

BUILDING OPEN AND HONEST GOVERNMENT: ANTI-CORRUPTION TOOLS

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Corruption in many transition countries has reached such dimensions that it requires principal solutions. It is deeply rooted in almost all areas, and therefore it is able to reproduce itself on its own. Its considerable expansion in the past thus generates its great spread also in the future. This situation requires a radical intervention and complex countering and attacking corruption on all fronts. Efficient fight against corruption requires a **program** of necessary changes, and formation of as large as possible **anti-corruption alliance, and an active and informed civil society**.

How, then, the fight against corruption should be initiated? Of course, it is at first necessary to thoroughly understand the reasons, loopholes and impulses nourishing corruption at any level. In the area of formal rules it is not only necessary to focus on repression, but especially on prevention.

Corruption = monopoly + freedom in decision making (discretion power) – transparency

Corruption formula

The situation is illustrated in Scheme 1 (*see Page 2*)

The model illustrates the general decision-making scheme. Similar principles also apply in relation towards the citizens, if they need various permits or confirmations, and the employee charged with their granting has a monopoly.

The corruption potential is formed:

- if the state establishes a monopoly⁴, if it to an excessive extent intervenes in the economic processes, if there are too many permits, licenses, concessions, subsidies, etc.
- if the decision-making process is freedom-based, it provides opportunity for subjectivism of the decision-making person (discretion power),
- if there is a low degree of transparency in the decision-making process.

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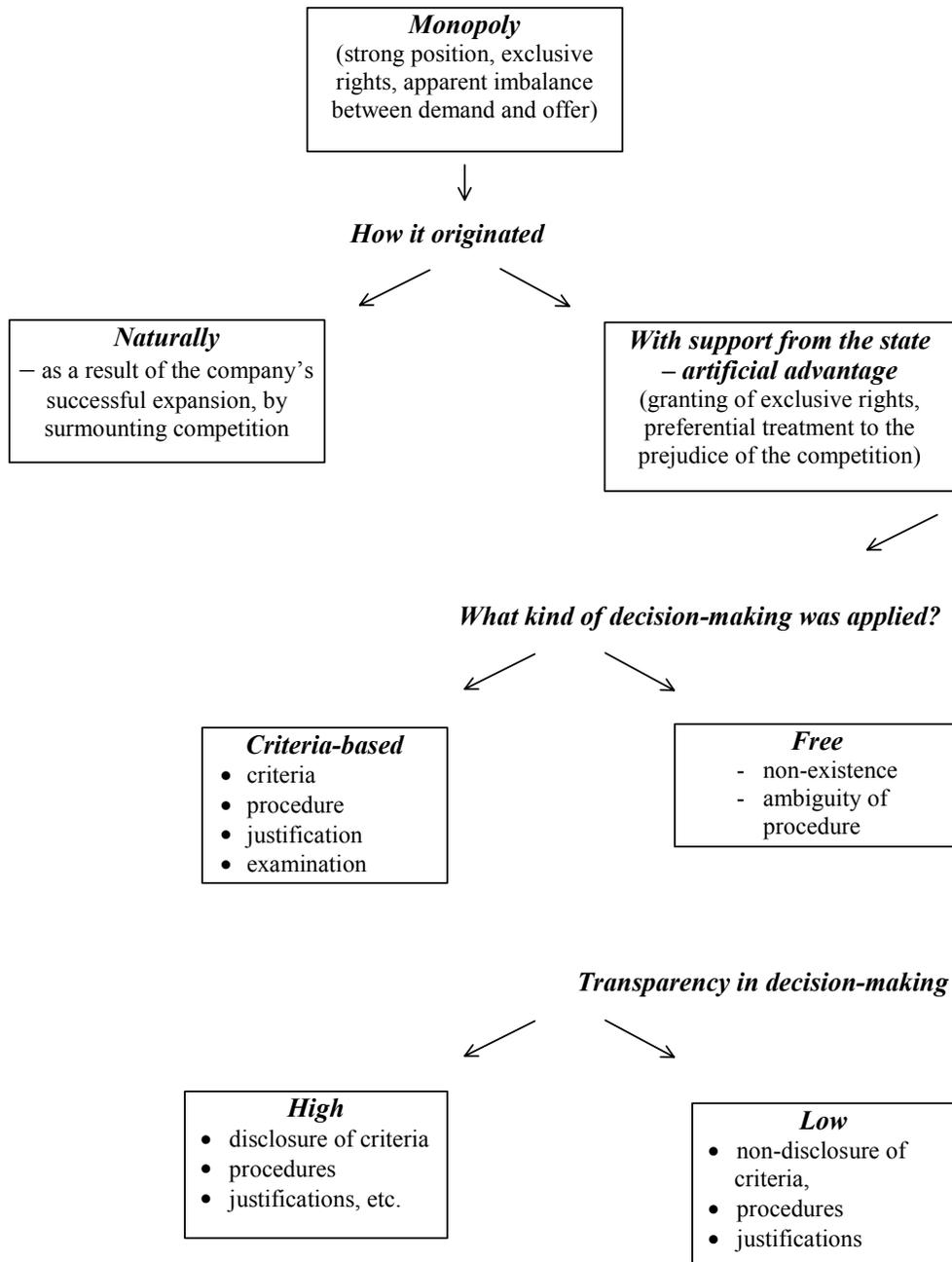
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⁴ In this text, this notion is to be understood in the broad terms of advantage, exclusivity, marked prevalence of demand over supply.

The scheme at the same time illustrates the main directions of changes necessary to restrict corruption.

Scheme 1
Corruption potential⁵



⁵ For detail see Zemanovičová, D.: Discretion power as a source of corruption, CPHR – TIS, Bratislava, 2001

1. Restricting monopoly, state interventions and regulation barriers

Interventions of state could not be completely removed and the goal of this paper is not to analyze range of regulations. Nevertheless, it must be said that state interventions in areas where public interest confronts business sector, corruption potential is created. Experience from many countries shows that corruption scandals are most often connected with tenders, license granting, privatization, abuse of public resources or foreign aid funds, administration of state monopolies - all in areas of state interventions to economy.

High level of state involvement is accompanied by merging politics with economy providing space for *strong influence of interest groups*.

Corruption potential is often a result of accommodation of inappropriate decision making procedures. If private sector entities represent both sides - supply as well as demand, it is natural they will try to settle an agreement lucrative to both of them. Thus, their negotiation leads to finding balance of interests. Situation when state takes role one of the sides could be well described by a triangle. Decisions are being made lucrative to two sides, but disadvantageous to the third, often represented by state. This creates considerable corruption potential and inefficient use of public resources.

It is the indirect way of realizing of public interest, which invokes potential conflict between externalities and internalities (individual interests of people appointed to act in public interest). Conflict of interests is a situation when public official is in his function influenced by private motions/considerations. State interventions should always be conducted only in public interest, be it the indirect way of realizing of public interest that enables interventions take place also in private interests.

Results of several foreign surveys confirm this. For instance:

- *Tanzi* (1998) puts many examples where corruption potential is created by excessive or undue regulations. For example: the more complex tax legislation is, the bigger freedom of decision making of public servants, the easier to corrupt.
- *Kaufmann and Wei* (1999) showed there is positive correlation between corruption index and index of governmental/state regulations.
- *Ades and Di Tella* (1997) claim rate of corruption is higher in economies with... and more active industrial policies.
- *Gatti* (1999) confirmed that more open economies tend to have lower rate of corruption.
- *Svensson* (1998) hints that countries provided with larger portion of foreign aid tend to have higher rate of corruption.
- *Abed a Davoodi* (2000) say that different rates of corruption in transitional countries can be best explained by the index of realized structural reforms - privatization, price liberalization and free competition etc.

Several analyses showed that regulatory state interventions are barrier for business enterprise⁶. Business barriers, corruption raise investment risks and repel investors, which consequently slows down country's economic growth.

⁶ E.g. Administration barriers for investments in Slovakia, FIAS, April 2001.

- *Wei* (2001) via conducted survey proved, that rate of corruption is negatively correlated with the extent of foreign investments.
- *Smarzyznská and Wei* (2001) similarly showed that more corrupted transitional countries have considerably fewer chances to attract foreign investments.
- *Wei* (2001) confirmed the existence of negative correlation between level of corruption and economic growth.

Corruption causes lower performance of state administration, raises the risk of abuse of EU funds assigned to development of candidate countries for entry, lowers competitiveness of business entities, deteriorates allocative effectiveness of economy as long as it creates barriers for foreign investments, all in effect being *strong obstacles for integration*.

2. From discretion to criterionalisms

Favoring (preferring) individual to public interest is strongly influenced by the level of freedom in decision making. Freedom in decision making means that, deciding subject, a person representing public interest has large scale of possibilities on how and when to make decision. For instance if public official may but must not grant an import or export license, or similarly if registration in the cadastre registry may last week but also several years, or if courts may decide within few months but also few years. Thus often happens that private interests are preferred to public and corruption takes place. The higher rate of discretion in decision-making, the broader corruption potential.

Some typical situations:

- **shortening of periods**, within which the decision is made, is being bought by means of a bribe (registration into the real estate cadastre, incorporation of companies, court decisions, “toll” for quick clearance by the border police, quick clearance at the customs office);
- **non-existence of criteria, or their ambiguity**, payment of a bribe “leans” the freedom in favor of the corrupting subject (granting of certificates, import and export licenses for goods, telecommunication services or TV-broadcasting, award of public procurement contracts, privatization, credit granting, subsidies, granting of exceptions, e.g. in respect of the import surcharge, granting of vouchers for spa treatment, court decisions, decision making in respect of tenancy conditions in buildings, granting of contribution for establishment or preservation of an employment position, etc.)
- **non-existence of rules relating to the person of the „decision-maker“**, for example: no treatment of the conflict of interests in their decision making, which should be based on the public interest and not on a private motive, has impact on their decision-making activities;
- it is very often the case that corruption arises through **non-compliance with the existing rules**, e.g. regarding unauthorized disclosure of information, especially where a statutory or contractual secrecy obligation is applied; a bribe is often paid to ensure **inaction, or tolerance of incomplete or incorrect documentation** (release from a fine or sanction,

release from a fine, or the traffic police's allowance to keep the driver's license, non-taking into custody);

- bribes are also offered for „favorable“ exercise of the state's supervisory functions (business license granting, e.g. on the capital market, in the banking sector, no ruling in case of legal violation).

Restriction of discretion power in decision-making means that strict criterialism must be introduced (stipulation and disclosure of criterions), decision-making procedures precisely defined (all processes, control, introduction of multiple eyes principle, collective decision boards, rotation of employees in positions especially sensitive to corruption, decision explanation, possibility to review decisions) and to get decision-making under public control, which means *raise transparency of decision making*.

3. Transparency and access to information⁷

Information is oxygen of democracy. If the acts of those, who govern us, are hidden and people do not know what is happening, it is impossible to participate in solution of public matters in a society. Information, however, is not only a need for people – It is an essential part of a good ruling. A bad government needs secrets to survive. The secrets enable non-effectiveness, wastage and corruption to prosper.

Amartya Sen, holder of Nobel's Prize, noticed that a serious famine has never occurred in a country with democratic form of government and a quite free press. The reason is that information enables people to investigate the acts of the government and it is a base of a proper and informed discussion about these acts.

Where openness and trust prevail, there at the same time well-being and abundance prevail. Where there is no openness and trust, distracting consequences take their turns.

In some countries the right to information has had its legal support already for over two hundred years. The oldest legislation regulating an access to documents was introduced in Sweden in 1776. The present legal system in this country is exceptional in a sense that this legal regulation is one of four key acts forming the constitution of this country (Pope, 2000, Page 127).

The situation in the USA is interesting. In the United States the right to information has been guaranteed in its first constitution amendment also for almost two hundred years. The Freedom of Information Act was adopted after a long-lasting pressure of citizens and journalists in 1966. That time President Lyndon Johnson commented passing of the Act saying that "nobody should have a possibility to make secret those decisions that can be published" (Sičáková, 2000, Page 28). The Act saw its biggest "blossom" in the beginning of the 1970's when the Watergate affair broke out and when the people "learnt to ask". An often use of the act resulted in the so called "electronic amendment" in 1996, the substance of which is to impose a duty on all offices to publish the most frequently required information on their web sites. "We got accustomed that

⁷ Kamenec, T., Pirošík, V.: Access to information as anti-corruption tool, CPHR – Transparency International Slovakia, Bratislava, 2001.

providing information is so natural like opening a window," the employees of state administration in the USA claim after applying the Act of Information Freedom for over thirty years. (Zemanovičová, 2000).

However, this Act is not only the specialty of Sweden or the USA. It can also be found in many other countries including Albania, Bulgaria, the Czech Republic, France, Georgia, the Netherlands, Ireland, Lithuania, Hungary, Ukraine as well as Canada, Australia, or New Zealand, Slovakia.

In Hungary the Act of Information Freedom was approved in 1992 and as a part of its implementation the institute of a special independent ombudsman for information freedom and personal data protection was also formed (Majtényi, 1997). The Czech Republic passed this act in 1999 and the citizens have rich and inspiring experience in application and use of the Act (www.ostosest.cz). In Slovakia very progressive freedom of information act was adopted in 2000 (www.infozakon.sk).

As for multinational alliances, we must mention also the European Union and the Council of Europe. The former regulates an access to documents by means of a special codex from December 16th, 1993 that relates to Declaration on Access to Information, which is a supplement to the Final Act to the Treaty of European Union. The Council of Europe passed a set of several resolutions, recommendations and decisions of the European Commission for Human Rights, in which the right to access official information is connected with the right to freedom of expression and information pursuant to the Article 10 of the Convention for Protection of Human Rights and Fundamental Freedoms (the Slovak weekly Trend, No. 44, 1999)

4. Ethics and ethical infrastructures⁸

As the amount of corruption is influenced by formal and informal rules in the society, ethics and ethical norms play an important role in preventing from the corruption.

The term “ethics” is usually used in connection with moral values, norms and principles that regulate behavior of a certain group of people. In relation to the public administration we talk about **public administration ethics** – one of the several kinds of applied ethics.

4.1. Public Administration ethics

In general we can say that **public administration ethics**⁹:

- Deals with the issue of desirable behavior of a public administration employee
- Deals with the principles of improving the standard of public services and society in relation to behavior of employees
- Sets what kind of personal characteristics the public administration employees should keep trying to gain
- Defines generally applied basic abstract norms and values, such as usefulness and kind-heartedness, avoiding doing bad deeds, honesty, tolerance and respect for others, freedom, justice, trustworthiness, responsibility, providence, politeness and many others, which the public sector employees should perform as a part of their work.

In general we can define two basic models of ethics:¹⁰

- professional model and
- political model

Professional model of ethics is based on the phenomenon of strong professionalism. Its development is supported by almost bureaucratic attention paid to simultaneous cultivation of suitable norms of professional behavior. Thus the employees and the representatives of the public administration know exactly which norms and expressions of professional behavior they are expected to perform. This model is characterized by high expectations laid upon the public sector by ethics. The professional employees are automatically expected to act in highly ethical manner during the decision making process although this behavior is not directly regulated or described in the rules. The basic condition for such ethics is ability of sound and responsible decision and binding trust in employee’s ability to distinguish the fragile limits between ethical and unethical. The values and principles applied and accustomed this way form the protection from irresponsible behavior. It can be used in the countries with long tradition of public service.

⁸ Sičáková, E., Slimáková, E.: Ethic and ethical infrastructure as anti-corruption tool, Transparency International Slovakia, Bratislava, 2002

⁹ For more information see Sičáková – Zemanovičová, 2000b

¹⁰ According to J. Uhr from Australia, who gave the presentation on the *symposium Ethics in public, held by PUMA in Paris in 1997*

Political model of ethics views unethical form of behavior as a certain form of corruption and serious breach of political standards. Public administration ethics is understood as a new kind of legislative norm, which conditions expansion of other ethical laws. This model considers breaching of ethical principles as offences. Requirements of ethical behavior create major part of legislative rules and laws and failure to comply with them or their breaching is considered as crime or breaching the penal law, punishable by means of sanctions specified thereby¹¹.

In effect to create and successfully implement ethics in the public life it is necessary to build the so-called ethical infrastructure. The term “ethical infrastructure” can be defined as a complex of tools and procedures aimed at elimination of undesirable behavior and oriented at creating motivation for correct and highly ethical behavior. The result of effectively functioning ethical infrastructure is formation of such environment, which provides a framework of knowledge of corresponding processes, rules and institutions. In accordance with them the public administration employees consider and ponder correctness or incorrectness of their behavior.¹² (5) At the same time it takes a considerable part in building public awareness.

4.2. Ethical infrastructure

Ethical infrastructure can be characterized as a complex of eight elements:

- 1) Political support and commitment
- 2) Effectively functioning legislative framework
- 3) System of accountability mechanisms – mechanisms aimed at “giving accounts”
- 4) Codes of conduct
- 5) Professional socialization of ethical standards
- 6) Legal status or the working conditions of public administration employees
- 7) Co-ordination of ethical organs or institutions
- 8) The active public

Ethical environment must be built in all components of public power – in executive, legislative and judicial. At the same time it is necessary to pay more attention to the ethics in the state enterprises or in companies with an ownership interest of the state. In this chapter we will deal with ethics in the public administration.

Several factors influence the state of ethics in the public administration. It is necessary to see the **trends in the world**, which are heading to horizontal, participating relation of a citizen and the state, as well as “debureaucratisation”, decentralization and deregulation in the society¹³. At the same time, it is recommended to look at the **historical background of development of the Slovak society.**¹⁴

In the period of centrally planned and directed economy and society the relation of a citizen and the public administration was deformed in two directions. On one hand it was the **paternalism**, when the state took over responsibility for everything and a citizen was convinced that someone

¹¹ Uhr, 1997

¹² *Occasional Documents, Ethics in Public Administration*, 1996

¹³ For more information see the chapter *Public Administration Reform and Transparency Increase*

¹⁴ For more information see Sičáková – Zemanovičová, 2000b

should take care of him/her. On the other hand, **citizen's rights were oppressed**, the public matters administration was estranged from the citizen and public administration served as a tool of oppressing the civic rights and freedoms. The passivity of citizens was a part of the system. The citizen's initiative was oppressed. The environment of double morality appeared in the society (from outside it was a must to agree with the "values of socialism", in private these values were rejected and "pragmatic" models of behavior appeared.)¹⁵

The norms of behavior and ethical values were misused (such as norms for communism builder, norms for the so-called *iskričky, pionieri*.¹⁶ Not only were these norms frequently breached but also efforts of their forced implementation caused aversion of the citizens.

Along with the influence of socialistic model in the Slovak Republic we must realize also an influence from our more distant history. Values of the citizens of the Slovak Republic¹⁷ point at rather strong inertness of values and regional differentiation.

But also our less distant past deformed the models of "successful behavior", e.g. non-transparent ways of privatization, assets stripping in corporations, misusing the offices and titles for personal benefit became a part of our everyday life and form a skeptical attitude of the citizens towards renaissance of morality and ethics.

This experience marked also the attempts to resettle the ethical principles and values and to build the ethical infrastructure in presence.

It is becoming a trend in many political systems to apply mechanisms focused on support of integrity and ethics of public administration employees. This trend is a part of a broader phenomenon focused on support of responsibility in the public sector.

4.3. Values

To solve a problem of ethics in the public administration means to solve also a problem of ethics in a society. It is necessary to take **values** defined in the society for a starting point. The thing is, values form bases of public service. These are collectively shared principles, whereby we consider what is right and appropriate. Values set in public documents form the environment, on the basis of which the citizens know the mission of public service organizations. They also serve as a guide for performance of everyday operation in the public administration. For example all the OECD countries have a defined set of basic values for public service. They confess these values and their primary sources to illustrate their priorities and intentions. However, it does not mean that they do not respect other values than those stated in their official documents.

The following are the most frequently stated values¹⁸:

- Impartiality
- Legality
- Integrity

¹⁵ E.g. a slogan "Who does not steal robs his/her own family."

¹⁶ Equivalent of Wolf Cubs and Scouts during the communist regime (translator's note).

¹⁷ See e.g. Krivý, 1998, who studied authoritarianism, attitudes against minorities, against western culture, disrespect towards laws, paternalism, egalitarianism in the regions of Slovakia.

¹⁸ For more information see *Trust in Government, Ethics Measures in OECD Countries, OECD, 2000.*

- Transparency
- Efficiency
- Equality
- Responsibility
- Justice.

The basic common sign in the OECD countries is that all of them take the same sources of their values for a starting point. These are society, democracy and profession.

Table 1

Public service core values stated in public documents in OECD countries

Impartiality, neutrality, objectivity	Australia, Austria, Canada, Czech Republic, Germany, Denmark, Finland, Greece, Ireland, Netherlands, Island, Italy, Japan, Korea, Hungary, Norway, Poland, Portugal, the United States of America, Spain, Sweden, Turkey, Great Britain, Luxembourg
Legality	Austria, Germany, Belgium, Canada, Denmark, Spain, Great Britain, Greece, Hungary, Japan, Ireland, Italy, Island, Korea, Mexico, the Netherlands, Norway, Portugal, Sweden, Turkey, United States of America, Switzerland
Integrity, honesty	Australia, Austria, Belgium, Canada, Germany, Denmark, Great Britain, Greece, Japan, Korea, Mexico, Netherlands, New Zealand, Poland, Portugal, Sweden, Turkey, United States of America
Transparency, openness, proper disclosure of information	Canada, Finland, Island, Great Britain, Greece, Ireland, Luxembourg, Mexico, Netherlands, New Zealand, Norway, Portugal, Sweden, United States of America
Efficiency	Australia, Denmark, Spain, Greece, Hungary, Ireland, Italy, Mexico, New Zealand, Norway, Portugal, Sweden, United States of America, Switzerland
Equality	Australia, Germany, Norway, Portugal, Sweden, Turkey, Luxembourg, Netherlands, United States of America
Responsibility, accountability	Australia, Germany, France, Finland, Great Britain, Hungary, Island, Mexico, New Zealand, Portugal, Sweden
Justice, fairness	Austria, Germany, Spain, Hungary, Ireland, New Zealand, Norway, Portugal, Sweden, Turkey
Confidentiality, respect of official secrets	Austria, Czech Republic, Germany, France, Ireland, Japan, Korea, the Netherlands, Sweden, United States of America

Professionalism	Australia, Belgium, Germany, Hungary, Ireland, Korea, Poland, Portugal
Service in the public interest, service to the whole community	Germany, Spain, Hungary, Japan, Portugal, Sweden, Switzerland
No private interests, no interaction of private and public interests, avoidance of conflict of interest	Canada, Czech Republic, Germany, Ireland, Japan, Sweden, United States of America
Obedience	Belgium, Germany, France, Italy, Japan, Korea
Respect for State resources	Ireland, Turkey, Norway, Sweden, United States of America
Loyalty, fidelity to the State	Germany, Italy, Korea, Norway, Turkey
Kindness, humanity	Australia, Korea, Hungary

Source: Trust in Government – Ethics Measures in OECD Countries, OECD, 2000

As another example we can mention seven **basic principles** set by the Committee on Standards in Public Life in Great Britain.

- **Selflessness:** Holders of public office should act solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family, or their friends.
- **Integrity:** Holders of public office should not place themselves under any financial or other obligation to outside individuals or organizations that might seek to influence them in the performance of their official duties.
- **Objectivity:** In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.
- **Accountability:** Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.
- **Openness:** Public officials should be as open as possible in all their decisions and activities. They should justify their decisions sufficiently and they should not provide information, unless it is in favor of broader public interest.

- **Honesty:** Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.
- **Leadership:** Holders of public office should promote and support these principles by leadership and example.

A highly moral, ethical conduct is expected from any employee of the public administration. However, the question is how a public servant is informed about ethical principles, values and forms of conduct, observance of which is expected from him/her. Is he/she able to study all the connected legal norms and orders to acquire an overview of what is considered as ethical, right, and what unsuitable, unethical conducts? Is it clear at all, which values and forms of conduct are expected from him/her? To what extent the advising function of ethical infrastructure is fulfilled? In the Slovak Republic such information is provided only minimally. Several methods applied in the OECD countries give us examples how to solve that.

4.4. Legal Regulation of Key Values

Many OECD countries set key values in some type of a legal norm. The following table is an example.

Table 2
Core values as part of the legal framework

Laws, statutes	Canada, Denmark, Germany, France, Hungary, Island, Korea, Luxembourg, Mexico, Netherlands, Norway, Poland, Portugal, Sweden, United States of America
Constitution	Germany, Spain, Finland, Greece, Japan, Korea, Mexico, Poland, Portugal, Sweden, Turkey
Civil service regulations	Germany, Finland, Great Britain, Hungary, Island, Italy, Korea, Netherlands, Poland, Turkey
Public service act	Australia, Belgium, Canada, Germany, Spain, Greece, Japan, Mexico, Netherlands, Switzerland

Source: Trust in Government – Ethics Measures in OECD Countries, OECD, 2000

Besides these basic kinds of legal provisions of key values also the following ones are used in practice:

- labor laws (Czech Republic, Germany),
- administrative procedure acts (Iceland, Sweden),
- Access to Information Act and the Penal Act (Iceland),
- conflict of interests legislation (Spain),
- instructions of federal government (Switzerland),
- Circular letters of the Minister of Finance (Ireland).

Other than legal forms of anchoring basic values can be:

- vision statement for the whole public service (New Zealand) or for individual organizations (Norway),

- guidelines (Denmark, Finland),
- charters (Ethical Charter in Korea, Portugal),
- codes for professional groups (New Zealand),
- reports (Canada, Norway),
- discussion paper on values (Australia),
- textbooks and commentaries on public service law (Germany),
- other books and promotional publications (booklets in Canada, posters and pamphlets in United States).

4.5. Informing, Communication about Values

Without informing, communications values are only empty words. Therefore the OECD countries introduced measures to support and disseminate key values for public officials. The most used method is providing these values automatically when entering into the public administration. Moreover, nine member countries repeatedly send a list of values to all the public employees and provide them also if somebody takes different position within the public administration. Ten countries anchor values directly to an employment contract and they are also a part of various different entrance as well as thorough courses. Eight member countries use a modern technology such as the Internet, intranet or CD-ROMs. It is thus necessary **to know the values**. Efforts to define, change and set key values would lead only to a partial success, if the countries did not stress communication of values, informing of public officials about generally valid principles. The feedback of public employees to understanding of public principles would point out which values in fact lead the employees to performance of their official duties.

4.6. Updating and application of Values

Updating of values is also important. The Office of Governmental Ethics acting in the USA published a working draft document about values in public service and anybody could send his/her remarks to the given materials to the address of the office. In Poland a referendum about bill of a new constitution took place, which, besides others, contained also a renewed list of the most important values for public administration employees.

Application of Values

The key values in principle determine a focus of public service. However, public servants in their everyday work need more detailed rules, which clearly define limits of acceptable conduct. *Supplementary rules* make clear the standards and help to interpret values in particular situations. *Statutory measures* form a background in a way they define expected conduct from each public servant as well as procedures of examination and persecution. The character of acts however predetermines them rather to set borders and provide conformity with rules, than to describe standards.

Almost all the OECD countries anchored the expected standards of public servants. In general, such standards are determined for situations, which can lead to conflict of interests (for example acceptance of gifts, use of official information and etc.). Other areas include work out of the public sector, post-employee limits, lobby and others.

4.7. Anchoring of Conduct Standards

It is necessary to state that in connection to the defined values, standards of conduct expected from employees in state or public service are set. The most frequent forms of expression of conduct standards are acts, codes of conduct and guides. The following table provides a survey of possibilities.

*Table 3
Formal sources for standards of behavior*

<i>Forms of sources</i>	<i>Countries</i>
Laws, regulations, legal documents	Belgium, the Czech Republic, Germany, Denmark, Spain, Finland, France, Greece, Hungary, Island, Japan, Korea, Luxembourg, the Netherlands, Norway, Poland, Portugal, Turkey, the United States of America, Switzerland
Code of conduct, code of ethics, civil service code	Australia, Canada, France, Great Britain, Greece, Ireland, Italy, Japan, the Netherlands, New Zealand, Switzerland
Guides, guidelines, directives	Australia, Canada, Germany, Denmark, France, Great Britain, Ireland, the Netherlands, New Zealand, the United States of America

Source: Trust in Government – Ethics Measures in OECD Countries, OECD, 2000

Two thirds of member countries adopted standards of conduct for public servants in a form of legal documents. Their particular form can be various, for example a constitution (Turkey), general acts on civil service (Denmark, France, Hungary), or public service (Japan), administrative procedure law (Greece, Portugal), labor law (the Czech Republic), specific codes determining standards of conduct (the United States), disciplinary act (Portugal) and the Conflict of Interests and Post-Employment Code for Public Service (Canada), etc. Codes of conduct, ethical codes and codes for state service (Great Britain) are also a frequent form of conduct standards determination. Over 33 percent of the OECD countries use them.

The individual countries have a whole range of documents that represent expected conduct standards to public servants. For example, New Zealand adopted a combination of general and specific codes as well as supplementary guides.

The OECD countries set standards of conduct, expected from public servants, in a series of documents. The most frequent forms are acts, codes of conduct and guides.

In effort to support development of own ethical infrastructures they establish **independent** institutions or bodies which are responsible for implementation of ethical values in everyday function of public servants and they are simultaneously competent to co-ordinate this process.²²

They accepted the necessity to establish an institute of ombudsman (investigator, mediator of complaints) as an independent public body. In different countries he/she can have different competencies and legal status. According to a research, carried out by OECD²³ an

²² For example Office of Government Ethics in the USA

²³ Documents PUMA/ETH 1997

ombudsman/mediator/commissioner is established in Belgium, Germany, France, Hungary, Poland, Sweden, the Czech Republic and others.

To a big extent application of ethical codes – codes of conduct, within a sector – widely drawn up ones or guides for conduct in particular situations – for example in such fields which did not occur in the past is spread.

Beside others they also created a legislatively defined functional **notification mechanism** aimed at defining procedures of notification of unethical conduct and activity of public servants because a servant's duty is not only a high level of responsibility for his/her activity, but he/she also bears a certain responsibility for unethical conduct in his/her work environment in a case that this fact is not notified to competent persons. Such a mechanism simultaneously helps to create a positive approach within the process of dealing with a dilemma “to notify or not to notify unethical conduct of his/her co-worker”.

4.8. What is it necessary to do in field of ethics in transition countries?

Transition countries are going through a dynamic stage of building a new institutional framework, joining global processes. It requires changes also in the area of the public administration, from the viewpoint of its new functions and processes as well as in the area of ethical values. Within the ongoing public administration reform, the country experiences attempts to define a state employee on the basis of the act on state service, as well as an employee in the public service – on the basis of the public service act.

A change of a vertical relation between citizens and the public administration to a horizontal relation means building of a citizen's trust toward public matters administration, what is simplified by defined ethical norms and overall ethical infrastructure.

One of the measures targeted at introducing ethics to the public administration, minimizing a risk of conflict of interests and building a citizen's trust in the public administration, is introduction of ethical code. Building of ethical standards should fulfil the following tasks³¹:

- **educational** – to build civil conscience on these issues and conscience of efforts for ethics in public service;
- **informative in relation to public administration employees** – to inform employees in the public administration what conduct should they refrain from in order to be aware that they act incorrectly or unlawfully;
- **informative in relation to citizens** – certain criteria for evaluation of employees in public administration will be available for citizens;
- **preventive** – based on the code to prevent employees in public administration from breaching laws;
- **penalization** – to enable and anchor an effective reaction to breaching of the ethical code;
- **facilitative** – to systemize and simplify discovering of conflict of interests of employees in the public administration.

³¹ For more information see Beblavý – Salner – Žitňanský, 1997

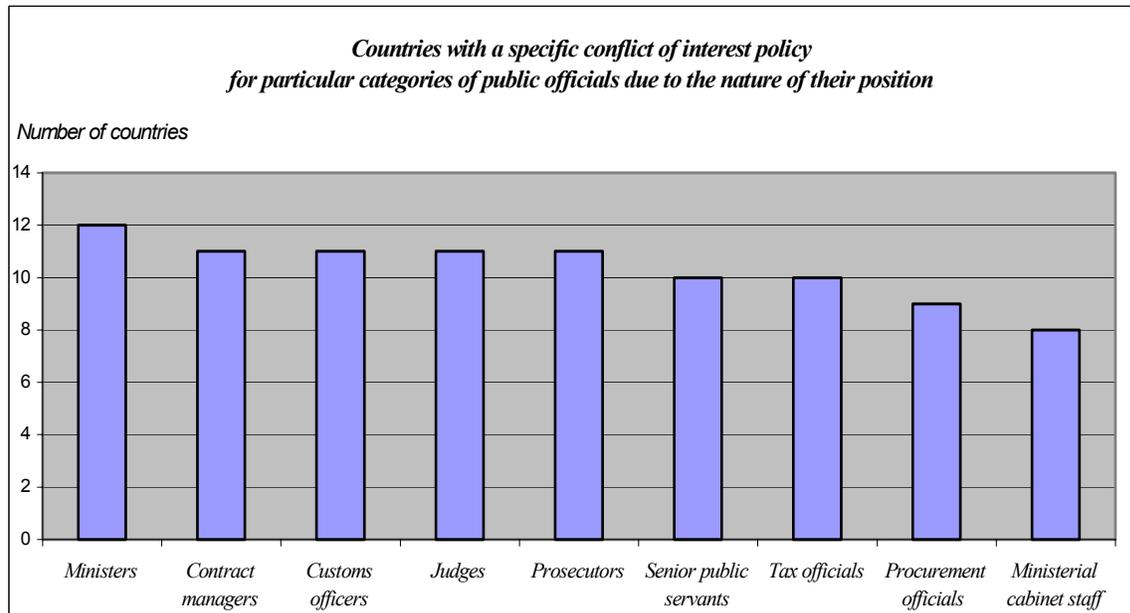
When improving ethics in performance of the public administration, it is appropriate to³²:

- define basic values of the public life and the public service in Slovakia as conduct standards are based on values;
- define and introduce a mechanism for regular review of validity of individual values in the public administration, their revision or adding new values;
- regulate some areas of possible origination of ethical problems in ethical code or in other legal regulations;
- determine a circle of public administration employees whom the ethical code will relate to;
- co-ordinate works on the ethical code with preparation of related key legal norms – law on state service, public service;
- co-ordinate further works on the ethical code with preparation of solution of the entire problem of interests conflict in the public sector;
- set legal liability of individual provisions defined in the ethical code so that the rules are enforceable;
- in effort to successfully implement the ethical code, to focus also on other elements of ethical infrastructure so that its implementation, monitoring and enforcement is secured;
- define institutional securing of formation, implementation and monitoring of ethical infrastructure.

5. Conflict of interest¹⁹

Conflict of interest is an essential part of the political, administrative and cultural context of a country. Although even countries with very detailed regulations on conflicts of interest have no legal definition for the term, public servants are expected to be aware of the potential conflict of personal interest. Conflicts generally arise from financial and economic interest, however other personal interests, undertakings and relationships may also compromise, directly or indirectly, the performance of duties of public office holders. This also includes a situation where actions taken in an official capacity could be seen as being influenced by an individual's personal interest.

Chart 1:

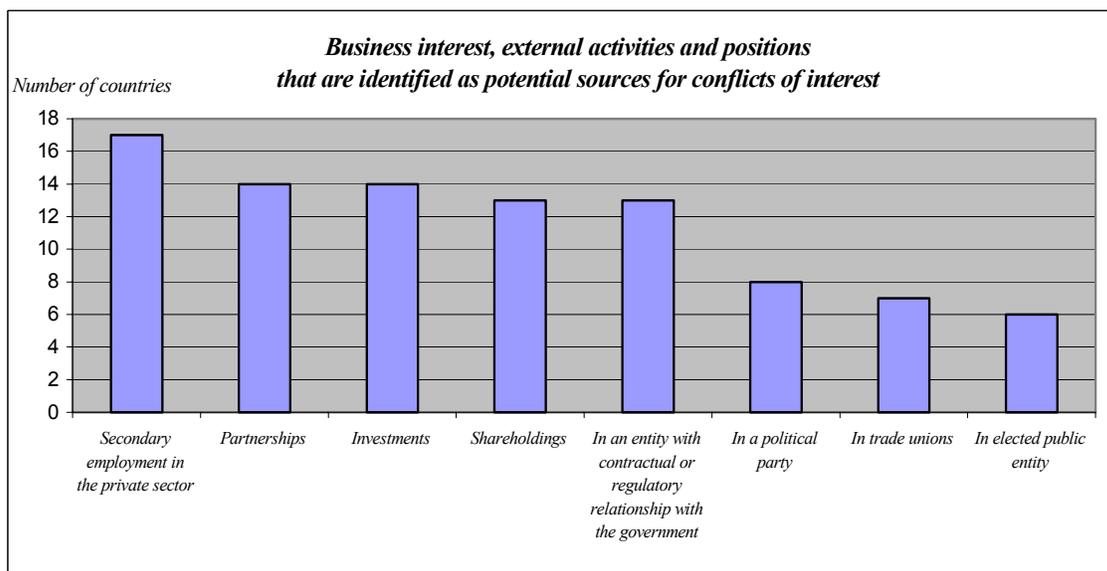


In OECD countries the most common source of the conflict of interest policy is the legal framework. Laws on Public or Civil Service contain the general principles and basic rules. A few countries also use Constitutional principles which contravene citizens' rights in general (for example: the obligation of public servants to exclusively serve the public interest, incompatibilities for public office holders, etc.). More and more specific laws cover sensitive areas for particular groups (e.g. board members) and the most recently developed codes of conduct in Europe also set general principles and give directions on what to do in case of doubt.

The following chart indicates the formal sources of conflicts of interest rules in OECD countries:

While the ultimate responsibility is on the individual to recognize in which situations a potential conflict may arise between private interest and public duties, OECD countries seek to define **the most exposed areas** for which instructions and guidance are necessary to prevent and resolve conflict of interest situations. The business interests, the external activities and positions of public officials are the most commonly determined areas in the OECD countries – their forms are indicated in the following chart:

Chart 3:

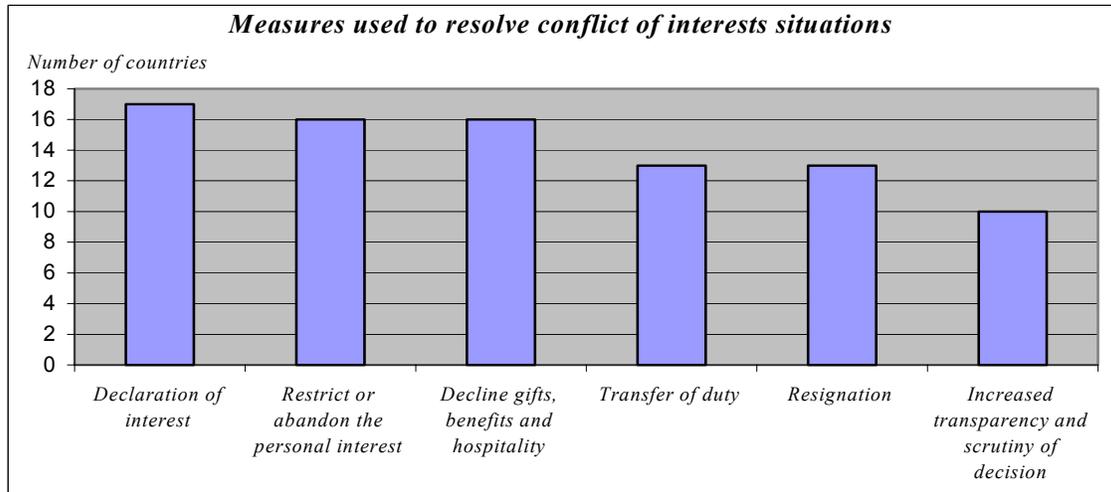


In certain situations the core value of the public service might be in conflict with basic citizens' rights: for example, public servants' political activities might conflict with their primary duty to serve the Government of the day in a politically neutral manner. The competing, general principles required for different employment positions could also lead to conflicting situations, for example in Australia the controversy between professional confidentiality and the obligation to report crimes make it impossible for a policeman to work in social and health services.

Activities that significantly affect the full and proper exercise of official duties are considered to be **incompatible** with public service employment. In cases of unavoidable, serious and pervasive conflicts of interest, the legal regulations restrict public servants from these activities and positions. Stricter conditions can be prescribed for certain groups that are exposed to politics, for example employees of an electoral commission. Concerning the public-private

sector interface, key decision-makers involved in privatization or outsourcing are prohibited for a limited period from accepting employment with the privatized company or outsourced provider.

Chart 4:

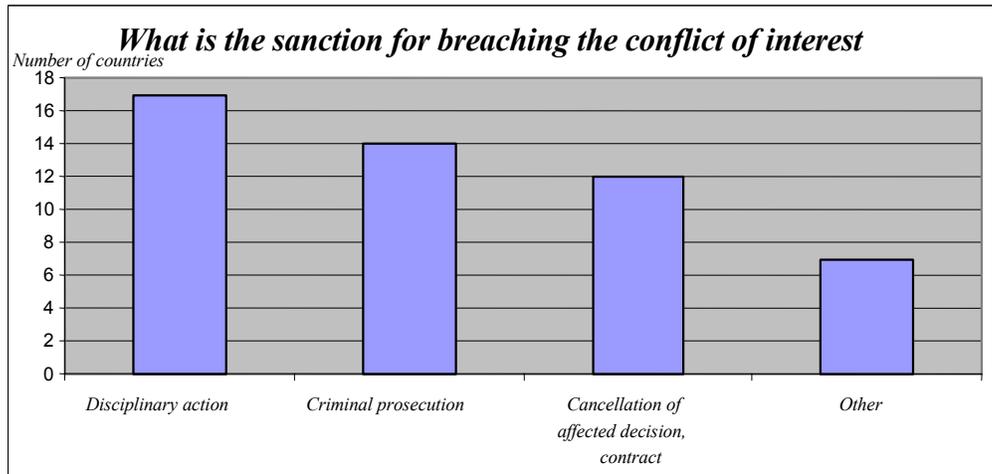


However, the declaration of personal interest itself does not resolve a conflict. Additional steps that are necessary include:

- Divestment: an official agrees to dispose of a conflicting interest, by selling shares and dropping investments.
- Transfer of duty: officials can either be assigned to a new position or maintain their position but not participate in the decision making process on the affected matters (e.g. abstaining from voting, withdrawing from discussion, even not receiving relevant documents and other information relating to the personal interest).
- Increased transparency and scrutiny of decisions: for example the above mentioned arrangements are put down in written documents and they are available for public scrutiny.
- Resignation: an official may be requested to resign from the private position in order to keep his/her public office. If the official does not do so his/her official position can be terminated in a given period.

OECD countries mainly employ disciplinary actions and criminal prosecution along with the cancellation of affected decisions and contracts (see following chart).

Chart 5:

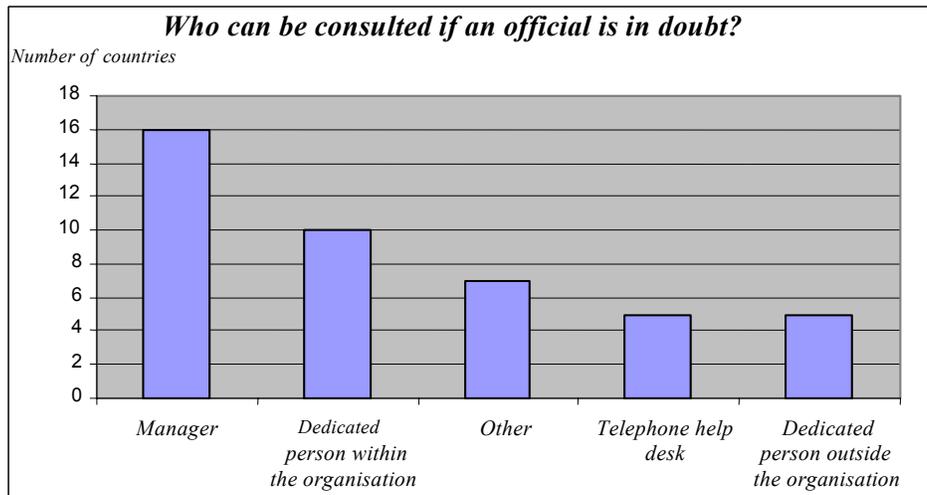


Depending on the seriousness of the breach, disciplinary sanctions can range from warning and reprimand through fines and re-arrangements of duties, to suspension and removal from office. Non-disclosure of conflict of interest is generally considered as a serious breach, and it results in disciplinary action or even criminal penalties depending on the circumstances of the case. In specific cases, when political or senior post holders do not disclose their relevant personal interests, it may interrupt their career (loss of mandate for elected officials and resignation in case of appointed positions). Ministerial advisors, in addition to losing office, also have to reimburse the remuneration they have received.

Public servants can be obliged to eliminate the cause of the conflict of interest, by suspending those activities that were carried out without authorisation, or with authorization but based on inappropriate disclosure. In addition, the decisions can also be cancelled if prepared or made by an official who did not disclose his/her relevant personal interest. For example, when it is found that an official with adjudicatory power holds a personal interest related to a company participating in a bidding process, they risk that the decision will be cancelled and the company excluded from further bidding for a determined term.

The most common way to resolve a conflict of interest situation when it arises is to inform the manager or immediate superior who has the primary responsibility for determining what measures should be applied. In case of doubt, in addition to the manager, internal personnel or legal staff as well as external organizations (such as independent commission, ethics office and Trade Unions) can also provide advice.

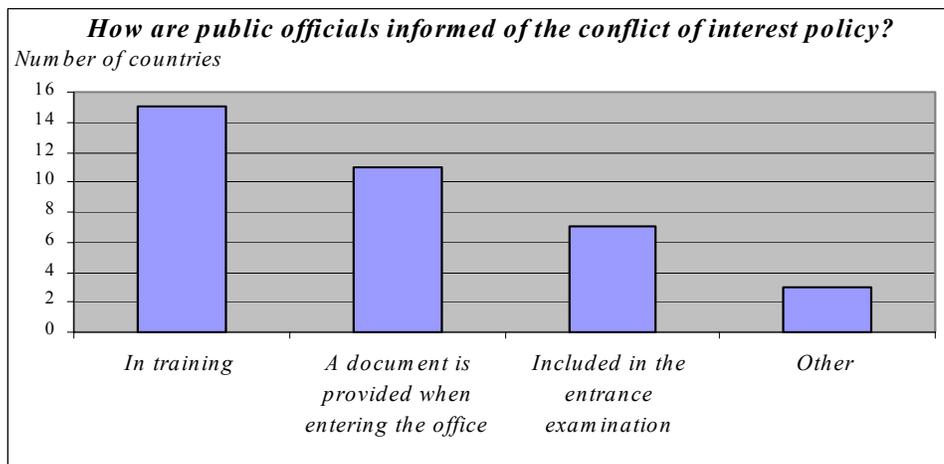
Chart 6:



While managers also play a key role in monitoring whether their staff comply with the rules, government organizations (for example the civil service department) and external institutions (commissions, auditor general, ombudsman and even the Constitutional Court) take an overall interest in monitoring the implementation of conflict of interest policy or the compliance of most senior officials of the state.

OECD countries focus on the induction period to ensure that public officials are aware of the rules of conflict of interest policy. The most common methods used in OECD countries are indicated in the following chart:

Chart 7:



No single instrument was characterized as the most effective in avoiding conflicts of interest, although a combination of mechanisms, especially those that raise awareness and ensure transparency, proved effective in several countries. The annual updating of statements on private interests together with training and consultation are key elements in a system which puts

greater reliance on the individual to self disclose their private interests. On the other hand, in systems, which place less reliance on individual arrangements, the maintenance of relevant legal regulations is the key measure to providing an effective basis for that system.

Moreover, ensuring the transparency of disclosed personal interests, by making them available for direct or indirect public scrutiny, together with an active media, were mentioned as the most influential measures in some countries. Several countries reviewed their conflict of interest policy in the last 2-3 years and requested follow-up measures in relation to the increasing closeness between the private and public sectors. However, only a few countries have developed sector agreements with private sector companies to ensure the standards of conduct that employees are required to maintain. In a converging area, legislation may introduce compatible procedures in sensitive fields such as procurement and recruitment (for example requiring the publicizing of vacant positions) for the not-for-profit sector.

Summary of necessary anti-corruption measures is given below in Table 4.

Table 4
Summary of the Anti-corruption measures²⁰

²⁰ Zemanovičová, D., Sičáková, E.: Corruption as a problem ethical, moral, economic and political, CPHR – Transparency International Slovakia, Bratislava, 2001

FORMAL RULES

PREVENTION

- Transparency of rules, processes and institutions, e.g.
 - Information on public funds usage,
 - Information on privatization - PIM²¹,
 - Information on public procurement,
 - Information on foreign aid,
 - Information on audit results,
 - Funding of political parties,
 - Disclosure of property statements,
 - Making the situation in media more transparent, analyzing the possibility of corruption, ways of its restriction.
- Acceptation and Implementation of the Free Access to Information Act
 - Monitoring,
 - Evaluation of the first experiences.
- Countering of the conflict of interests
 - at the level of state administration,
 - public administration,
 - self-administration,
 - in the companies with state participation,
 - via adoption of the so-called Integrity Pacts in case of sensitive state contracts.
- Reform of public administration and other important sectors
 - Separation of political and professional functions,
 - new definition of public administration functions,
 - decentralization,
 - personal policy, standards, acceptance of employees, career promotion, motivation,
 - reform of the health care and education sector, of social system, etc.
- Ethical reform
 - ethical standards, codes of ethics,
 - ethical infrastructure.
- Reduction of administrative obstacles to business, reduction of subjectivism in decision making
 - on the basis of analyses of permits, licenses, subsidies, etc., to propose cancellation of some thereof, to improve claimability,
 - to introduce a system of more eyes in decision making,
 - to publish decisions, including their justification.

REPRESSION, improvement of law enforceability

- Control system,
- Police,
- Prosecution,
- Courts.

²¹ Privatization Information Minimum recommended by Transparency International Slovakia and signed by most political subjects.

INFORMAL RULES

- to improve perceptiveness of citizens in respect of corruption issues,
- to inform the citizens on the corruption situation, its reasons, attitudes of the government, politicians, degree of the program fulfillment,
- to exert influence on the citizens tolerance towards corruption,
- to change the paternalistic model of relationship between the citizen and the public administration to a participative one,
- to introduce issues of ethics, moral and fight against corruption to schools,
- to inform on the anti-corruption tools in media, to publish anti-corruption handbooks,
- to establish self-purifying mechanisms in the corporate sphere and in media via professional associations and non-governmental organizations,
- to create monitoring components at the level of self-administrations,
- to adopt public obligations of compliance with ethical standards,
- to arouse interest in these issues among the youth by means of competitions,
- to exert influence via art and religion in order to recover the ethical standards and values.

It is desirable to form an anti-corruption alliance involving all subjects in the society. Countering corruption is not a task to be fulfilled during one election period, it is not good if it is understood on a partisan basis. On the contrary, it is necessary to engage both the coalition and the opposition in its countering, as well as the businesspeople, non-governmental organizations and media. Corruption cannot be successfully combated either solely by the government or solely by the civil society. Only their unification enables formation of a sufficiently powerful pressure to achieve a change.

The citizen is a key figure in the fight against corruption. Only if the power of public opinion is sufficiently strong for politicians to feel such pressure towards changes that there will be political will for their implementation, it will be possible to adopt system measures restricting the corruption potential. Thus the citizen should be informed via education and enlightenment on what may be done against corruption, but also on the attitude of each individual political player towards this issue.

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