border Guard Services of Moldova and Ukraine can interact with them. Thus, it is necessary to eliminate the disparity and excessive detail in the description of some structures, such as in the presentation of material on the European Anti-Fraud Office – OLAF (p.115 -123).

Theme 2/B NATIONAL ANTI-CORRUPTION INSTRUMENTS OF UKRAINE requires substantial changes. In particular, the statement "The activity and active position of the Anti-Corruption Committee resulted in the development and adoption of a number of anti-corruption laws and legal acts" (p.183) does not correspond to the assessments given to the above authority by the representatives of the European Union. Last GRECO report casts doubt on the effectiveness of this body. In addition, the presentation of all 15 areas of the National Anti-Corruption Strategy 2011-2015 (p.182 -189) should be replaced by an emphasis on those areas that are directly related to the activities of the Customs and Border Guard Services. It should be noted that national strategy and the corresponding state program have been implemented in Ukraine not for the first time, that's why instead of compiling the text of these documents, it is better to provide information on what has been done, and not to discuss what they intend to do. Public organizations hold such information.

Regarding the description of the legal base, the authors made a clear bias towards describing the general provisions. As a result, the manual lacks specifics. For example, in the description of the Law "On Principles of Preventing and Combating Corruption in Ukraine" the issues of completing and submitting the declaration of assets, income, expenses and financial obligations for public officials should be given in more details as it is the demand of the law and the direct responsibility of the entire target audience of the proposed manual. At the same time, the mandatory anticorruption expertise of draft legal acts that is the statutory implementation of the Ministry of Justice of Ukraine could only be mentioned.

It seems unreasonable to single out a separate chapter "3.4. Anti-corruption expertise of draft legislation" (p. 262-270), which logically should have been the part of previous chapter "3.3. Corruption risk assessment". Besides, and also in this case, it seems that the detailed description of the specified in the manual such risks as the administration of information, property, financial assets, the use of discretionary powers in determining the customs value, etc. will bring the audience (students) more practical use than the description of the examination of draft legal acts with which they will never deal on service. The practical class for students on this abstract matter (p.277) doesn't make more sense.

Module III. CLASSIFICATION OF CORRUPT PRACTICES AND LEGAL LIABILITY THEREFOR IN THE REPUBLIC OF MOLDOVA AND UKRAINE deserves special attention. The entire module should be edited paying attention to correct usage of legal terms. This module, being the most important in terms of the educational effect, must stand out the principle of punishment inevitability for the crime. In this regard, such statements as "One should remember that the violation of many prohibitions and restrictions provided by anti-corruption law cannot entail legal liability" (p.295) are inadmissible. But what liability? No one? If the author meant criminal liability, it should be written so. Second example: "... by a person executing responsible political position" (p.290). Position can be held or occupied, but not executed. Moreover, at least it looks strange when to illustrate the article of the Criminal Code an example is given from the experience of the Russian Federation (p.332). As for the abundance of disputable passages in this section, they are recommended to be moved to appendices.

The size and the content of the proposed Practical exercises (p.369-374) in Appendix 1 are insufficient. A standard set of tasks in the manuals of such type should comprise in average about 60. In addition, the tasks should be offered with their solutions (for reviewers). This will help to assess the correctness of their application and specific focus on the target audience.

OBJECTIONS

of the working group on the comments

made by the Ukrainian Special Board on Combating Corruption and Organized Crime on the draft manual (Module III)

The working group members are grateful to the reviewer for valuable criticisms of the module written by them. They partly agree with remarks and express their confidence in the possibility to improve the initial text, expanding creative beginning in the reviewed manual. Indeed, it is difficult not to agree with the fact that "this module, being the most important in terms of the educational effect, must stand out the principle of punishment inevitability for crime." Unbiased professional opinion of the reviewer, that let him give an independent assessment of our manual, deserves gratefulness. However, the content of the following critical remarks leaves no opportunity to fully agree with them.

1. In particular, on p. 6 of the document the reviewer notes that such statements as "One should remember that the violation of many prohibitions and restrictions provided by anti-corruption law cannot entail legal liability" (p.295) are inadmissible. But what liability? No one? If the author meant criminal liability, it should be written so." But the co-author of the module meant exactly what he wrote. The reviewer does not give any reasons for his remarks, and at the same time, the study of law and legal experience gives us the idea confirming the truth of the criticized statement. For example, what kind of legal liability is directly provided for violating the ban on acceptance of services and property by state and local authorities (Article 17 of the Law of Ukraine "On Principles of Preventing and Combating Corruption")? Or what kind of legal liability is set for the violation of restrictions for persons, who quitted their position or terminated the activities associated with the performance of state and local government functions, but who represent the interests of any person in cases in which the other party is the body in which they worked (Article 10 of the Law of Ukraine "On Principles of Preventing and Combating Corruption")?

2. The second remark about our text: inadmissible are the statements like: "... by a person executing responsible political position" (p.290). Position can be held or occupied, but not executed."

In this regard, we'll remind that our text is based precisely on terms used in the official Russian version of the Law of the Republic of Moldova of 16.07.2010 No. 199 "On Public Officials Status" (http://lex.justice.md/ru/336193/).

But we agree that this statement is not characteristic to Ukrainian legal lexicon. The question of terms is extremely important, because the law and legal literature in different countries use different conceptual terms. Many terms used in one country may have different semantics or do not have the equivalent in another jurisdiction (confirmation – the notorious term "integrity"). Variety of terms is a problem of great practical importance. To be fair we should not forget that in the Ukrainian legal acts the criticized statement is sometimes used.

For example:

Order of the State Border Guard Service of Ukraine No. 425 of 20.05.2008, registered in the Ministry of Justice of Ukraine on June 18, 2008, No. 537/15228

On approval of the Instruction on the procedure of salary payment to servicemen of the State Border Guard Service of Ukraine with amendments made according to the Orders of the State Border Guard Service No. 776/21089 of 24.04.2012, No. 909 of 08.11.2012.

4.1.1. The Head (commander) of the State Border Guard Service authority, due to service needs, may order a serviceman to do temporary duty stipulated by another equal or higher position that he does not take:

a) vacant (unoccupied) military position – with his consent (temporary position);

b) not vacant (occupied) military position – if the serviceman who occupies it is temporary absent or dismissed from his service duties (temporary duty).

3. Considering that we gave enough arguments on this issue, let's move on to the following comment: "at least it looks strange when to illustrate the article of the Criminal Code an example is given from the experience of the Russian Federation (p.332)." With all due respect to colleagues' conclusion, we want to say, that this conclusion is equivalent to the assertion that the example of the use of the surgeon's scalpel in Ukraine is not demonstrative for the surgeon in Poland. In our view, contrary to the reviewer's, it would be somewhat strange to miss the possibilities to confirm that the problems and the mechanisms to solve them are the same in different states.

In general, without discussing the usefulness of the methods of comparative law in drafting our manual, we note that, in our opinion, these techniques are very useful for training. The study of norms application, institutions of national, foreign and international law allows to understand the spirit of the law and the trends in developing legal enforcement practices. For practice it means the ability to quickly navigate the array of regulatory information, and comparing different versions of enforcement, choose the best, taking into account international experience.

4. We agree that the size and the content of the proposed Practical exercises (p.369-374) in Appendix 1 are clearly insufficient, so we edited the text of tasks, eliminating stylistic and conceptual shortcomings.

However, stunning is the categorical assertion that "in addition, the tasks should be offered with their solutions (for reviewers). This will help to assess the correctness of their application and specific focus on the target audience". In developing situations, we proceeded from the fact that the level of the coach and his career experience allow him to organize problem solving activity in a group and check its accuracy. If to prepare such solutions only for reviewers, they are not part of the book and should be written as an explanatory note to the manuscript. Given in the Appendix tasks for coaches is only an option of possible approach to the development of self- teaching materials based on peculiar features of trainees.

Equally puzzling is the reviewer's thesis that a standard set of tasks in the manuals of such type in average should be about 60. Such a peremptory tone with high probability allows us to assume that such a "standard set of problems" is not known to any of the experts, except for the reviewer.

Needless to say that with educational aim it is necessary to make an array of situational tasks and include it into a separate extensive appendix as a separate edition. But it should be done while using this manual in practice when the structure of student groups will be known.

The questions for self-control, the lack of which was pointed out by the reviewer, are given in the same Annex 1.

5. We agree with the fact that each unit should be preceded or finished with a conclusion or a summarizing phrase, which can be easily perceived and revised by the audience and, as a result, will help them with the formation of knowledge system. Following this recommendation we added a conclusion to Module III.

Conclusion: comments on Module III of principal character are taken into account during manual text editing (the list of corrections is enclosed). A number of comments were not taken into account because, in our opinion, they are unreasonable.

S.A. Filippov

EUBAM is an EU Mission fully funded
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International Organization for Migration
is the implementing partner