

Biljana Dulović  
Blaženka Dabanović  
Dalibor Šaban  
Holger-Michael Arndt  
Josef Schiffer, Ph.D.  
Mladen Grdinić  
Mladen Tomović, M.Sc.  
Šefko Kurpejović  
Vesna Ratković, Ph.D.

# INTEGRITY OR CORRUPTION? QUESTIONS AND ANSWERS

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# INTEGRITY OR CORRUPTION ? QUESTIONS AND ANSWERS

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## *Editors*

Vesna Ratković, Ph.D.

Holger-Michael Arndt

## *Authors*

Biljana Dulović

Blaženka Dabanović

Dalibor Šaban

Holger-Michael Arndt

Josef Schiffer, Ph.D.

Mladen Grdinić

Mladen Tomović, M.Sc.

Šefko Kurpejović

Vesna Ratković, Ph.D.

## *Project coordinator*

Aleksandra Vojinović

## *Proofreader*

Mary Ann Siara-Decker

## *Design*

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# FOREWORD



From 2012 to 2014 the Directorate for Anti-Corruption Initiative and the Commission for the Prevention of Conflict of Interest together with the Federal Office of Administration from the Federal Republic of Germany were partners in the Twinning project “Support the implementation of the anti-corruption strategy and action plan” MN 10 IB JH 03 in preparation for the possible accession of Montenegro to the European Union.

Within the framework of the project the idea for this publication came into being.

A working group of civil servants from different authorities in the Montenegrin administration discussed the pressing issues of integrity in the workplace taking into consideration the changing legislations.

Society is not adequately aware of the topic and does not really know how to deal with the question of integrity in the workplace, in contacts with citizens and colleagues as well as with current norms and standards in this area.

The following questions and answers are written in plain, understandable language and should help the reader to recognise more clearly the limits and better determine which behaviour is desired, permitted and forbidden.

It should also show civil servants which limits under civil service law must be observed. Additionally both citizens and civil servants need to respect relevant penal regulations.

A general policy is that an official of the Montenegrin administration is not allowed to accept any benefits relating to his or her work unless such an action is permitted. Nonetheless, there are still grey areas that still have to be discussed with superiors in cases of doubt.

We hope that this handbook will contribute to the implementation of reliable standards of integrity in the public administration and will raise awareness that the fight against corruption is indeed necessary. The objective of such a process must be achieved by outlawing this type of crime and by informing the society in this regard.

Systematic prevention and combating corruption can only be successful in the long term if the issue is addressed to the society as a whole.

Corruption can only be successfully combated in the public administration when credible efforts in this area are made with adequate support at the political level.

Podgorica, February 2014

**Holger-Michael Arndt**  
Federal Office of Administration

# INTRODUCTORY REMARKS



*Dear Sir or Madam,*

This handbook is intended for public employees, and especially those who are at the beginning of their career, or have up to three years of experience in complex and responsible tasks. The handbook contains questions and answers related to corruption as a negative social phenomenon and integrity as the opposite and preferred benchmark for improving the efficiency, transparency and accountability, i.e. the integrity, of public administration. As you know, the achievement of this goal is one of the priorities of the overall reform activities in Montenegro.

The subjects contained in this handbook are intended to facilitate learning and apply the standards related to the exercise of a number of principles that make “good governance”, in particular: the implementation of the Law on Civil Servants and State Employees, the Labour Law and the Criminal Code, the prevention of corruption and other abuses of power, the principle of integrity as well as the Code of Ethics.

The aim of this handbook is to present, through practical questions and answers, to civil servants and state employees their legal rights and obligations as well as the rules and restrictions relating to lawful and ethical conduct in the performance of their duties and tasks. This handbook should not only facilitate the officials and employees to acquire and expand knowledge and skills on how to perform their duties in a modern, efficient and responsible manner, but also

should contribute to more harmonious relationships with colleagues, clients, citizens and others. This handbook aims to show civil servants how to recognise corruption and encourage them to act in case of suspicion of corruption or any other form of unethical and unprofessional conduct in their workplace.

This handbook is a result of the joint efforts of several public authorities and German colleagues from the IPA 2010 Twinning project “Support the implementation of the anti-corruption strategy and action plan”. Great contributions to the design and production of this handbook were made by representatives of the Directorate for Anti-Corruption Initiative, the Human Resources Management Authority, the Ministry of Interior, the Property Directorate and the Basic Court in Podgorica.

As of this year the handbook will become an integral part of the training programme at the Human Resources Management Authority so that public employees, through participation in seminars with lecturers from the above-mentioned state authorities, may gain and expand their knowledge and skills in a simple and practical way and thus contribute to the improvement of the efficiency and integrity of work of the public administration.

By showing your interest and willingness to study and implement this handbook, I am sure you will actively contribute to making our public administration professional and respected by everyone.

Podgorica, February 2014

**Directorate for Anti-Corruption Initiative,**  
Director, Vesna Ratković, Ph.D.

## 1

*Blaženka Dabanović*

## PRINCIPLE OF INTEGRITY AND ITS IMPLEMENTATION IN PUBLIC ADMINISTRATION

The word '**integrity**' originates from the Latin word *integritas* and means indivisibility, stainlessness, honesty, reality, due diligence and other moral values of a person.

**Integrity of a civil servant and a state employee** means that he/she has adequate knowledge and skills, acts ethically in accordance with the laws and morality and is not susceptible under the unethical and immoral (corruptive) pressure.

Integrity of the institution refers to the method of work of the institution and its employees who work and act independently, impartially, transparently and fairly.

By strengthening the integrity of both civil servants and institutions, the public confidence in the work of state authorities will be increased. One cannot talk about the integrity of the institution if there is no integrity of the individual, who knows and accepts that the interest of the institution should be above his/her private interests.

The aim of creating social integrity is to make corruption a risky and unrewarding task.<sup>(1)</sup>

Integrity and corruption are two opposed terms! Strengthening integrity will automatically create an unfavourable environment for corruptive activities and vice versa!

In the world there are many definitions of corruption, but a high degree of consensus exists for the following elements:

- abuse of delegated powers;
- acquisition or intention to acquire personal gain;
- a phenomenon that harms the public good;
- violation of the principle of impartiality;
- deviant behaviour in relation to the position of holding public office.

For the purposes of the handbook we present the very often quoted definition given by Howard Whitton:

C = O – PEN/PI  
 C - corruption  
 O - opportunity  
 PEN – Personal Ethical Norms  
 PI – Professional Integrity

Work in the public administration is very complicated and complex. Employees in the public administration decide on rights and duties of citizens, act in the most complex matters, and therefore employees face many ethical and moral dilemmas.

Rights, obligations and the manner of conduct of civil servants and state employees are defined, first of all, by the Law on Civil Servants and State Employees and the Code of Conduct of Civil Servants and State Employees, but also by various internal rules. In addition to the above-mentioned documents, the (non)existence of procedures, norms and rules of behaviour can create certain dilemmas in concrete situations.

In order to clarify certain dilemmas, we have compiled questions and answers as well as practical examples, which can help users of the handbook to better understand the obligations and restrictions in public administration. Thus, if they find themselves in a dilemma situation, whether or not they are acting in accordance with moral principles and rules of conduct, they can find out the suggested ways to act.

If there are no clear rules and procedures, legal norms or codes of ethics, or if they do exist but their implementation and control are not provided, we can say that opportunity, or increased risk of misusing public authority at the expense of the public interest is always there. In this case, the work and responsibilities of a civil servant can be questioned, i.e. whether or (not) his/her integrity exists. It should not be allowed that corruption becomes a matter of choice of those who work in public administration.

For resolving ethical dilemmas, it should always be started from the above-mentioned laws and secondary legislation, but if they are insufficient, it is possible to use some methodological approaches, for example:

### **Seven steps: Moral Investigating Plan Programme Integrity<sup>(2)</sup>**

To implement this methodological approach it is necessary to, step by step, with a colleague, integrity manager or the head of the authority, expose the ethical dilemma by going through these questions so as to come to possible solutions based on the answers. You can present the ethical dilemma you have at a collegium or other type of professional meeting.

#### **I What is the decision I am faced with?**

- Check from various aspects why the decision is morally difficult. Define the main objections and contentious elements. Analyse what the issuing or non-issuing of such a controversial decision would mean for you. Try to answer the question: should I act, yes or no?

#### **II Who is involved in my decision and what do the relevant laws, regulations and Code of Ethics say about this situation?**

- Comprehensively check which institutions and persons have rights, interests or wishes concerning the decision.

#### **III Who takes the decision?**

- That's me. If not, someone else owns the dilemma, you are trying to make someone else responsible or you have to reformulate the decision.

#### **IV Do I need more information to make a well-informed decision?**

- Comprehensively check the information, but be aware that getting 100% of the information is never possible.

#### **V What are the arguments behind my decision?**

- Write down in two columns: arguments that favour your action as well as the contra arguments.
- Take into account arguments of all stakeholders.

#### **VI What should be my decision?**

- Check all arguments concerning Value, Consequence or Excuse.

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<sup>2</sup> Henk Bruning, Public Integrity, two approaches, PPT, training of trainers, LOGINTS

- Take a look at all laws and other regulations.
  - Use the rule of thumb: arguments that are a Value (V) always precede arguments as Consequence (C), unless the consequences are extreme.
  - Conclusion: make your final decision and write down the most important pro and contra arguments.
  - Limit the damage. After weighing the pros and cons investigate the consequences of your decision and in what way you will be able to limit, compensate for or make good any possible damage or harm.
- VII Check your own feelings about the decision. If you hesitate and have doubts, ask yourself: what is the reason?**
- If you have doubts, your decision is probably not morally sound. Try to find out the reasons and consider what you can improve.

# 2

*Biljana Dulović*

## LAW ON CIVIL SERVANTS AND STATE EMPLOYEES

Beside the rights and obligations of civil servants and state employees, the Law on Civil Servants and State Employees regulates the issues of integrity, conflict of interest, gifts, various types of limitations originating from work in state authorities and the protection of civil servants and state employees reporting suspicion of corruption (whistleblowers).

### **What is the integrity of civil servant and state employee?**

The integrity of civil servants and state employees implies the legality, transparency and responsibility in work and in the decision-making process, simultaneously with ethical conduct which will not diminish their reputation and the reputation of the state authority in which they work.

### **What is the Integrity Plan?**

The Integrity Plan is an internal anti-corruption document that contains a set of measures of a legal and practical nature aimed to prevent and eliminate opportunities for the creation and development of various forms of corruptive behaviour within the authority, its individual organisational units and individual jobs. The Integrity Plan is the result of self-assessment of the exposure of authorities to the risks of occurrence and development of corruption. Adoption of the Integrity Plans is the legal obligation of the state authority.

## Who is the Integrity Manager?

The Law obliges the head of the authority to designate a civil servant or employee who should be responsible for the preparation and implementation of Integrity Plans, i.e. the Integrity Manager.

For the effective implementation of Integrity Plans it is necessary to involve not only the Integrity Managers but also all employees.

## What does every employee need to know about a conflict of interest as a possible risk from corruption?

A conflict of interest is a situation in which a private interest is confronted by a public interest, or situation when the private interest influences, or can influence the impartiality of civil servant while performing tasks in the interest of the public.

An employee in the public administration must comply with the obligation to report potential conflicts of interest, i.e. he/she is obliged to inform the immediate supervisor of all potential circumstances that could lead to the risk of corruption.

**Example:** A disciplinary procedure is conducted by the disciplinary commission headed by the uncle of the civil servant against whom the procedure is conducted. The president of the disciplinary commission is obliged to inform the immediate supervisor about the existence of a conflict of interest and will then take all necessary measures to designate another president of disciplinary commission in this case.

## What does the prohibition of abuse of power in the state authority and the misuse of property mean?

**Prohibition of abuse of power** in the state authority implies that the work in the state authority cannot be used for the purposes of achieving private interests or interests of another nature or for a legal person related to him. A related person shall be considered a relative of a civil servant or employee in a direct line and a collateral line to the second degree of affinity, a relative by marriage to the first degree, a married and common-law spouse, adoptive parents and an adopted child.

**Prohibition of the misuse of state property and data** that a civil servant has recourse to in the performance of his or her duties means that the officer shall not, for the purposes of achieving private interests, or the interests of

other persons related to him/her, misuse state property and data he/she in the performance of his/her duties.

**Example:** The civil servant is related to a lawyer involved in a lawsuit (relative, friend, etc.). The civil servant knows that the lawyer (his/her relative or a friend) represents the person who is suing the state authority in which this civil servant is working. The civil servant transfers data or information from his work to the lawyer and in this way helps him/her to win the dispute. Such additional work by the civil servant or state employee poses an obstacle in performing his/her regular tasks in the state authority.

### **How does the law govern the question of gifts and what should be known about the gifts?**

As a gift shall be considered all things regardless of their value (money, securities or precious metal), as well as rights and services which can bring the employee into the relationship of dependence on the giver,

Generally, the Law does not recognise the possibility of accepting gifts, with the exception of appropriate gifts of small value, meaning that the value of the gift is under or equal to 50 EUR.

An appropriate gift is considered a gift up to the value of 50 EUR which the officer can receive, and only in certain situations (e.g. to mark important dates, anniversaries, protocol gifts).

These gifts have to be reported to the state authority in the prescribed way.

In the case that a civil servant or a state employee is offered a gift that he/she cannot accept, he/she is obliged to reject it. If he/she cannot refuse the gift, or return it to the giver, he/she is obliged to hand it over to the state agency where he/she works.

### **What is outside work and what are the conditions for allowing it?**

Outside work involves working after hours and outside of the state authority in which the civil servant or state employee is employed.

**Upon receiving a written approval** from the head of the state authority, a civil servant or state employee can perform activities or provide services to natural or legal persons only if such work is not prohibited by special law, does not represent a conflict of interest or an obstacle to the proper performance of regular duties and does not harm the reputation of the state authority.

With prior notification to the head of the state authority, the civil servant or state employee can perform work in scientific-research, pedagogical, humanitarian, sports-related fields, as well as publish expert papers and deliver lectures at expert seminars and conferences, as long as there is no conflict of interest.

A civil servant or state employee cannot establish companies or be engaged in entrepreneurship. Furthermore, he/she cannot be a president or a member of management or supervisory body of a company or public enterprise, public institution or other legal person owned by the state or a municipality, as well as of the management and supervisory body of scientific, humanitarian and sports associations.

**Example:** If a civil servant or state employee were to set up a company or become a member of some body of a company, that company could have a privileged position in relation to other companies in a way that this civil servant or state employee would control this company less frequently and employees in that company would know when monitoring is planned and would be able, therefore, to adapt their business to achieve a positive evaluation.

### **What are the restrictions related to the civil servant or state employee after termination of his/her employment?**

For a period of two years after the termination of employment with the state agency, a civil servant or state employee cannot:

- **become employed** as a director, manager or consultant in a company or other legal person over which a state authority where he/she was employed carries out audit or control activities;
- **enter into a contract** or other form of business co-operation with the state authority in which he/she was employed previously;
- **use the knowledge and information** he/she obtained while working in the state administration in order to gain a benefit for himself/herself or another person related to him/her.

The immediate supervisor shall take all measures to provide anonymity to the civil servant or state employee and protect him/her from all forms of discrimination, the temporary restrictions on the exercise of duties (suspension) and from the restriction or denial of rights established by the law and from termination of employment.

\*

\* \*

The legal obligation of each state authority is to adopt the Integrity Plan that includes measures to prevent and eliminate opportunities for the creation and development of corruption, for which the integrity manager will be responsible for its implementation. Civil servants or state employees are required to report potential conflicts of interest to their superior. A civil servant or state employee cannot accept gifts except the appropriate ones under or equal to 50 EUR. A civil servant or state employee can, exceptionally and outside of normal working hours, upon obtaining written authorisation from the superior, or with prior notification to the head of a state authority, perform outside work. A civil servant or state employee who reports suspicions of corruption need to be protected.

## 3

*Dalibor Šaban*

## REPORTING CORRUPTION

In addition to state authorities, which are the most competent to act in preventing and combating corruption, citizens, civil society and media also have an important role to play. In order to be able to report cases of corruption, it is important that they know what corruption is, what are its adverse effects and where and how they can report it.

If a civil servant or state employee, in performing his/her activities, learns about a criminal offence against an official duty or a crime or act of corruption, he/she is obliged to report the suspicion to the competent authority and inform the immediate supervisor about the submitted report.

**For reporting corruption there should be a justified reason and reporting should be done in good faith and intention.**

**To whom should suspicions of corruption be reported?**

If you suspect that criminal offenses with elements of corruption have been committed, you can submit the charge to the following institutions: the Supreme State Prosecutor's Office, the Ministry of Health, the Ministry of Education, the Directorate for Anti-Corruption Initiative, the Police Directorate, the Public Procurement Administration, the Customs Administration, the Tax Administration, the Games of Chance Directorate, the Judicial Council and the National Commission for Implementation of the Strategy for the Fight against Corruption and Organised Crime. You can also consult with your Integrity Manager.

## How should you report corruption?

Corruption can be reported by phone, mail, fax, electronic means (e-mail or through the e-government portal), or directly, by coming to the premises of the relevant institution. The contact data of state authorities that have open lines for reporting corruption are listed at the end of this handbook.

## Is there anonymous reporting of corruption?

The applicant can anonymously report corruption. There is also the possibility for the applicant to disclose his/her personal data to the authorised officer for the receipt of applications, but to ask that his/her anonymity be guaranteed during the process.

The immediate supervisor shall take all measures to provide anonymity to the civil servant or state employee (if he/she asks for it) and protect him/her from all forms of discrimination, from the temporary restrictions of the exercise of duties (suspension) and from the restriction or denial of rights established by the law but also from termination of employment.

## 4

*Šefko Kurpejović*

## CODE OF ETHICS FOR CIVIL SERVANTS AND STATE EMPLOYEES

The behaviour of employees in accordance with the rules of the Code of Ethics contributes to the creation of the image of a professional, objective and honest public administration. Adherence to the principles prescribed by the Code of Ethics raise the level of general awareness of the need to behave in accordance with morality, which, starting from an individual, changes the collective consciousness of a society.

### What is the Code of Ethics?

The Code of Ethics is a set of standards and rules of behaviour of civil servants and state employees.

The aim of the Code of Ethics is the preservation, recognition and promotion of the dignity and reputation of civil servants and state employees as well as the strengthening of public confidence in the work of state authorities. Any unethical and unacceptable behaviour and actions of a civil servant or state employee undermine integrity and represent a factor of a risk of corruption.

A civil servant or state employee in the performance of his/her duties is required to adhere to the Code of Ethics of civil servants, as well as to the special code if such is adopted.

A civil servant or state employee needs to apply ethical standards and rules of conduct in relations with other officers, towards citizens, towards the work as well as to the authority where he/she works.

## How and in which way is a civil servant or state employee obliged to perform duties in state authority?

A civil servant or state employee is obliged to perform duties in a state authority in a manner that does not diminish his/her reputation and the reputation of the state authority as well as to ensure the exercise of rights, respect for the integrity and dignity of citizens. While performing private business, the civil servant or state employee should not use official identification documents and official position which he/she obtained in the state authority.

## What is a civil servant not able to use while performing private business?

While performing his/her private business, the civil servant cannot use his/her official ID or official position in the state authority.

A police officer committed a traffic offence. By referring to his official ID, he/she avoids paying a foreseen fine for the committed offence.

## How should a civil servant or state employee behave with respect to third parties?

In relation to third parties a state employee shall act professionally, impartially, decently, respecting the principle of equality.

- **Professionalism** means performance of duties in the best way possible, meaning that in addition to knowledge and experience, a civil servant or state employee should possess appropriate moral and ethical standards that require the integrity and accuracy in the work done and all actions.
- **Impartiality** implies acting in compliance with legal norms and laws regardless of whether someone is close to us in gender, religion, skin colour, etc.
- **Decency** means acting in accordance with moral principles, i.e. that addressing people and communication in general in professional performance should be without the use of words that violate moral and professional ethics.
- **Equality** implies that the employee shall use the principle of equality of citizens before the law at all times and, in particular, when deciding on the rights, obligations and legal interests of citizens without bringing in the privileged position of any citizen for any reason.

**What is a civil servant or state employee obliged to report to the immediate superior?**

A civil servant or state employee is obliged to report to his/her immediate supervisor any violation of the Code of Ethics performed by other civil servants and state employees, but also any request addressed to him/her that implies treatment that is not in accordance with the Code of Ethics.

**Who can civil servants and state employees contact for violations of the Code of Ethics?**

For the violations and breaches of ethical standards, civil servants and state employees can address in writing their immediate supervisor, the head of the authority or the integrity manager. If there are facts and circumstances, which indicate the violation of official duty, an immediate supervisor is required to submit a proposal for disciplinary action to the head of the authority and is then required to head it.

**Who are the members of the Ethics Committee?**

The Ethics Committee shall consist of a president and four members, four of whom are representatives of the employees in the judiciary, the public administration, the Parliament of Montenegro and one member from the representative trade union organisation.

**Who appoints the members of the Ethics Committee?**

The president and members of the Ethics Committee shall be appointed by the Government of Montenegro at the proposal of the state administration body competent for administrative tasks for a period of four years.

**What are the areas of competence of the Ethics Committee?**

- To give opinions on appeals against the conduct of employees in state bodies;
- To give opinions related to the implementation of the Code of Ethics;
- To monitor the implementation, initiate changes and amendments to the regulations in the area of employees' ethics;
- To promote ethical standards and rules of conduct in state bodies.

You can address the Ethics Committee by using the aforementioned form, which you can find on the website of the Human Resources Management Authority: [www.uzk.co.me](http://www.uzk.co.me). For more information you can contact: [etickiodbor@uzk.co.me](mailto:etickiodbor@uzk.co.me).

A violation of the rules and standards prescribed by the Code of Ethics is a minor violation of official duty (Law on Civil Servants and State Employees, Article 82, paragraph 1, item 8).

\*  
\* \*

From the text that you have just read, we learned what the Code of Ethics is and what the easiest way is to arrive at the level that someone says to you that you act in accordance with this Code of Ethics. By implementing these rules of conduct and by reporting unethical behaviour if you see it, you will assist the overall efforts aimed at establishing a professional, fair and ethical public administration.

# 5

*Vesna Ratković, Ph.D.*

## PREVENTION OF CORRUPTION

The problem of corruption as a negative social phenomenon is present to a greater or lesser degree in all modern countries. Since this is a global problem, the effective fight against corruption is the current and priority issue of modern states. The effective fight against corruption is marked also as a priority by all three branches of power in Montenegro. It includes preventive and repressive activities of various state authorities, but also involvement of civil society, citizens and the media.

### **What is corruption?**

Corruption is a negative social phenomenon, the most often criminal offense that is prescribed by the Criminal Code (see Chapter VI). Corruptive activities, in layman's terms, can have a broader meaning and imply different types of abuse and violation or non-compliance of ethical and professional or expert rules, standards, customs and the similar. Whether it is about corruptive practices with characteristics of corruption, criminal offenses or other abuses or violations of ethical norms, we can say that in this way the reputation and trust in the work of public administration or its integrity is undermined.

Preventive anti-corruption measures promote and implement principles of integrity and ethical rules in the public, private and civil sectors. Moreover, preventive measures include rules, procedures and restrictions in performing the services as well as managing the disciplinary procedures in cases of failure to obey the said rules and procedures.

For an efficient, continuous and planned fight against corruption, it is necessary to use instruments recommended by international anti-corruption standards. Namely, it is necessary to establish and continuously improve specialised state authorities, i.e. institutional anti-corruption frameworks; to adopt and constantly improve and implement appropriate laws, i.e. legislative anti-corruption frameworks and to adopt, execute and harmonise strategic documents at the national and sectorial levels. Continuous education and training of personnel in the public administration is one of the priority tasks, especially when it comes to those employees who work on a preventive or repressive action against corruption.

### **What is the institutional anti-corruption framework?**

Montenegro started to build and develop the institutional anti-corruption framework since 2001. At that time the Directorate for Anti-Corruption Initiative was established as the first state agency with responsibilities of prevention in the fight against corruption. By 2005 other agencies and bodies with preventive jurisdiction (the Commission for Prevention of Conflict of Interest, the Public Procurement Authority, the Anti-Corruption Committee of the Parliament of Montenegro) were established. In the upcoming period, the above-mentioned authorities have improved and specialised their personnel for the effective implementation of the regulations in their field and thus contributed to the progress of Montenegro in the overall efforts to combat corruption.

As a next request and challenge in the work of these bodies is the need for greater degree of co-ordination and co-operation as well as the need that these bodies, in addition to prevention activities, acquire also control tasks and tasks of “administrative investigation”. In this sense, it is planned to bring together the majority of the preventive jurisdictions in the fight against corruption into a single agency, which would also have a part of control activities as well as activities of “administrative investigation”. When it comes to state authorities with preventive jurisdiction in the fight against corruption, their co-operation with representatives of the NGO sector, the private sector and the media is very important.

### **What is the legislative anti-corruption framework?**

The legislative anti-corruption framework includes, in particular, criminal legislation, legislation governing public procurements, conflicts of interest, tasks of state audit institutions, prevention of money laundering and financing of terrorism, the control of financing of political parties and others. Generally

speaking, Montenegro adopted and constantly improves all the necessary laws that rely on instruments and standards contained in international anti-corruption conventions. Now the biggest requirement and challenge is the effective and consistent implementation of these laws.

### **What are the anti-corruption strategy documents?**

The real strategic documents at the national and, later, the sectorial level (health, education, local government), were adopted in Montenegro in 2005. At this moment it is the effective Strategy for the Fight against Corruption and Organised Crime (2010-2014) and the associated Action Plan for implementation of the Strategy (2013-2014). By adoption of these documents, numerous goals and activities outlined in strategic documents are in implementation by 72 reporting entities in an organised and planned manner. Thus, apart from the analysis of the causes and consequences of corruption, action plans were adopted and implemented for a specific period of time (two years) in which implementation of all the stakeholders in the society have taken part, and the success of opposing the corruptive practices depends on them - Reporting entities.

Based on the fact that it is not enough just to adopt strategic documents, but also effectively implement them, the Government of Montenegro established the National Commission (representatives of all three branches of power as well as of NGOs) as a control body. This body reports to the Government on implemented activities and gives recommendations in the case of failure to implement measures from the strategic documents. The National Commission has a Secretariat consisting of five civil servants from the Directorate for Anti-Corruption Initiative, who collect and analyse data on which basis they draft a report on the implementation of strategic documents for the National Commission and the Government of Montenegro. Reports are done every six months and published on the website of the Directorate for Anti-Corruption Initiative and the Government of Montenegro.<sup>(3)</sup>

### **What is preventive action against corruption?**

Preventive action against corruption includes measures and actions to prevent the causes and occurrence of this phenomenon (usually a crime) and create an environment that is unfavourable and intolerant for corruptive behaviour. **“Zero Tolerance to Corruption!”** is an internationally recognised

3 [www.antikorupcija.me](http://www.antikorupcija.me)

slogan that expresses these aspirations. The responsible exercise of delegating tasks for which public officials and civil servants and employees are responsible, helps to prevent corruption in public administration.

As with other forms of crime, preventive action is crucial for an effective fight against corruption, although it is not always attractive, easily measurable and visible as some types of repressive actions against corruption (detention, publication of final judgments, etc.). The essence of prevention is expressed in the proverb: "Better safe than sorry!"

Preventive actions and measures against corruption include:

- The application of laws and codes of ethics
- The principle of integrity - efficiency, transparency, responsibility
- Development and implementation of Integrity Plans
- Reporting corruption and the protection of persons who do so in good faith
- Research on types of corruption and recommendations for actions
- Reporting the incomes and property of public officials, senior civil servants
- Checking the timeliness and quality control (internal / external)
- Financial audits (internal / external)
- Encouragement and motivation of employees

### **What is understood by the application of laws and codes of ethics?**

The effective implementation of all regulations in all areas based on the Constitution and laws and impartial decision-making is the best mechanism for the prevention of corruption and other abuses in public administration. Where the efficient, transparent and accountable work exists, there are no backlogs, delays in the execution of tasks, and the quality of work is good. Such an environment is not a good basis for the different types of abuse, including acts of corruption, because the work is well-planned and organised, control functions within the authority are performed with high quality and in a timely manner, there is a characteristic division of work and teamwork, and the like. A good working environment and mutual respect for supervisors, civil servants and state employees contribute to the fact that the application of the laws and principles of ethical codes of public administration is efficient and recognised as such by other bodies as well as by our citizens.

## **What is the principle of integrity in public administration?**

When it comes to the public administration, this principle is the collective name for a number of principles that characterise “good governance”, primarily the following: efficiency, transparency, accountability, avoidance of putting private interest ahead of public interest, loyalty, expediency and effectiveness. When we say integrity, it is as if we mentioned each of these principles. Thus, integrity is the method of work of a specific institution and its employees who work and act impartially, independently and transparently - honestly. A civil servant or a state employee who has integrity, has the necessary knowledge and skills for the performance of assigned tasks, acts in accordance with the law and morality and is not susceptible to unethical or corrupt pressures.

## **What are Integrity Plans?**

This is a modern preventive method for the establishment of legal and ethical quality of work for the state authorities. These are internal documents, whose production relies on the analysis of specific working processes in each state authority, organisation, or an agency. All workplaces and work processes are analysed, starting first and foremost on their level of responsibility, complexity, decision-making, handling of budgets, work with clients and others. On that occasion the risk analysis of all working processes and the degree of their exposure to possible abuses and corrupt behaviour is performed and at the same time, the measures to control or eliminate the identified risks should be proposed. It is very important to involve all the employees in the development and implementation of Integrity Plans. Moreover, a special role is played by the heads of the authorities and the integrity managers. Since the beginning of 2012, the development and implementation of Integrity Plans are a legal requirement under the Law on Civil Servants and State Employees (Article 68) and the appropriate guidelines.

## **Who should report corruption and how are whistleblowers protected?**

Given that corruption is in a majority of cases considered to be a criminal offence, abuse or violation of some ethical principles and standards, it is extremely important to report (blow the whistle) it within the authority or by citizens, representatives of civil society, the private sector or the media. This term originates from the English word whistleblower, i.e. the employee, former employee, or member of the organisation who reports such illegal behaviour to the responsible persons or authorities in charge. Anytime when this is possible

reporting should be accompanied by proof, i.e. facts which will make it easier to prove corrupt behaviour. More details are given in Chapter III - Reporting Corruption.

The Law on Civil Servants and State Employees ensures anonymity and protection from all forms of discrimination, termination of employment etc. for those who report corrupt or other criminal offenses against official duty (Article 79). The same kind of protection is provided for employees outside the public administration through the relevant provisions of the Labour Law.

### **What is the importance of research on types of corruption?**

Research and measurement on forms of corruption and other factors that can point out to the causes, mechanisms of functioning and consequences of corrupt behaviour are of great importance for the suppression of this negative social phenomenon. Two methods of researching corruption, which start from two different target groups, are commonly used. The first method measures the perception, i.e. impression, and not the facts on corruption in a society – the corruption perception index. The second method is based on the examination of the experiences of the participants and standpoints regarding those experiences.

As with studies of other negative phenomena, it is very important that questionnaires are created in a way that give the respondents the opportunity to express their views, opinions and experiences as honestly as possible. This depends on the issues on which the concrete research is based, for example, on certain forms of corruption, the areas where corruption is most common, the recommendations for its suppression and the like. In addition to the views and opinions of the respondents, sociological parts of the questions that refer to age, gender, education, geographic origin, etc. is of great importance for planning the next preventive actions to be taken in the future. Each survey should indicate the areas and situations that are the most exposed to corruption so that it can be possible to indicate to the competent authorities, through the appropriate recommendations, where to put the priorities in preventive and repressive actions against corruption. In addition, by repeating the research, the data can be compared and the results obtained in such a way that they may point to trends of growth or decline in the presence of corruption in a society.

Research is mainly performed by state authorities (for example the Directorate for Anti-Corruption Initiative), representatives of the NGO sector (CEDEM, CEMI), international organisations (for example Transparency International – according to their latest survey on the corruption perception

index (from 2013) Montenegro is at the **67th** position out of 183 states, with the overall score of **4.4**. The desirable result is **10**.

### **What is the importance of reporting incomes and assets of public officials and senior officers?**

The obligation to report incomes and assets of public officials is one of the international anti-corruption standards, which is regulated by the Law on Prevention of Conflict of Interest in Montenegro. In fact, public officials, in addition to other obligations and prohibitions, are obliged to submit once a year the form filled out with data on income and assets (of their own and of members of their household). Thereby, the public becomes aware of this data which could possibly point to a conflict of interest or inaccuracies existing in the report. This way contributes to the transparency and control of receiving income and assets of public officials in order to show that they will not put their personal interests above the public interests,

The obligation to report income and assets is constantly expanding, and now over 4,000 public officials at the state and local level have the obligation to report their incomes and asserts. This commitment is extended to senior management positions, e.g. in the police, and the tendency is, in accordance with international standards, that everyone using the state budget funds is required to report assets and income and thus, make them transparent to the public, which will make it easier to control and sanction detected irregularities.

### **What are the internal and external control mechanisms?**

Efficiency, accountability and quality of work are of great importance for the work of the state administration. Here it should be noted that it is very important that civil servants and state employees fulfil their duties in a quality, timely and transparent manner, but it is also important that managers, mainly the middle management staff, perform control functions through regular or extraordinary quality control and respect given deadlines. This is also an opportunity to detect irregularities, illegalities and other forms of abuse in order to take measures for the early detection of factors and situations that may lead to criminal offences.

In the cases mentioned, the quality implementation of Integrity Plans can be of great benefit in terms of taking appropriate measures to eliminate the risks as well as for the analysis and measurement of the degree of achieved success.

External control measures are also very important and can be taken by any controlling authority or inspection authority, e.g. by the Inspection Administration.

## What are the internal financial controls?

Based on the law, the economical and effective use of budget and other resources is one of the most important tasks of the state administration. At the internal level of financial control in public administration we can distinguish: financial management and control and internal audit.

## What is financial management and control?

They are introduced in order to improve financial management and decision-making in achieving the following objectives of the public administration authorities: conducting business in accordance with laws, regulations, contracts and procedures; ensuring a reliable, complete and timely financial and business reporting; the proper, economical, efficient and effective use of resources as well as the protection of assets, liabilities and other resources against losses caused by mismanagement, undue spending, irregularities and frauds. They are implemented in all organisational units and at all levels, and covers all assets, including those received from the EU.

**The control environment consists of:** personal and professional integrity and ethical values of managers and employees, the manner of leadership and management; hierarchy in terms of powers and responsibilities, rights and obligations and reporting levels as well as competence of employees and others.

## What is the management of financial risks?

This is a process of identification, assessment, monitoring and control of possible circumstances, which may adversely affect the achievement of the set goals and the taking of necessary steps to reduce the risk to a level of reasonable assurance that the objectives will be achieved. Risk management is carried out on the basis of risk management strategies annually determined by the head of the subject as well as through the implementation of Integrity Plans.

## What are the control financial activities?

The control activities include:

- the processes of authorisation and approval,
- the separation of duties, which prevents one person from being responsible for the authorisation, execution, registration and control at the same time,
- a system of dual signature where an obligation cannot be taken or

- payment made without the signature of the manager of the authority and the manager of the financial department or authorised person,
- procedures of complete and updated registration and
- monitoring of business transactions, etc.

### **To whom do financial information and communications relate?**

They relate to all hierarchical levels, provision for employees of clear and precise guidelines and instructions on their role and responsibilities, documenting of business processes, transactions and filing with the goal of making the “audit trail”, reporting in detecting errors, irregularities, misuse of funds, frauds and prohibited acts. The manager of the authority shall be responsible for monitoring and assessing financial management and control systems and the assets management in a regular, cost-effective and efficient manner.

### **What is the internal financial audit?**

The internal audit is conducted to provide objective and expert opinion and advice on the adequacy of the financial management and control system in order to improve the operations of the state authority. It is achieved by: planning the audit activities, identification and assessment of the nature and the level of risk associated with each activity of the authority, assessment of the adequacy and effectiveness of the system in relation to the identification, assessment and management of the risk by the head and making recommendations to improve the financial management and control system.

The head of the authority is responsible for ensuring the conditions for the functioning of the internal audit through the: appointment of a Head of the Internal Audit Unit, in consultation with the Ministry of Finance; signing the internal audit charter; approving the strategic and annual internal audit plans; implementation of the accepted recommendations of the internal audit and by recording recommendations for which there was no agreement as well as the submission of the annual report on internal audit activities to the Ministry of Finance.

The Head of the Internal Audit Unit is independent in its work and cannot be transferred to another workplace nor dismissed because of stating the facts or giving the recommendations in the audit report. The Head of the Internal Audit Unit and the internal auditor can perform only the tasks of internal audit.

The Central Unit for Harmonisation of the Ministry of Finance is in charge

of the establishment and development of the systems of internal financial controls in the public sector.

### **What are the external financial controls?**

Transparency in public spending is externally ensured through the individual audits of consumer units – the audit subject, by the State Audit Institution (SAI) and the mandatory annual audit of the final accounts of the budget, which should be submitted to the Parliament. SAI publishes annual reports on audits performed on final budget accounts, audits in municipalities, spending units, funds, public companies as well as others.

The Annual Report of the SAI contains primarily an assessment of:

- whether the amounts given in the Annual Budget correspond to the amounts stated in the records;
- whether the controlled revenues, expenses and assets are properly documented in accordance with the regulations and general standards;
- in which important cases regulations and rules on the budget and economic affairs of the state were not obeyed as well as
- if major objections to the perceived shortcomings of the audited entity as well as recommended measures.

The annual report can also contain the conclusions of previous and suggestions on future fiscal years.

Continuing in the process of European integration, Montenegro has implemented its obligations and become a part of the AFCOS network (Anti-Fraud Co-ordination Service), the system for combating frauds, i.e. combating irregularities and frauds that may arise from the misuse of EU funds. The AFCOS network is a co-ordinating body within the Ministry of Finance with the aim to monitor and manage policies for prevention and suppression of irregularities in order to protect the financial interests of the EU. One of the objectives of the AFCOS Network is the development and co-ordination of the implementation of the National Strategy for Combating Fraud in order to enable an effective protection of EU financial interests,

### **What are the encouragement and motivation of the employees?**

Encouragement and motivation of employees are two of the priorities of the overall reform of public administration and is an important element for achieving progress based on merit, i.e. the *“merit-based system”*. This represents a

process that takes place from the time of schooling and education, advertising vacancies, receiving those who have the most knowledge and skills for specific jobs, the possibility of their specialisation and continuous improvement of the knowledge, rewards for effective, transparent and accountable work and progress in service. Thus, encouragement and motivation of employees who demonstrate a high quality of performance of duties and responsibilities and their timely execution should be subject to analysis and evaluation by management personnel through financial, e.g. variable increase of earnings or the ability to stimulate the further professional and vocational training which enable promotion in the service.

Of course, the subject of this analysis should be also those employees who do not show results, timeliness and accountability in order to ensure timely reaction and to create a public administration composed with a high percentage of high quality, efficient, accountable and dedicated personnel of integrity at all levels of the public administration.

### **What is the free access to information?**

Free access to information is crucial for the transparent operation of the public administration, including its organisation, functioning and decision-making processes, while still respecting privacy and personal data. It is expressed mainly through the principle: “The public has a right to know!” These issues, in accordance with international standards, in our country are regulated by the laws on free access to information, protection of personal data and on confidentiality. Harmonisation in the design and implementation of these three laws is currently the subject of improvement, bearing in mind the great importance of their implementation for the realisation of the principles of transparency and integrity in work of the public administration.

### **What does the law on free access to information say?**

This law specifies the definition of public authorities, which also includes all legal entities that are wholly or partially funded from the budget of Montenegro, or where the state or local governments have ownership. This law also establishes the obligation of proactive disclosure of information of interest as well as all data from which the sign of secrecy is declassified on websites of the institutions that own them. Access to information of public interest can only be restricted in order to protect the interests in cases prescribed by the law. Finally, the law also prescribes misdemeanour sanctions, etc.

## When can the access to information be restricted?

The authority from which the information is sought can restrict access to information if the disclosure of the information would significantly undermine the public interest or there would be a possibility that the disclosure could cause harmful effects on the interest that is of greater importance than the interest of the public to know that particular information.

When the public interest is more important, the authority must disclose the information. In deciding on the protection of trade and other economic interests of the publication of data relating to the protection of competition and trade secrets (intellectual property), the first instance authorities from which the information is sought and the Agency in the appeal proceedings shall take into account that under the guise of protecting the economic interests, they do not hide corruption or other illegal acts, or threaten the economic interests of the state or investors.

## What is the “test of the damage”?

In applying this test, it should be carefully assessed whether the public interest for disclosing information is stronger than the potential harm that could be inflicted by publishing some information.

For example, the public interest is very strong when it comes to the document from which it can be determined that it is about corruption, disrespect of regulations, illegal use of public funds, abuse of authority, performed criminal offense, the existence of grounds for challenging the court decision, illegally obtaining or spending of public revenues as well as a possible threat to life, public safety, health and environment. The need for public reporting and keeping the public interest requires that balance is carefully weighed in each concrete case.

For the purpose of effective and quality implementation of these laws, there is a need for continuous education and training of those responsible for acting on requests for free access to information so that the information would be published accurately and in a timely manner, with an explanation of the facts taken into consideration when making decisions. The following is also needed: education of media representatives, NGOs and citizens on the issues of free access to information so that the implementation of laws in this area would be effective and contribute to the transparent work of the public administration.

## What about education and public awareness raising?

The typical preventive measures also involve those related to the education,

specialisation and different types of achieving and improving the knowledge and skills of specific target groups: civil servants and state employees, public officials, representatives of the private and NGO sector, media, citizens, students, accountants, etc. Designing and implementing a number of anti-corruption programmes for different target groups is primarily an activity of major educational centres here: the Human Resources Management Authority, the Judicial Training Centre and the Police Academy, in co-operation with a number of other state authorities that have a preventive and repressive jurisdiction when it comes to corruption: the Directorate for Anti-Corruption Initiative, the Commission on the Prevention of Conflicts of Interest, the Police Administration, the Customs Administration and others.

Raising public awareness about the problem of corruption implies that an anti-corruption campaign should be developed and implemented continuously, alone or in co-operation with other state institutions and non-governmental organisations. On that occasion, electronic media for different types of TV spots are used, for example: “Not even a cent for a Bribe”, “Corruption is not an option”, billboards, posters, leaflets and other materials to convey anti-corruption messages or calls for a proactive approach when it comes to corruption. Campaigns should be based on the results and recommendations arising from research and surveys on corruption.

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We saw that efficient fight against corruption implies preventive and repressive actions of various state authorities, but also involvement of civil sector, citizens and media. When it comes to the preventive actions, there is no doubt that these types of actions are important for the suppression of corruption in the public sector, and that they involve specific activities (public policies, campaigns, controls, codes of ethics) which are different from those used by repression authorities (prosecution, criminal procedure).

The greater importance and expectations from the work of preventive anti-corruption authorities here can be seen from the plan for the establishment of the new Anti-Corruption Agency, which would encompass the two most important existing prevention authorities: the Directorate for Anti-Corruption Initiative and the Commission for the Prevention of Conflict of Interest. This new agency would have the additional responsibilities related to the strengthening of co-ordination among all the state authorities as well as control anti-corruption powers – the so called “Administrative investigation”.

## 6

*Mladen Grdinić*

## CRIMINAL CODE – TERMS AND CHARACTERISTICS OF THE CRIMINAL OFFENSES AGAINST OFFICIAL DUTY

Criminal offenses with the characteristic of corruption are cited in the Law on Courts (Article 18), and the criminal offenses as such are prescribed by the Criminal Code – Chapter 34, Criminal Offenses against Official Duty and Chapter 23 – Criminal Offenses against Payment Transactions and Business Operations. This handbook will present criminal offenses against official duty. These are the following:

**Abuse of an Official Position** exists if a person, in an official capacity, obtains for himself/herself or another person any benefit, causes damage to someone else or gravely violates the rights of someone else by unlawfully using his or her official position or authorisations, overstepping the limits of his or her official authorisation or omitting to perform his or her official duty.

**Example:** The criminal act of abuse of an official position exists in the case when a state employee is entitled to use the official phone for official purposes, but he/she is uses it to conduct private telephone conversations with foreign countries, whereby he/she acquires benefits reflected in the free exercise of said private telephone conversation and in the same amount causes damage to the state authority where he/she works.

**The Unconscientious Performance of Office** exists when an official, by violation of law or other regulations or general acts or failure to do supervision or in some other manner obviously unconscientiously acting in the performance of his/her office, although he/she was aware or was obliged to and had to be

aware that such acts may cause serious violation of rights of someone else or damage someone else's property.

**Unlawful Collection and Payment** exists when an official collects money for something from someone who is not obliged to pay or who charges someone more than he/she is supposed to pay, or who when paying someone or handing over items to someone, pays or hands over less than he/she is supposed to. For this criminal act the perpetrator is an official or responsible person who acts with intention, i.e. there is no criminal act if a person in his/her work made a mistake, and thus collects or pays more and violates a certain right by such action.

**Fraud in the Conduct of an Official Duty** exists if an official in the performance of his/her office and with the intention of acquiring for himself/herself or someone else an illicit material benefit by submitting false statements of account or in some other manner misleads an authorised person to make an unlawful payment.

**Example:** The offense of fraud in the conduct of an official duty occurs when a procurement officer in the accounting departments submits fraudulent billing documents for payment (orders for business travel, bills of hotel services, etc.), after that the payment is made.

**Embezzlement** exists if a person for himself/herself or someone else, with the intention of acquiring illicit material benefit, appropriates money, securities or other movables entrusted to him by virtue of his/her office or work in a state authority, business organisation, institution or other entity or store.

**Unauthorised Use** exists if a person makes an unauthorised use of money, securities or other movables entrusted to him by virtue of office or work in a state authority, business organisation, institution, or other entity or store or without authorisation confers such things to someone else for use. Unlike the criminal act of **embezzlement**, in this criminal act there is no appropriation or intention to acquire unlawful material gain for a person itself or other person, but it is about the temporary use of things with intent to return that item.<sup>(4)</sup>

**Trading in Influence** exists if a person requests or accepts a reward or any other material benefit or accepts the promise of a reward or other benefit for

4 The criminal acts of petty fraud services, embezzlement and unauthorized use exists if the amount of illegal payments, the value of obtained unlawful proceeds or value of embezzled things or things that the offender uses does not exceed one hundred fifty Euros, and is committed with the intention to obtain a small financial gain. By this the milder forms of the three crimes were defined: fraud in service, embezzlement and unauthorized use, whereby for the existence of these offenses, in addition to the essential elements of the crimes, it is necessary that the value of acquired illegal gain does not exceed 150 Euros, and that the offender committed them with the intention to obtain a small financial gain.

himself/herself or another person by using his/her official or social position or influence to either have an official act performed or not performed. Trading of influence also occurs if a person uses his or her official or social position or influence to perform an official act that should not be performed, or influence that an official act that should be performed is not performed.

**Example:** A criminal offence of trading in influence exists when a senior state official by using his official or social influence requests from the competent prosecutor to stop the investigation against a person, or requests the police not to file criminal charges against a person.

**Instigation to Trading in Influence** exists if a person gives, offers or promises a reward or any other benefit to a person in official capacity or another person to intercede in order for an official act to be or not to be performed by using his or her official or social position or influence. It is also when someone gives, offers or promises a reward or another type of benefit to a person in an official capacity or another person through his/her official or social position or influence thereby interceding in order to perform an official act that should not be performed or not to perform an official act that should be performed.

**Accepting a Bribe (Passive Bribery)** exists if a person in an official capacity requests or receives a gift or any other benefit or accepts an assurance of a gift or any benefit for himself/herself or someone else for agreeing to perform within the limits of his/her official authorisations an official act which he/she should not perform or does not perform an official act which he/she should perform.

**Example:** Criminal acts of passive bribery exist in cases where a responsible person solicits money to perform some activity within his/her official position, for which he/she is obliged to perform anyway.

**Giving Bribes (Active Bribery)** exists if a person gives, offers or promises a gift or other gain to an official who agrees to perform an official act within the limits of his/her official authorisations that he/she ought not to perform or omit to perform an official act he/she ought to perform, or a person who mediates in such bribery of an official.

**Example:** Criminal offense of active bribery exists in cases where some person offers or gives money to the official to perform some action for which he/she is obliged to perform anyway.

## Who is the perpetrator of the crime of corruption?

The perpetrator of criminal acts with elements of corruption is usually an official or responsible person or a person with social power, i.e. a person who is a politically exposed or family members or friends of politically exposed persons. The concept of a public official is defined by Article 142, paragraph 3 of the Criminal Code.

## Does the value of material gains from criminal offence with elements of corruption affect the length of the sentence?

The above-mentioned criminal acts are punishable by imprisonment, which varies depending on the type of crime as well as on the amount of material benefit obtained by the committers(s) of the criminal act. For example, the criminal act of abuse of office is punishable by imprisonment for a term of six months to five years. If a material benefit in excess of three thousand Euros is obtained, the offender shall be punished by imprisonment of one to eight years. If the value of material gains exceeds thirty thousand Euros, the offender shall be punished by imprisonment of two to ten years.

## To whom can the criminal charges for criminal acts of corruption be filled, who is required to file a criminal complaint and are there sanctions in case of non-performance of these obligations?

Officials and responsible persons in state authorities, local self-government, public enterprises and institutions are obliged to report criminal acts of corruption about which they were informed or acknowledged on them in the performance of their duties.

A criminal charge shall be submitted to the public prosecutor and may be submitted in writing, orally or by telephone.

Criminal charges can be submitted to the court, the police or the prosecutor who is not in charge, and thus they are bound to receive criminal complaints and immediately submit it to the public prosecutor in charge.

The Criminal Code foresees imprisonment in case of false reporting of criminal acts or for planting evidence for a criminal act.

### **How is an attempt to a commit criminal act with elements of corruption treated?**

Although the completed crime is the basic form of criminal conduct in which the elements of the criminal acts are achieved, the Criminal Code covers also the possibility of attempts, i.e. situations where the actions of execution happened, but the crime was not completed. However, in cases of attempt, the law does not prescribe punishment for all crimes, but only for criminal acts that are punishable by imprisonment for five years or more, and in such situations, the offender shall be punished with the punishment prescribed for the offense, which is attempted, and can be punished more leniently.

### **How is confiscation of property acquired by performing criminal acts with elements of corruption dealt with?**

No one can keep the material gain obtained from a criminal offence, and from the offender money, valuables and any other material gain obtained by a criminal act will be seized.

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The criminal offenses of corruption in the legal system of Montenegro are defined as criminal offenses against official duty and have been prescribed in Chapter 34 of the Criminal Code. As such, these crimes do not represent anything other than a deviation from the normal and legally defined ways of performing a duty. Therefore, corruption offenses derive a greater degree of their danger to society from the fact that the perpetrators of these criminal acts are public officials, who with such conduct reduce the effectiveness of the state and disturb the public order.

Apart from the obvious physical consequences that these crimes can cause, the “harmful effects” of these crimes are reflected in the vulnerability of the authority and integrity of the government as well as weaken the confidence of citizens in their own state. Therefore, the Criminal Code provides for a complete range of criminal offenses against official duty, including: the abuse of an official position, the unconscientious performance of duty, unlawful collection and payment, fraud in the conduct of the official duty, embezzlement, unauthorised use, petty fraud in conduct of the official duty, trading in influence, instigating to trading in influence, active and passive bribery. These crimes are punishable by imprisonment, and it is possible to order confiscation of the proceeds obtained by the exercise of these crimes.

# ANNEX I

*Mladen Tomović, M.Sc.*

## Introductory remarks - “CASE STUDIES” - HYPOTHETICAL EXAMPLES OF VIOLATION OF INTEGRITY

In this annex nine case studies of possible examples are presented that can be used to resolve ethical dilemmas in practice. At the end of each case study three possible answers are offered. They are very useful for work in groups, where each group should prepare arguments and explanations of why they chose the particular answer. This will later be used for discussion and identification of problems in practice as well as for finding the best solutions for their removal.

For decades already, case studies have been an integral part of professional education, whereby the modern concept of education bases their educational activities exactly on the development and presentation of case studies. Case studies help us to better understand and use the knowledge that we gained during the theoretical training.

Case studies are written assumptions of real situations based on certain specific or hypothetical data and research. During the reading of a prepared study, a clear picture of what is happening in the institution during the certain period can be gained. Events that are often described within the study are certain behaviours at work or in relation to the work, decision-making within the institution as well as description of the external factors that have influenced the development of the case. A case study may represent an abbreviated and simplified representation of a possible real-life situation.

This method of training will give participants the opportunity to learn about and analyse the real problems of institutions and situations in which the individuals who are directly involved in a particular work process can be found. In addition to these purposes, case studies will help to better understand the

legislative framework, but also to implement properly the achieved theoretical knowledge.

In addition to these benefits that case studies will provide to the participants at seminars, there are several others that should be mentioned. The most significant effects in using case studies are:

- the integration of theory and practice,
- the development of their abilities for classification and presentation of unstructured data,
- the development of critical thinking,
- the development of the ability to distinguish the important from the unimportant,
- the development of abilities to learn from team members (if it is a group work on a case study),
- the provision of an opportunity for participants to express their original opinion, actively participate in discussions, share their thoughts with colleagues, and finally develop and improve the overall ethical culture.

On the other hand, an important aspect in the analysis of case studies is the presentation of the analysis of case studies to the participants. Trainers will give the 5-10 minutes to the groups for the analysis, and after that, an additional 5-10 minutes to present their analysis to other participants. The presentation should include all the relevant issues, the problems in the concrete case with as well as appropriate recommendations for overcoming the analysed problems that might occur in practice.

After the presentation, the discussion should be transferred to all present. At this stage it is necessary to defend the ideas and opinions that were presented. Through such presentation and discussion, the participants will be able to effectively communicate their ideas to others. Just remember that a large number of employees, and especially managers spend a lot of time in similar discussions with their colleagues with the aim of finding an adequate solution for a particular problem. This is one way of preparing participants for real job situations.

### **Case study 1. Outside Work and Conflict of Interest**

Tax inspector XY in his/her free time provides consulting services to local businesses. In the meantime, he/she realised that this is a great source of income and has registered a bookkeeping/accounting agency in the name of his/her family member. His/her work in the field, direct contact with taxpayers, will allow a steady source of income for “his/her” agency, and no one will be able

formally to connect him/her with “it” because it was registered to another person. In any case he/she will have access to information on a monthly and annual plan of controls, and will be able to warn those taxpayers, who are “his/her clients”, when the inspectors will visit them so they might fix their records and synchronise business. Those who do not want to voluntarily move to “his/her” agency will be subject to his/her frequent “visits”, controls and sanctions, so that they will eventually have to begin to let “him/her” to take care of their business books and records.

- You think everything is OK and you don’t do anything. This is one of the best inspectors in your team, who has performed the greatest number of controls and issued the greatest number of misdemeanour orders and requests for initiation of misdemeanour procedure. You are lucky that among your employees you have such experts who can give tax advice to the biggest private companies.
- You analyse eventual complaints to the work of the said inspector and charge the other inspector to perform the control of all taxpayers and clients of the bookkeeping agency in question.
- You check whether such behaviour is in accordance with the law and Code of Ethics of Civil Servants and ask for written approval from the immediate supervisor for performance of outside work and statement on nonexistence of conflicts of interest and take certain measures.

### Case study 2. Outside Work

Two police officers X and Y in their free time, provide physical protection to local discotheques and nightclubs. Security is increased and the frequency of police raids and conflicts in clubs is reduced to a minimum. In the meantime, the work has been so developed, that these officers gradually include other colleagues from other organisational units, who also want extra money, because the satisfied club owners exclusively ask for police officers for these services.

- Everyone has a right to an outside job. Anyway wages in the civil service are low and it is commendable that someone is looking for the opportunity for outside income.
- This is a great opportunity to combine both the good and usefulness. Guests in the said clubs certainly feel safer when they know that there are armed police officers in the club, and potential offenders will receive a clear message that these bars are not the place where they should spend

their time.

- You ask them to submit the written approval of the immediate supervisor to perform outside tasks, and you will perform a verification/assessment of potential conflicts of interest with respect to the responsibility of the institution and the concrete organisational unit in which the said officers are working.

### Case study 3. Outside Work and Gifts

A tax inspector (Department for Control of big taxpayers) participates as a famous and distinguished lecturer at internal seminars and training events organised by large taxpayers (telecommunications, IT, pharmaceuticals, petroleum companies). At these seminars he/she usually receives gifts (phones, vouchers for fuel, tablets, laptops, etc.). He/she performs these tasks on the basis of a service agreement for education of staff and management at companies on which all taxes and surtaxes are calculated.

- You think everything is all right, and will not do anything.
- He/she is one of the biggest professionals in your team. He is entitled to outside work and the gifts are appropriate gestures of gratitude.
- You check for a possible conflict of interest with respect to the responsibility of the institution and ask for a list of all gifts received with their exact market values.

### Case study 4. Temporary and Permanent Prohibition of Work

A number of police officers were finally convicted for criminal offenses prosecuted ex officio, and against a number of them the procedures are still ongoing. However, they still freely perform their regular duties, and some of them were upgraded to a better position in the meantime because of the exceptional results achieved in their work.

- Everyone has the right to make mistakes in his/her work, however some evidence could never be obtained without using methods other than those permitted (abuse of power, illegal collection of evidence, etc.).
- Everyone is innocent until proven guilty. They are top professionals and these procedures are more a result of pressure from the public and media

- on the work of the judiciary rather than on actual circumstances.
- By the force of the law you issue a decision on termination of employment for convicted persons, and those against whom proceedings are ongoing you suspend until completion of judicial proceedings and initiate proceedings against immediate superiors for failing to fulfil the legal obligations.

### Case study 5. Employment

The contract for the definite term employment of an official in a ministry for a period of 2 years is expiring, and the head of the state authority decided to launch a public vacancy so it could keep and employ this official for an indefinite term of employment. He/she was also given the task to compose the questions for the test of specific skills related to his/her job. For the above-mentioned vacancy notice an additional 30 candidates applied. When the results of the exam with the rankings were delivered, the said officer was within the category of “unsatisfactory” because, despite having a maximum score on the test of specific skills, he/she failed the test on the English language, which he/she claimed was too heavy. The head of the state authority was visibly disappointed, but decided to cancel the position advertisement and then announce a new call and possibly ask the head of the Human Resources Management Authority to give him/her the English test, prepared by their staff so that this awkward situation would not be repeated again.

- This is a normal, colleague relationship among state authorities, and certainly a human act on the part of the head of the authority.
- I think the head of the authority should write a good justification for cancelling the vacancy and send the official for an additional language course.
- The principles of equality and transparency in employment were fully violated. You propose to the head of the authority to hire the first candidate from the ranking list because everything else is illegal.

### Case study 6. Awards, variables, and one-time financial assistances

A head of a state authority has a team of people who achieves excellent results. However, there are no budget funds available for other fees and any other remuneration. Since the authority has several hundred employees,

the head decided not to pay the allowances of the salary to other employees, which they are legally entitled to, in order to have money for remuneration of his management team. During the year, all members of his management team received monthly an additional 1,100 EUR. In addition, to some he gave a one-time financial assistance to improve their living conditions in the amount of 15,000 to 30,000 EUR.

- This is the real manager who takes care of his best employees and always finds a way to reward their work and loyalty.
- It is not just that he has abolished the legal supplement to the salary of other employees. In any case they will be able to achieve this right through the courts (by filing a lawsuit for the compensation of a damage), and will be paid from the state budget with interest so that no one will be at a loss.
- This is a classic example of threatening integrity and the potential abuse of power.

### Case study 7. Conflict of Interest and Public Procurement

The president of a municipality announced an open procedure for the purchase of transport vehicles for municipal services. At the same time he is the president and owner of XX company, which deals with the import and repair of transport vehicles and which has also applied for the tender. A commission for the opening and evaluation of bids determined that the offer of XX company owned by the president of the municipality, which was submitted by the authorised person, was the most qualified and gives the longest gratis warranty period for vehicle maintenance and recommended that the mayor sign the contract. The mayor made the decision on the selection of the winning bidder and signed a contract with the authorised person of the XX company.

- Everything is OK. A public official may not be a CEO nor a member of a managing board but can certainly be the founder and owner of the company.
- It is true that in a formally-legal way everything is fine. However the bidder and the purchaser are essentially the same person, and this can arouse some doubts in objectivity.
- This is a conflict of interest and such a procurement procedure is annulled.

## Case study 8. Conflict of Interest and Public Procurement

A civil servant in a ministry has had a small private family company ZZ for almost 10 years, which deals with computer maintenance. In the ministry the contract for maintenance of official computers, servers and networks has expired and no one was satisfied with the quality of service of the previously selected company, although the company has been selected in tough competition in the “shopping method”, at a cost of 10,000 EUR per year. The head of the IT Sector proposes to avoid tender and at the very special price of 5,000 EUR per year engage the ZZ company, owned by the civil servant, because the offered annual price is within the limits of the immediate agreement. All welcome the decision and the minister concluded an agreement with the company of the civil servant.

- Excellent solution. He is the right man for that, and at the same time he is the most informed about specific problems with computer work in the ministry and is always accessible and available for solving eventual problems.
- I'm not sure if it's really okay to hire a company owned by the official from the IT sector: Maybe the problem can be resolved through the contract for outside work, but this is less important: The price is, without a doubt, considerably lower and should be accepted.
- You inform the civil servant that as of the 1st January 2013, he cannot be the owner and founder of the company, and you suggest to him, as soon as possible, to transfer ownership and control to another person, and point out that this is an example of a conflict of interest.

## Case study 9. Grants and Subsidies

The public company DD, discretionarily awards financial assistance to sports clubs and organisations in which members of the managing board are public officials from that public company. In gratitude they get a certain quota of free tickets to sporting events and events that are attended by athletes from these clubs for themselves, their family members and a certain number of employees.

- Everything is OK. This is a good way for the additional financing of sports organisations and the promotion of sport.
- Maybe they should issue a public call for donations and subsidies to which other sports organisations and clubs that meet the criteria of the call could apply.

- I think this is a conflict of interest and the acceptance of inappropriate gifts.

### Case study 10. Restrictions upon termination of employment

Two officers of a state authority voluntarily left their jobs. Officer X is retired but has continued to provide consulting services to the agency where he was employed under a contract for consulting services. Officer Y got the employment as a manager of a legal entity supervised by the government body which had previously he had been employed in.

- It's all right, it's a good example of how to use acquired knowledge in new working positions.
- Perhaps it should be checked check if misdemeanor prohibitions relating to restrictions upon termination of employment were violated.
- Civil servants and state employees are not allowed to perform these duties two years upon termination of employment.

## ANNEX II

*Josef Schiffer, Ph.D.*

### “PURSUING INTEGRITY” OR “PREVENTING AND FIGHTING CORRUPTION”?

#### A socio-psychological perspective on integrity

The above question might seem ridiculous arguing that the question refers to pretty much the same focus. Nevertheless, there is some good indication that pursuing integrity is preferable to at least fighting corruption on the verbal level. There is sound socio-psychological research that framing states, situations and objectives in a positive way makes an important difference for acting and goal-seeking.

Based on psychological evidence “integrity” has become a dominant technical term world-wide in the context of corruption prevention. Anti-corruption managers have become Integrity Managers. Probably the change of the vocabulary took place without much notice because professional and social groups copy language usage sometimes in a way similar to fashion.

In the following, some information about the background of the language change will be given and argued that it pays to take care of verbal behaviour. Yet, it is about more than only jargon.

In recent decades, more so in Europe in the Anglo-Saxon space, Positive Psychology plays a dominant role. It basically advises people to frame situations in a positive way and to follow positive goals, e.g., obviate avoidance goals that state that something should not be done. There are several roots and different scientific and semi-scientific experts proposing positive thinking, which should not be reviewed here. Additionally, it is quite difficult to switch from a negative mind set to a positive one only based on some recipe books. Mind sets are

normally deeply rooted as there is always an emotional background such as fear or the disposition to go for positive rewards.

However, there is quite intriguing evidence from research that the positive framing of situations and the usage of terms, words with a positive connotation shapes behaviour. Much research evidence comes from priming studies and experiments where people are confronted with negative or positive stimuli on a subliminal timeframe. They do not notice consciously the verbal and pictorial cues, but react in a predictable way. Advertising has avidly taken note of this. The effects are small, but there is an impact.

One important lesson is that we react to our environment in a predictable way. This comes not as unanticipated news, but it is often ignored that situations play a very important role in shaping human behaviour. Corrupt situations, e.g. situation with many corrupt individuals induce corruption and integer situations with mostly integer people inducing integrity. From criminal research we know that environments, parts of cities or villages with broken windows have higher crime rates compared with parts where there is no damage. The obvious explanation that crime is the cause and the damage is the effect is only partially true because fitting the windows can reduce crime, e.g. the damage to property. Putting it in some other way it is about the most fundamental insight from social psychology. We attribute behaviour to personal traits, which is called the **Fundamental Attribution Error**. Yet, behaviour is at least, by one half, induced by the situation in which the persons are situated.

Nevertheless, changing the language, e.g. talking about integrity and thus, stating a positive goal and refraining from talking about corruption repression or prevention of corruption and thus, talking about avoidance goals can only be half of the measure. Language shapes thoughts, attitudes and behaviour but does not fully determine it. The question is how to build up integrity and to behave with integrity. The section above implied that talking about integrity has an effect in inducing more integer behaviour, but the concept of integrity seems to refer to a fundamental attribute of personality that should be the ultimate aim. We argue that this is misleading on reasons already implicitly addressed.

Nevertheless, there are traits of personality like extraversion or agreeableness that are relatively stable. However, on the other hand there is much evidence from behavioural research that the extraverted can behave in an introverted way in some situations and the introverted show extraverted behaviour. Personality and situations interact and behaviour is a function of both of them. Most of us do not fall into the categories of bad guys or good guys. Only a few do. Most of us prosper in good environments or degenerate in bad environments. Thus, integrity is not so much a personal trait but rather a function of both **the person and the situation**.

The chapters of this handbook address the concept of integrity at different locations, focus on specific terms like integrity management or integrity plans and refer to the linguistic roots of the term that goes back to ancient Greece. We will not anticipate these explanations but define integrity informally here as concordance between talk and action. This seems not adequate because integrity seems to have a deeper content and not only some superficial resemblance feature.

Yet, perhaps with the exception of psychopaths, as indicated above, we all perceive ourselves as moral beings with good, not-harming and positive intentions. The well-known social-psychologist Steven Pinker refers to this fact as the moral gap. We are right and the others are wrongdoers whereas the others see it reversed. As talk mirrors convictions and beliefs and a moral stand can be assumed, integrity could be, in fact, the resemblance of talk and behaviour.

There obviously is the alternative also to equate some kind of inner trait called integrity and behaviour or to equate the inner dimension and the observable dimensions of talk and behaviour, but that seems not the primary understanding of referring to integrity in normal contexts. The requirement seems only to be to match talk and behaviour and to do as declared. This makes sense in the light of the fact that we talk morally, but we do not always act morally.

If we all have a moral stance and talk morally, commend the good and condemn the bad why does crime or corruption occur? There are modern theories of crime (Per Olaf Wikström from Cambridge University)<sup>5</sup> that brings sound evidence that moral deficits are at the root of crime at least with young offenders. Some young offenders become old offenders and situational crime is only a minor part of deviant behaviour.

The question than is whether corruption also has a moral bearing. The answer is “yes” and “no”. Taking an abstract view corruption is about the illegitimate misuse of collective goods and is at least on the moral landscape of modern societies a moral wrongdoing. Where fairness is a major moral stance nobody is allowed to take more than he deserves by his/her own work. Obviously there is the interesting question why tax evasion flourishes even in modern societies.

Looking at the whole moral landscape of the world and verifying that corruption is much more common in cultures with a collective orientation, e.g. favouring the “we” as families or clans or networks with a high power distance and not questioning the elites, a partly different moral grounding becomes visible. Corruption is legitimate if it serves the in-group. Yet, this seems to be changing in the process of cultural globalisation.

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5 Per-Olof H. Wikström and Kyle Treiber, *The Role of Self-Control in Crime Causation, Beyond Gottfredson and Hirschi's General Theory of Crime*, *European Journal of Criminology* 2007; 4; 237

If human beings as social beings are moral creatures because moral is about the social game, moral talk is predominant and deviant behaviour, e.g. crime or corruption, will normally be defended on moral reasons by wrongdoers, how can the quest for integrity be of any help? Moral education that runs under the name of ethics courses in business and public administration is necessary but probably not sufficient. The changing of the moral mind is a very old but nevertheless a difficult endeavour when the minds have become older. It seems to work with children under conditions normally given with well-minded parents, but even here there seems to be some natural pre-wiring as science tells us.

There is an old answer on the question how moral standards can become better. Nearly 2200 years ago Glaukon, an uncle of Plato, pointed out how important reputation is for morality. Integrity is about the reputation to act as talked and is based on moral standards. A reputation must become visible, or better, reputations grow by visible actions with a good end. That means that integrity has to become a value as an end.

The insight from Glaukon has become validated by modern social sciences research based on simulation studies that connect possible actions with costs and gains. Costly behaviour leads in the end to gain because social actors reward contributors to the public good. Thus, even integrity can be a means to an end.

With this in mind, the question arises whether there more can be done than to only place integrity in the focus of public discourses in public administration, the political realm and society. Clearly there must be some kind of reward for integrity on action. Reward without punishment is worthless as nature tells us because both modes of learning are installed within our brains. Integer action has to be rewarded by social and political valuation. Non-integer action has to be proscribed socially and if it violates then sentenced by the law.

Furthermore, there is another device that already takes a prominent position in the context of preventing corruption. It is transparency that makes non-integrity – good talk and bad deed – difficult. Based on research, what really helps to reduce corruption is the freedom of press legislation and this seems to play the most important role world wide. A free press that has no clientele to serve is the most important vehicle to generate transparency.

## ANNEX III

*Dalibor Šaban*

### WAYS TO REPORT CORRUPTION

#### CORRUPTION ...

- ... can occur in all spheres,
- ... makes damages to you and the whole society,
- ... there are several criminal offenses with elements of corruption.

Corrupt acts are: active and passive bribery, abuse of official duty, abuse of the position in commercial business, unlawful influence, fraud in the office, false balance, abuse of appraisal, causing bankruptcy, causing false bankruptcy, etc.

#### What is the “Not Even a Cent for a Bribe”?

- This is a campaign of the Directorate for Anti-Corruption Initiative, supported by the EU and aimed at suppression of corruption in Montenegro.
- The campaign consists of: posters, TV and radio spots, billboards, city lights posters, leaflets and information flyers – “the bill with a zero value”, which can be found in this handbook.
- This “bill” can be used in case that someone asks for a bribe from you.
- With this campaign the Directorate wants to raise the public awareness on the harmful effects of corruption.
- With this campaign we want to encourage you to join us in this fight by reporting the suspicions of corruption to the Directorate for Anti-Corruption Initiative (contact details are given on the next page).

## Why report corruption to the Directorate for Anti-Corruption Initiative?

### The Directorate:

- is the state authority that acts preventively against corruption,
- has expertise in this area,
- provides useful tips for those who want to report corruption, thus, transferring their knowledge to citizens,
- immediately forwards the reports to the competent authorities for further action,
- guarantees anonymity to all who wish to report corruption in this way,
- informs you about the results of your application,
- is willing to act as your strong and reliable partner in suppressing corruption.

Phone: 020 234 396,

website: [www.antikorupcija.me](http://www.antikorupcija.me)

Fax: 020 234 082

E-mail: [aci@daci.gov.me](mailto:aci@daci.gov.me)

By mail to the address: Rimski trg 46, 8100 Podgorica

*In person by coming to the premises of the Directorate*

In addition to the Directorate, there are other state authorities involved in the fight against corruption.

You can report corruption to the following state authorities:

*Police Directorate:* 020 241 333

*Customs Administration:* 0800 81 333

*Games of Chance Administration:* 020 265 438

*Tax Administration:* 19707

*Supreme State Prosecutor's Office:* 067 623 223

*Office for Reporting Corruption in Judiciary:* 067 238 288

*Ministry of Health:* 0800 81 444

*Ministry of Education:* 0800 81 234

*Public Procurements Directorate:* 020 245 798

*Investment and Development Fund:* 020 224 524

*Inspection Directorate:* 080 555555

*National Commission:* 020 234 396



