

# „Sharing Best Practices in Introducing and Teaching Ethics Principles to Public Administration Employees“

## RESEARCH REPORT



Institut pro veřejnou správu Praha



Hochschule für Wirtschaft und Recht Berlin



Krajowa Szkoła Administracji Publicznej



Direção-Geral da Qualificação dos Trabalhadores em  
Funções Públicas - INA

Institute for Public Administration Prague in cooperation with partners from Germany, Poland and Portugal realized the project focused on the issue of ethics in public administration. The project was operated under Lifelong Learning Programme, within Partnership Projects of Leonardo da Vinci subprogramme and the research was conducted from 2011 to 2013.

The research study provides a brief introduction of the public administration system in respective countries and on training in public administration in general. Furthermore, it focuses on the detailed overview and comparison of the legal background of ethics in public administration as well as on the vocational training in prevention of corruption, where the research aimed to identify the applied good practice too .

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DOS TRABALHADORES EM FUNÇÕES PÚBLICAS

## **INTRODUCTION**

The Four-Country Study on Introducing and Teaching Ethics Principles to Public Administration Employees was conducted in the Czech Republic, Germany, Poland and Portugal over the period 1 August 2011 - 31 July 2013. The research was part of the project "Sharing Best Practices in Introducing and Teaching Ethics Principles to Public Administration Employees", funded by the European Commission's Lifelong Learning Programme (LLP) Leonardo da Vinci Programme.

The initiator and coordinator of the project was the Institute for Public Administration in Prague, Czech Republic. The other partners were: the Berlin School of Economics and Law, Germany, the National School of Public Administration, Poland, and the National Institute for Public Administration, Portugal.

In the Czech Republic, the research project was coordinated by Lukáš Jirsa and Aleš Svoboda. The authors of the Czech report have been representatives of the Institute for Public Administration Prague Lukáš Jirsa, Aleš Svoboda, Lenka Hronová, Václav Melichar, Pavel Dittrich and Jana Havlíčková.

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In Portugal, the research was coordinated by Prof. Helena Rato and Dr. Matilde Gago da Silva from General Directorate of Public Administration and Employment. They are also the authors of the Portuguese report as well as their colleagues Prof. César Madureira and Dr. Margarida Quintela Martins.

The research report brings to the fore a discussion of codes of ethics in the different partner countries as well as other relevant legal instruments on ethics. A particular emphasis was put on the possibilities of training in ethics and to what extent such training is able to promote ethical behaviour in public administration. All this was achieved through the research into the current state of affairs in partner countries being done by partner institutions who knew the local environment, followed by joint meetings, presentations and discussions, and then processing into a study. The core material was developed at regular multilateral meetings.

The study is divided into three chapters and national materials from all project countries are involved in each particular chapter in order to provide a general overview and enable easier orientation in the whole study.

The report opens by sketching a portrait of public administration in each of the four countries in Chapter 1. This first Chapter continues by providing some basic information about the country as well as information on the structure of public administration, types of employment in public administration, recruitment in public administration and training in public administration in the Czech Republic, Germany, Poland and Portugal.

As mentioned above the study pays particular attention to ethics principles for public administration employees, which constitutes the second Chapter. This chapter initially examines definitions of ethics principles for public administration employees and legal forms of documents defining ethics principles to PA employees. Chapter 2 also outlines the enforcement of respecting ethics principles by public administration employees and penalties for non-respecting in each of the four countries.

In examining training in ethics, the third key Chapter analyses training of public administration employees in ethics principles, referring briefly to both pre-vocational

education and vocational training in each of the four countries. Further, Chapter 3 deals with the vocational training on anti-corruption. The focus on a narrower and more specific topic that can provide measurable and tangible outputs, which can be compared, must have been selected. Outcomes and findings of the research are outlined in the final conclusion.

The report also includes several annexes with supplementary material, namely: additional data, theoretical materials on ethics and training, international statements and articles by national experts.

## **Disclaimer**

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## **CONTENTS**

<b>INTRODUCTION</b> .....	3
<b>I.PUBLIC ADMINISTRATION IN THE CZECH REPUBLIC</b> .....	10
1.1 Basic Information on the Czech Republic and Its Public Service.....	10
1.2 Structure of Public Administration.....	10
1.3 Types of Employment.....	12
1.4 Recruitment.....	13
1.5 Training in Public Administration.....	14
1.5.1 Training of Officials in State administration Authorities.....	15
1.5.2 Training of Officials in Territorial Self-governing Units.....	16
<b>I. BASIC INFORMATION ON GERMANY AND ITS PUBLIC SERVICE</b> .....	21
1. Structure of Public Administration.....	22
2. Recruitment and Types of Employment in Public Administration.....	23
<b>I.PUBLIC ADMINISTRATION IN POLAND</b> .....	26
I.1. Basic Information about the Country.....	26
I.2. Structure of Public Administration.....	26
I.3. Types of Employment in the Polish Public Administration.....	28
I.4. Recruitment in the Polish Public Administration.....	34
I.5. Training in the Public Administration in General.....	35
<b>I. PUBLIC ADMINISTRATION IN PORTUGAL</b> .....	39
1. Basic Information about the Country.....	39
2. Structure of Portuguese Public Administration.....	40
2.1.Organizational Structure.....	40
2.2.Human Capital in Portuguese Public Administration.....	42
3. Types of Employment in Public Administration.....	45
4. Recruitment in Portuguese Public Administration.....	49

5. Training in Public Administration.....	51
5.1. Vocational Training for Portuguese Public Administration by Law.....	52
5.2. Vocational Training for Portuguese Public Administration by Practice.....	57
<b>II. Introduction to Chapter on Ethics.....</b>	<b>65</b>
<b>II. ETHICS PRINCIPLES FOR PUBLIC ADMINISTRATION EMPLOYEES IN THE CZECH REPUBLIC.....</b>	<b>67</b>
2.1 Definition of Ethics Principles for Public Administration Employees.....	67
2.2 Legal Forms of Documents Defining Ethics Principles to PA Employees.....	68
2.2.1 Usage of Codes of Ethics in the Public Administration in the Czech Republic.....	69
2.2.2 Activities in Preparing the New Code of Ethics for the Public Administration.....	70
2.2.3 Provisions.....	71
2.2.4 New Code.....	72
2.3 Legal Enforcement of Codes of Ethics in the Czech Republic.....	78
<b>II. ETHICS PRINCIPLES FOR PUBLIC ADMINISTRATION IN GERMANY.....</b>	<b>80</b>
1. Definition of Ethics Principles.....	80
2. Legal Forms of Documents Defining Ethics Principles to Public Administration Employees .....	88
3. Enforcement of Respecting Ethics Principles by PA Employees.....	98
4. Criminological Findings: Frequency of Sanctions for Bribery.....	103
<b>II. ETHICS PRINCIPLES FOR PUBLIC ADMINISTRATION EMPLOYEES IN POLAND.....</b>	<b>113</b>
1. Definition of Ethics Principles for Public Administration Employees.....	113
2. Legal Forms of Documents Defining Ethics Principles for Public Administration Employees.....	126
3. Sanctions for Misconduct of Public Officials.....	145
<b>II. ETHICS IN PORTUGAL.....</b>	<b>145</b>
1. Definition of Ethics Principles for Public Administration Employees.....	145
2. Legal Forms of Documents Defining Ethics Principles to Public Administration Employees.....	147
3. Enforcement of Ethics Principles by Public Administration Employees.....	149

<b>III. TRAINING OF PUBLIC ADMINISTRATION EMPLOYEES IN ETHICS PRINCIPLES IN THE CZECH REPUBLIC</b> .....	154
3.1 Background.....	154
3.2 Ethics and Training of Public Administration Officials in Ethics.....	154
3.3 Research on Vocational Training for Civil Service Employees in Prevention of Corruption.....	158
3.3.1 <i>Annotation and Evaluation of Courses</i> .....	161
<i>Summary</i> .....	178
3.3.2 <i>Workshops, Debates and Conferences on Ethics</i> .....	178
 <b>III. TRAINING IN ETHICS IN GERMANY</b> .....	 180
1. Training in Ethics During Initial Education: The example of Education in Public Administration at Universities of Applied Sciences - Study Programmes for the Higher Intermediate Service.....	180
2. Training in Ethics During Further Academic Education: The Example of Master Programmes.....	182
3. Training in Ethics During Continuing Education: The Example of Training for the Prevention of Corruption.....	182
Conclusion: Best-practices of Training for the Prevention of Corruption?.....	200
 <b>III. TRAINING IN ETHICS IN POLAND</b> .....	 204
Training of Public Administration Employees in Ethics Principles.....	204
1. Objectives of Training in Ethics Principles.....	204
2. Tools for Training in Ethics Principles.....	205
2.1. <i>University Formation in Ethics Available to Future Public Administration Employees</i> .....	206
2.2. <i>Vocational Training in Ethics Principles</i> .....	209
<i>Vocational Trainings on Anti-Corruption – Summary of Research Results and Conclusions.</i>	221
 <b>III. TRAINING ON ETHICS IN PORTUGAL</b> .....	 223
1. Vocational training on Ethics for Portuguese Public Administration.....	223
1.1. <i>Training on Ethics Provided by INA</i> .....	223
1.2. <i>Training on Ethics Provided by Training Sectorial Public Bodies</i> .....	229
1.3. <i>Graduate Studies in Public Administration</i> .....	234
2. Training in Prevention of Corruption.....	235



<i>2.1. Analysis of the Questionnaires.....</i>	236
<i>2.2. In Search of Good Practices.....</i>	238
<i>Conclusions.....</i>	243
<b>GENERAL CONSLUSIONS.....</b>	246
<b>BIBLIOGRAPHY AND SOURCES.....</b>	249
Czech Republic.....	249
Germany.....	251
Poland.....	252
Portugal.....	254
<b>ANNEXES</b>	
ANNEX 1 Ethics Chapter-Comparison Table	
ANNEX 2 Training in Prevention of Corruption-Evaluation Criteria	
ANNEX 3 EU Convention on Fight against Corruption	
ANNEX 4 Germany - Table 1: Education Systems in Public Administration – by States	
ANNEX 5 Germany- Table 2: Master Programmes – and Ethics Modules	
ANNEX 6 Germany- Table 3: Mission Statements and Statements on Ethics of Selected Public Organisations	
ANNEX 7 Poland-Additional Data on Polish Public Administration	
ANNEX 8 Poland-Dignity-Based Mangement in Public Administration: Civil Servants as Objects and Subjects of Public Service Ethos	
ANNEX 9 Poland-Ethical Principles in Polish Law	
ANNEX 10 Portugal- Proposal of Criteria for Evaluating on Ethic Training Practices	
ANNEX 10.1 Portugal- Good Practices Operational Definitions	
ANNEX 10.2 Portugal-Human Rights	
ANNEX 11 Portugal- Questionnaire Sent to Public Administration Bodies	
ANNEX 12 Portugal- Questionnaire Results	
ANNEX 13 Portugal- Ethics in Public Administration (Presentation by Dra. Isabel Corte Real,former Secretary of State for Public Administration)	

## I.PUBLIC ADMINISTRATION IN THE CZECH REPUBLIC

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### 1.1 Basic Information on the Czech Republic and Its Public Service

According to figures from the first half of 2012, the Czech Republic has an approximate population of 10,500,000 inhabitants and the unemployment rate is around 8%. Estimations and figures about the total number of people employed in the public administration as well as methodologies have varied in recent years, thus no relevant and guaranteed figures could not be provided. However, the figures for 2010 and 2011 provided by Ministry of Finance is the most reliable data available. Figures for 2012 are based on data from the Czech Statistical Office and represents a qualified estimation. These figures reflect people employed in state organizational units and do not involve employees in state enterprises, doctors and hospital staff, teachers, policemen, firemen and soldiers.

**Table 1: Number of Employees in State Administration in the Czech Republic**

<b>Number of employees</b>	<b>Real state 2010<sup>1</sup></b>	<b>Real state 2011<sup>2</sup></b>	<b>Real state 2012<sup>3</sup></b>
State administration in total	<b>159 854</b>	<b>151 754</b>	<b>163 848</b>

*1,2 Source: [www.mfcr.cz](http://www.mfcr.cz) – public finances / state budget/ fulfilling of state budget – national accounts (tab.no.10 – fulfilling of binding number of employees) – state organizational units and state allowance organizations)*

*3 Source: qualified estimation of Czech Statistical Office*

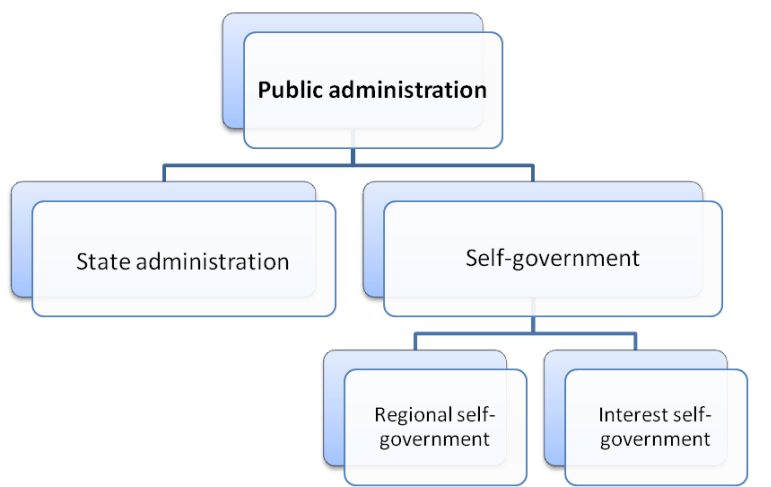
### 1.2 Structure of Public Administration

The system of public administration in the Czech Republic can be divided into state administration section and local administration section. The state administration comprises ministries and other central administrative authorities, whereas main bodies of local administration are municipalities (in total 6,245) and 14 regions.

In the Czech Republic, there was chosen the joint model of public administration in 2000 due to economic and demographic reasons. State administration is conducted not only by state employees (as it is in dual system), but the execution of chosen powers of state administration is conducted also by territorial self-governing units or corporations based on law delegation.

The basic structure of public administration in the Czech republic is displayed on the diagramme below.

Chart 1-Basic Structure



Most public administration institutions has a character of organizational units or allowance organizations and they are financed from public budgets, with the allowance by the founder or with finances obtained from the main activity. In compliance with the outlined division, public administration bodies can be structured in the following pattern:

**1. System of essential state authorities (legislative, executive and judicial) and their subordinate offices and institutions.** It concerns especially the Parliament and its office comprising two chambers – Chamber of Deputies and Senate, President of the Republic and his Office, Government and its Office, Czech National Bank, Supreme Audit Office, Constitutional court, courts and state assemblies.

**2. System of central authorities of state administration, which is represented by ministries and central authorities.** Beside all ministries, here belong for example Czech

Statistical Office, Office for the Protection of Competition, National Security Authority, Academy of Sciences etc.

**3. The system of territorial bodies of state administration**, which maintain and serve always only a part of the territory. The basic level of territorial organization of state administration had been represented by districts until 2002, subsequently the whole state administration executed by districts was delegated to municipalities and regions. The competence of some authorities is often defined independently on a current district territory (e.g. financial or customs offices).

**4. Subjects of interest self-government** – it concerns for example chambers of commerce, agrarian chamber, medical chamber, chamber of tax advisors, various entrepreneur unions etc.

**5. Self-governing bodies in form of regions and municipalities** - territorial self-government together with local state bodies creates the so called local public administration (or regional public administration).

### 1.3 Types of Employment

According to provisions of the Act no. 312/2002 Coll. about officials of territorial self-governing units, there are three types of employees in regional authorities: officials, senior officials and head of office. Officials are employees of a territorial self-governing unit's authority (municipal office, city hall, regional office). On the contrary, senior officials are being appointed by the head of office. The function of the head of office is conducted by a chief executive but in authorities where this position is not established (typically small municipalities), his/her duties are delegated to the mayor.

State administration service was intended to be regulated by law, but the act no. 218/2002 Coll. never came into effect so until the efficiency of the new act, there will be various legal regulations in the Czech public administration in this respect.

Currently, for central state authorities there is no unified division of types of employees and in particular authorities there can be applied different titles of functions. However, in general it follows the basic structure as in regional authorities. In both cases, the above listed officials are not officials literally but they are employees

in compliance with the Labour code, who are obliged to undergo training (more details in chapter 5). Their labour contracts are not time limited, but on the contrary to some other European countries, there is no tenure for officials in the Czech public administration.

According to the new proposed legal act about official of public administration (so called Legal Relations and Training of Public Administration Employees Act), which is to be implemented in January 2014, people working for public administration are to be divided into following essential categories: public administration employees (junior and senior positions), public administration officials (lower and higher officials), key collaborators (support for members of government or assemblies), heads of self-governing territorial unit authority and other employees. Whereas public administrative officials are entitled to conduct the patrimonial administration, employees provide support for the operation of patrimonial administration.

#### **1.4 Recruitment**

According to provisions of officials of self-governing territorial units act, there are following criteria applied for employment of officials. He/she has to be the Czech citizen or foreigner with the permanent residence in the Czech Republic, at least to be age of 18 and with no criminal record. Furthermore, he/she has to master the Czech language and comply with other requests for conducting administration activities. For the position of head of office, candidates have to have at least either three year experience as a senior employee, to conduct administrative activities in authorities of territorial self-government or state administration for the same period or to act as an assembly member of territorial self-governing unit for minimally three years. In general provisions, there is no request for the minimal reached educational degrees but in specific conditions for the particular position this can be applied. Moreover, the reached education degree influences belonging to a remuneration category. This approach and remuneration system is widely criticized as nontransparent and reflecting years of service ether than actual performance.

For every position, a call for applicants has to be published and a tender has to be open. The labour contract is not time limited but it does not mean a lifelong tenure for officials, which is being applied in several public administrations abroad. In case of

serious violation or repeated minor violation of his/her duties within during six months, he/she can be fired. Other reasons to be fired are a loss of enlisted competences or not passing the requested training within the set period.

In state administration authorities, there is no single recruitment process used. Essential applied criteria are similar but more positions than in regional authorities in senior and managerial functions are occupied on political rather than on purely professional terms. Moreover, on the contrary to self-governing territorial units, there is no legal obligation to hold tenders for available positions, which is another point that raises criticism.

However, methods of officials recruitment should be changed in the new legal act because new internal career system is to be launched. In order to apply for promotion, employees and officials have to work at least for 12 months period and agree to be involved in the career system. Available positions within the open competition are to be announced through Human Resources Portal. A vast majority of employees and officials is employed on a labour contract. Contracts are not time limited, but on the contrary to some other European countries, there is no tenure for officials in the Czech public administration.

There is no school in the Czech Republic, which would be in charge of preparing a universal official (such as Ecole Nationale d'Administration in France), who would be fully qualified for all agendas within the executed public administration. Nevertheless, state as well as private secondary schools and universities accredit many study programmes and fields of study with a focus on public administration.

### **1.5 Training in Public Administration**

In the Czech Republic, each branch of public administration follows a different legal act as far as it concerns training of officials.

On the state administration level a position of officials and requests on their training, skills and performance should have been specified in the legal act No. 218/2002 Coll., about service of state employees in administration authorities and about remuneration of these and other employees in administration authorities. Originally, the act should have come to effect on 1<sup>st</sup> January 2004, but it never happened so and the date had been repeatedly postponed. The latest announced date

was 1<sup>st</sup> January 2014. It is apparent that the current form of the act became obsolete to such an extent, that the new legal act is inevitable to be implemented. Instead, nowadays training of state administration officials is involved in the governmental resolution No.1542/2005. The new act should also deal with training of officials in territorial self-governing units, where training is currently described in the Act 312/2002 Coll.

### **1.5.1 Training of Officials in State Administration Authorities**

Training of employees in state administration is divided to initial training and proliferating training. Initial training comprises introductory training introductory initial training and following introductory training while proliferating training comprises managerial training, language training and training in other areas.

#### **Introductory Initial Training**

This type of training is launched immediately after the beginning of labour contract and must be terminated within three months. It involves basic information about execution of activities of the office and obligations of employees in times of crisis management, presentation of relevant legal acts and internal rules, basic work with information technologies, presentation of ethical code, presentation of practice of the respective office in terms of environmental approach, basic knowledge and skills necessary for realizing requested activities and any other information based on a decision of head of office. Introductory initial training is ensured by the administrative authority.

#### **Following Introductory Training**

This type of training is realized after passing introductory initial training and must be terminated within 12 months since the beginning of labour contract. It has been ensured by former Institute of State Administration and its successor organization Institute for Public Administration Prague. It focuses on following main areas: legal system of the Czech Republic, public administration, public finances, European Union and communication.

## **Proliferating Training**

### **Managerial Training**

State administration officials undergo managerial training, which is divided into basic that is focused on general **managerial training** and other that develops and proliferates knowledge and skills of managers according to individual needs and requests of authorities.

Basic managerial training is realized after passing introductory initial training. Employees, who were appointed, can start the managerial training on the day of beginning of their labour contract. This type of training is realized by Institute for Public Administration Prague.

### **Language Training**

Provision ensured by administrative authorities.

## **1.5.2 Training of Officials in Territorial Self-governing Units**

### **Legal Introduction**

Training of public administration officials is described in Act No.312/2002 Coll. and officials are obliged to proliferate their qualification through initial training, continuous training and special professional competence (preparation and testing). Senior officials are obliged to proliferate their qualification also at training of senior officials. Training might be provided by a legal body or individual entitled to training activity, i.e. organizations assigned by Ministry of Interior.

### **Initial Training**

A first step in the complex system of officials is **initial training**, which is mandatory for all officials without exception. It involves knowledge of basics of public administration, especially general rules of organization and activity of public administration and territorial self-governing unit, basics of public law, public finances, European administration law, rights, duties and ethics of officials. They are obliged to finish the initial training until three months since the beginning of their labour contract and prove it with a certificate issued by the training institution.



### **Continuous Training**

In the public administration changes of crucial character have often been realized and therefore it is necessary to update, proliferate and extend knowledge of officials according to the needs of authority and official. For this sake the so called **continuous training** is dedicated. It is realized in a form of courses. An official has to undergo the training in range of 18 days during 3 years. A plan of his/her training has to be processed within one year after the start of his/her occupation. At least once in 3 years period the following of the plan is analysed and based on the results of evaluation, it might be modified.

### **Special Professional Competence**

The special professional competence consists of a summary of knowledge and skills necessary for the operation of activities set by the relevant legal regulation. The special professional competence has a general and a special part. The general part involves knowledge of basics of public administration, its organization and operation, knowledge of the legal act about municipalities, the legal act about regions and administrative procedure. The special part involves knowledge of authority of bodies of territorial self-governance and territorial self-governing authorities related to these activities and capability of their application. In total, there are currently 32 special professional competences listed in the relevant regulation.

Special professional competence is certified by an exam. It has a written and oral part and it must be taken by 18 months after the beginning of employment contract. If an official fails, he/she has two other attempts to pass the exam. In case of a repeated failure, he/she loses his/her occupation or has to be replaced for a different kind of agenda.

Officials can undergo the preparation for undertaking the exam of special professional competence individually or in training institutions which have the accreditation of the appropriate training programme. However, the exam can be realized solely at the the only institution determined for this purpose – Institute for Public Administration Prague.

### Training of Senior Officials

Senior officials and heads of authorities participate at the training which is focused on their needs. The **training of senior officials and heads of authorities** comprises a general and special part and it is focused on managerial knowledge and skills in the area of public administration and on the overview of conducted activities by subordinate officials. A senior official is obliged to finish this training within two years since the beginning of his/her function. For their further training senior officials and heads of authorities utilize beside other forms also courses of continuous training. Officials who undergo this type of training have to stay under the employment contract with the respective public administration authority for at least three years, otherwise he/she has to cover the costs expended for his/her training.

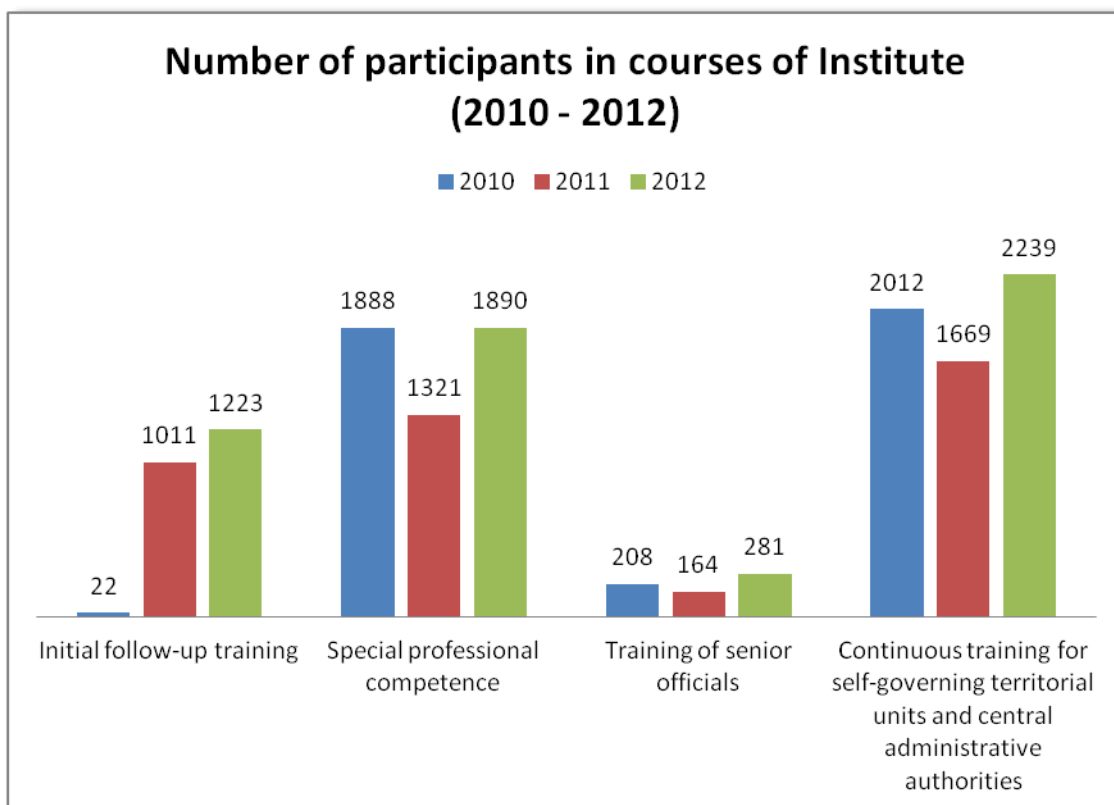
**Table 2 Global Information on Institute's Training Activity in 2012**

<b>type of training event</b>	<b>number of courses</b>	<b>% ratio</b>	<b>aggregate number of participants</b>	<b>% ratio</b>
preparation for special professional competence exams	101	39,1	4419	53,3
catalogue courses of continuous and proliferating training	68	26,4	1443	17,4
in-house courses on demand (continuous and proliferating training)	42	16,3	796	9,6
training of senior officials and heads of authorities	25	9,7	281	3,4
initial follow-up training (e-learning)	12	4,7	1223	14,7
training of elected representatives	1	0,4	17	0,2
eGovernment courses	3	1,2	46	0,6
courses for internal lecturer's staff	6	2,3	73	0,9
<b>total</b>	<b>258</b>	<b>100,0</b>	<b>8298</b>	<b>100,0</b>

**Table 3 Numbers of Participants of Particular Types of Institute’s Courses in 2010 – 2012**

**Number of participants in courses of Institute**

	<b>2010</b>	<b>2011</b>	<b>2012</b>
initial follow-up training	22	1011	1223
special professional competence	1888	1321	1890
training of senior officials	208	164	281
continuous training for self-governing territorial units and central administrative authorities	2012	1669	2239



**Note to illustrate these figures:**

- Institute for Public Administration Prague as a training institution set in law was in 2011 one of 305 accredited institutions providing an offer of training events for the public administration sector in the Czech Republic.
- In 2011, 68 administrative authorities provided information about the training activity. They were sending their employees mainly on departmental training (52,545). High figures of graduates of both initial trainings point at movements in authorities and newcomers employees. Authorities still dedicate a great attention to the language training of their employees.

**Table 4 General Overview of Central Administrative Authorities Feedback on Training**

<b>General overview from replies of central administrative authorities (except Institute):</b>	<b>Number of graduates</b>
	<b>Initial training</b>
Initial follow-up training	2013
Basic managerial training	903
Other managerial training	3536
Standardized language exams	546
Other language training	4118
<b>Training in other areas set by government:</b>	
Environmental minimum	1439
EU minimum	377
Equal gender opportunities	1805
<b>Training in other areas set by administrative authority:</b>	
- departmental professional training	52545
Basic training of lecturers	158
<b>Total number of certificates issued by administrative authority</b>	<b>71184</b>

## I. BASIC INFORMATION ON GERMANY AND ITS PUBLIC SERVICE

*Kerstin Wüstner*

There are about 82 million inhabitants in Germany (2011). The working population is nearly 42 million and 2.8 million are unemployed, which is an unemployment rate of 6.6% (2012).<sup>1</sup>

In 2010 4.5 million were working in the public service. Since 1991 the number of staff has decreased dramatically. While there were about 6.7 million employees in the public service in 1991, their numbers dropped to 4.5 million in 2010, which reflects a reduction of one third. Nowadays, the percentage of people working in the public service in relation to total employment is about 13% (see table 1).

Table 1: Percentage of Employees in the Public Sector in Relation to Total Employment – Displayed with Reference to Employment Setting<sup>2</sup>

	1991	2006	2007	2008	2009	2010
Federation (“Bund”)	1.6	1.6	1.6	1.5	1.5	1.5
States (“Länder”)	6.7	6.0	6.6	6.4	6.5	6.5
Local authorities (“Kommunen”)	5.2	4.9	4.9	4.8	4.8	4.9
Total	13.5 <sup>3</sup>	12.5	13.0	12.8	12.8	12.9

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<sup>1</sup> Source: destatis.de (Statistisches Bundesamt).

<sup>2</sup> Source: destatis.de (Statistisches Bundesamt).

<sup>3</sup> The rate is higher (17%) when the numbers of staff who were employed by the railway (“Deutsche Bundesbahn, Reichsbahn”) and post office (“Deutsche Bundespost”) are included. Both organisations have been privatised later, which led to an enormous reduction of number in staff in the public sector.

## 1. Structure of Public Administration

*Marianne Egger de Campo*

The German system of governance and of public administration is composed by the following three main categories<sup>4</sup>:

- Bundesverwaltung (administration of federation),
- Landesverwaltung (administration of federal states),
- Kommunalverwaltung (administration of local authorities).

The **two main principles** of the German state are essential:

- Federalism (i.e. division of power between the central federal government and the 16 state government)
- Separation of powers (legislature, executive and judiciary power)

Federalism means that the federation of individual states (= Bundesländer) guarantees each states' sovereignty and assigns specific competences to each state.

The federalist principle is interwoven with the German system of the separation of powers, consequently the legislature, judiciary, and executive power is exerted on each of the three levels: federal state (Bund), the individual states (Bundesländer), and local authorities.

According to the German constitution (Grundgesetz Art 30, Art. 83) the individual states (Bundesländer) and the local authorities (Kommunen) are mainly responsible for public administration.

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<sup>4</sup> For this whole section cf. Bogumil, Jörg/Jann, Werner: Verwaltung und Verwaltungswissenschaft in Deutschland: Einführung in die Verwaltungswissenschaft, [Introduction into Administration Science] 2nd edition, Wiesbaden 2009, pp. 74 – 104.

## 2. Recruitment and Types of Employment in Public Administration

*Kerstin Wüstner*

As described before, Germany's administrative system is framed by the country's constitutional principles. Due to these, public administration is a complex system.

Employees in the public service may be employed by the federation ("Bund"), the states ("Länder") or by local authorities ("Kommunen"). Further, semi-state employers ("mittelbare Staatsverwaltung") are to be mentioned. Table 2 presents the numbers of people working in each organisational setting.

Table 2: Number of Employees by Setting (2010)<sup>5</sup>

	No. of employees in 1,000
Federation ("Bund")	530.3
States ("Länder")	2 317.8
Local authorities ("Kommunen")	1 355.2
Social insurance agencies and Federal employment office <sup>6</sup>	382.8
Total	4 586.1

Employment of staff in public administration can have the status of civil servants ("Beamte"), they also can be employed as public employees ("Angestellte") or as wage earning blue collar workers ("Arbeiter"). In general, civil servants have tenure, with the exception of provisional civil servants or some civil servants in higher education.

In 2010, the public sector employed more than 1.6 million civil servants and 2.7 public employees ("Angestellte" and "Arbeiter").

Further, there are four career paths in the public service:

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<sup>5</sup> Source: destatis.de (Statistisches Bundesamt) (2010).

<sup>6</sup> In some statistics, this sub-sector is not included. This can explain discrepancies within the data.

- (1) In the first level is the ordinary service work for example office clerks (Oberamtsgehilfe) or prison guards (Justizwachtmeister).
- (2) The second level is the intermediate service, e.g. secretaries (Sekretär) are classified here.
- (3) One level higher is the higher intermediate service. "Inspectors" (Inspektor) or "councillor" (Amtsrat) are employment titles in the higher intermediate service.
- (4) The higher service is the highest career level and offers highest income opportunities and a considerable range of decision making power. For example, "federal councilor" (Regierungsrat) or "state secretary" are in the higher service.

#### **Four Career Paths**

Training of the administrative staff is largely defined by each state, most of which have their own colleges of public administration.

The preconditions for admission to the above mentioned career paths vary considerably:<sup>7</sup>

- For the *ordinary service*, applicants need to have successfully completed secondary school education or hold a recognised equivalent. The training, e.g. in order to become i.e. a prison guard, takes six months.
- In order to get into the *intermediate service*, applicants are required to have successfully completed a general school education (10 years) or attended a secondary modern school. The apprenticeship takes two years and bases on the principle of dual education with practice and theoretical training at a specific professional school.
- In order to get into the *higher intermediate service*, applicants need to complete education at a University of Applied Sciences (Fachhochschule) or another school education qualifying for admission to university level or a recognised equivalent. In general, students attend a University of Applied Sciences. This can either be an internal study programme of public administration, or an external University of Applied Sciences which has the same status as any other college of higher education.

Some years ago, students were mostly hired as provisional civil servants by their employer and consequently received trainees' remuneration. They could be sure to

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<sup>7</sup> see BMI (without year): The public service in Germany and Reichard & Röber, 2009.



get a job after the exams. Thus, they had a double status of student and provisional civil servant (candidate or “Anwärter”). This system is advantageous for the students/trainees, as it offered students security (position and payment) and strengthened early commitment to the organisation. By now, some states have given up these internal Universities of Applied Sciences also because of economic reasons. Hence, students don’t receive trainees’ remuneration anymore and they have no longer a job guarantee. For example, this is the case for the states: Berlin, Brandenburg, Bremen, Hamburg und Saxony-Anhalt. Other states still refer to the “old” system, such as Bavaria, for example, where students earn almost 1 000 € per month.

- The fourth career path is the *higher service*. Here, a university degree is required. There is a strong tendency to rely upon law degrees. Yet other degrees, e.g. a degree for economics, can be accepted as well in exceptional cases. Recently, also Master degrees (for example Master of Public Administration) have opened up the opportunity to apply for the higher service, too.

Civil servants are employed subject to revocation during the preparatory service. The duration of this preparatory service differs between the four career paths, e.g. it is six months in the ordinary service or two years in the higher service.

In addition, the terms of probation differ, too:

- in the ordinary service 1 year
- in the intermediate service 2 years
- in the higher intermediate service 2½ years
- in the higher service 3 years

## **I. PUBLIC ADMINISTRATION IN POLAND**

*Paula Anna Borowska*

*Patrycja Joanna Suwaj*

*Roxana Zyman*

### **I.1. BASIC INFORMATION ABOUT THE COUNTRY**

Poland has a total area of 312.575 km<sup>2</sup> and a population of 38.5 million. The capital city is Warsaw and the official language is Polish. The status is a parliamentary republic.

The last two decades have brought great transformations in Poland, like in all countries from Central and Eastern Europe, which have included the development of a new state system founded upon democratic principles. Poland has been a NATO member since 12.03.1999 and a EU member since 1.05.2004.

### **I.2. STRUCTURE OF PUBLIC ADMINISTRATION**

The new Constitution of the Republic of Poland, adopted by the National Assembly on 2 April 1997 defines the Republic of Poland as a unitary state with a parliamentary and cabinet-based form of government. Article 10 stipulates that “1. The system of government of the Republic of Poland shall be based on the separation of and balance between the legislative, executive and judicial powers”, and “2. Legislative power shall be vested in the Sejm and the Senate, executive power shall be vested in the President of the Republic of Poland and the Council of Ministers, and the judicial power shall be vested in courts and tribunals.”

The central governmental administration can be divided, according to the scope of its activity, into the central governmental administration and the central governmental administration as represented in the voivodeships or provinces. The central governmental administration consists of the Prime Minister, Council of Ministers, Ministers and central bodies. As of March 2011, the central governmental administration includes the Chancellery of the Prime Minister (KPRM), Ministries as well as 17 central bodies of the governmental administration. The Council of Ministers

uses regulations to establish, abolish, or transform a particular Ministry. The detailed organizational structures of each Ministry, including the numbers and names of departments, offices or other units within it, are set out in a statute conferred by the Prime Minister by virtue of an Ordinance. The central bodies of the governmental administration are in turn created by virtue of an act.

The territory of Poland is divided into voivodeships (provinces); these are further divided into powiats (counties), and these in turn are divided into gminas (communes or municipalities). Poland currently has 16 voivodeships, 379 powiats (including 65 cities with powiat status), and 2,478 gminas.

## **Competences of Each Level of Government**

### The State Level and the Central Government Level

After 1989 democratic rule was re-established in the form of the current Poland, constitutionally known as the "Third Polish Republic". Poland is a democracy, with a president as a head of state, whose current constitution dates from 1997. The state is responsible for legislature, defence, taxes, finance and foreign policy. On this level government officials are employed.

The government structure centers on the Council of Ministers, led by a prime minister. Polish voters elect a bicameral parliament consisting of lower house (Sejm) and Senate (Senat).

According to the Polish Constitution (Constitution Art 146, Art 163), local government and central government administration are responsible for public administration.

Tasks at the level of government (the executive power) are defined by principal civil service values which are regulated by the Constitution (Art 153) and Article 1 of the Law on Civil Service. It is explicitly stated that the civil service is being established in order to ensure professional, reliable, impartial and politically neutral execution of tasks of the State.

### The Local Government

Poland's current voivodeships (provinces) are largely based on the country's historic regions, with some of them centred on and named for individual cities. Administrative authority at voivodeship level is shared between a government-appointed voivod (governor), an elected regional assembly and an executive elected by that assembly.

The voivodeships are subdivided into powiats, and these are further divided into gminas (known as communes or municipalities).

Each gmina carries out two types of tasks: its own tasks, and commissioned ones. Own tasks are public tasks exercised by self-government, which serve to satisfy the needs of the community. Own tasks include a variety of matters for ex.: the spatial harmony, the real estate management, the environmental protection and nature conservation, the water management, country roads, public streets, bridges, squares and traffic systems, water supply systems and source, the sewage system, removal of urban waste, water treatment, maintenance of cleanliness and order, sanitary facilities, transport, health care, welfare, care homes, subsidized housing, public education, cultural facilities including public libraries and other cultural institutions, historic monuments conservation and protection, etc.

Powiats have relatively limited powers, since many local and regional matters are dealt with either at gmina or voivodeship level. Some of the main areas in which the powiat authorities have decision-making powers and competences include: education at high-school level (primary and middle schools are run by the gminas), healthcare (at county level), public transport, maintenance of certain designated roads, land surveying, issuing of work permits to foreigners and vehicle registration.

Objectives of voivodeships include for ex.: public education, including higher education, health promotion and protection, culture and heritage conservation and protection of monuments, social service, family support, environment, water management, including flood control, public transport and public roads, physical culture and tourism, to protect the rights of consumers, defence, public safety, activities in the field of telecommunications and protection of workers' claims in the event of insolvency of the employer, etc.

### **I.3. TYPES OF EMPLOYMENT IN THE POLISH PUBLIC ADMINISTRATION**

The Civil Service Act (dated 5 July 1996), categorized posts in public administration. It separated political positions such as the Minister, Deputy Minister, ministerial adviser, the Voivode -- in the provincial part of the central government administration, and those that were subject to change with a change of government from less political

positions. The remaining posts were to be politically neutral and expected to be held by the same individuals irrespective of political changes.

A new Civil Service Act was passed on 18 December 1998, and came into force on 1 July 1999. The Act provided for the Civil Service Corps to carry out tasks of the state in a professional, diligent, impartial and politically neutral manner. The Civil Service Corps was made up of Civil Service employees working on the basis of employment contracts. It also included Civil Service officials who were to be nominated and who worked in offices of the governmental administration, Ministries, central offices and offices under them, such as the Tax Chambers and Offices, Maritime Offices, State Archives, Voivodeship Offices, and various Inspectorates at voivodeship and powiat levels. Local, county-level, and regional governments and personnel were subject to separate regulations. The post of Head of the Civil Service, associated with a five-year tenure, conferred upon its holder a status as a member of the central governmental administration, but not the title of Minister. However, the ultimate leadership of the Civil Service Corps was in the hands of the Prime Minister. Each organization also came to have a Director-General post whose holder was to ensure functioning and continuity of operation, conditions of work, and general compliance with the Labour Law. Directors-General also directly supervised organizational units within the agency as a whole.

On 21 November 2008, the Sejm enacted the new Civil Service Act, which entered into force on 24 March 2009 and ushered in a third period of development of the Civil Service that was characterized by more pragmatic solutions. Higher posts in the public administration would now be filled by internal promotion, or in some cases by competitions that given Ministries or offices organize. The Act reinstated the position of Head of the Civil Service. He or she falls into the framework of the Chancellery of the Prime Minister and is supported by one of its units-Department of Civil Service.

Poland's Civil Service system is a mixed system in which the prevalent features are typical of the career system due to the preparatory service, stability of employment for Corps members, automatic adjustment of remuneration for inflation, and the de facto correlation between the number of years in post and compensation. The principles typical of the career system are more visible in the case of Civil Service Officials than for the Civil Service Employees. Elements of the position system will be seen in cases of

open, competitive recruitment, the awarding of bonuses for competences appropriate to the given post, and the filling of higher positions by means of competitive entry.

### **Civil Service Corps**

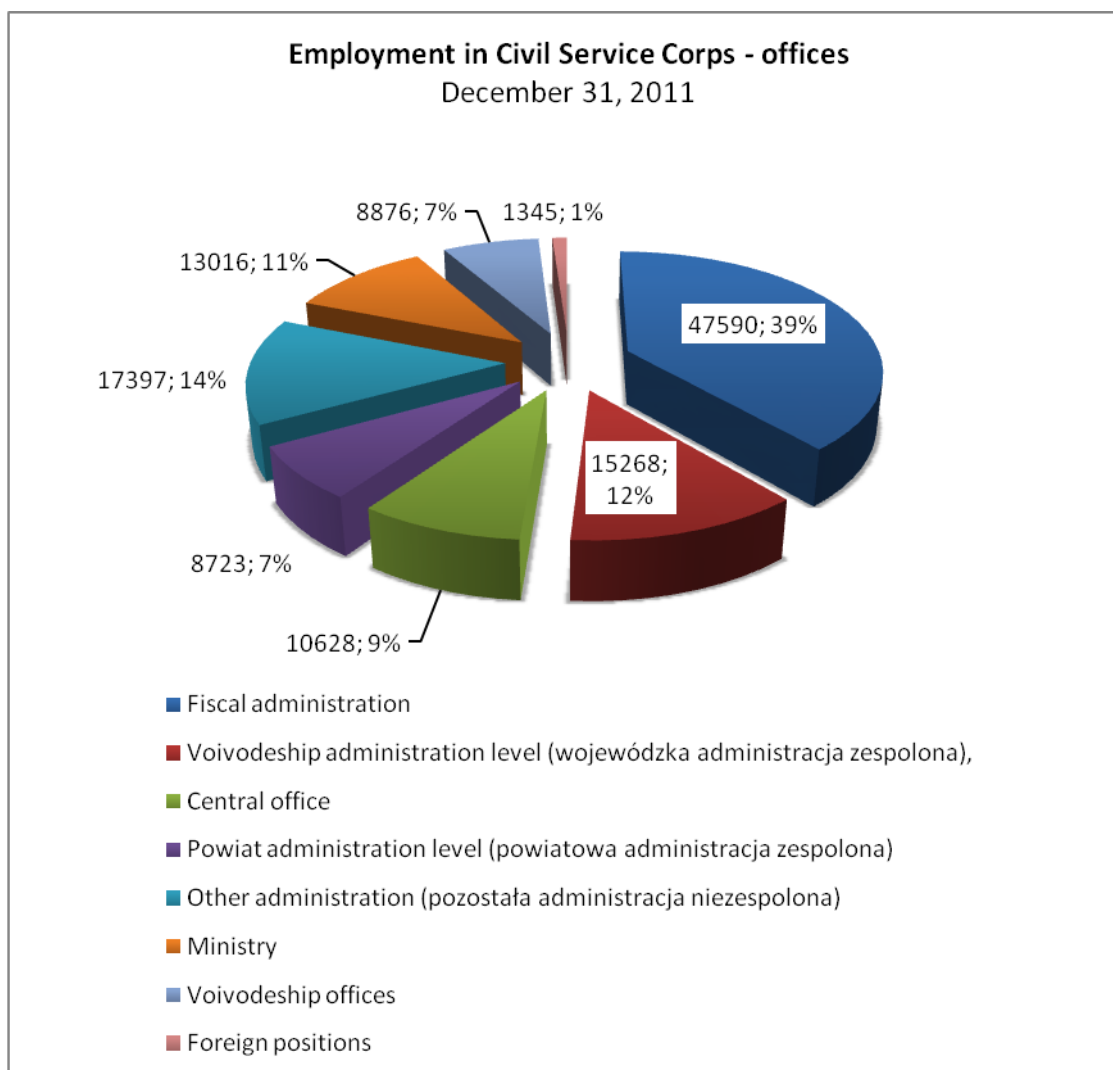
Article 153 of the Constitution of the Republic of Poland (1997) states that in order to ensure a professional, reliable, impartial and politically neutral discharge of the State's obligations a corps of civil service shall operate in the organs of Government administration. The Prime Minister shall be the superior of such corps of civil service.

According to the Act of 21 November 2008 on Civil Service, the Civil Service Corps shall consist of employees employed in officials` positions in:

- the Chancellery of the Prime Minister
- offices of Ministers and Chairpersons of Committees which form part of the Council of Ministers and offices of central agencies of the Government administration
- voivodeship offices and other offices which are part of the apparatus supporting local agencies of Government administration subordinated to Ministers or central Government administration
- headquarters, inspectorate offices and other organisational units which are part of the apparatus supporting heads of unified voivodeship services, inspections and guards, as well as heads of powiat services, inspections and guards.

## Human Capital of the Polish Public Administration

Diagram 1



<http://dsc.kprm.gov.pl/zatrudnienie-i-wynagrodzenia-w-sluzbie-cywilnej>

The most numerous offices belong to the fiscal administration, which consist of Inland Revenues, Revenue offices and Fiscal Audit Offices.

As of 2011, the wider public administration sector consisted of 975,150 employees, Government and state administration: 730,450 employees, and self-government administration: 244,700 employees. The Civil Service Corps comprised (in 2011) 122,842 employees. Out of these, Civil Service employees have employment relationship on the basis of the employment contract - number: 116,859 and Civil Servants have employment relationship on the basis of appointment - number: 5,983.

Additional related data on the Polish public administration is included in a supplementary section at the end of the Polish Report.

**Differences between Civil Service Employees and Civil Service Corps Members**

The differences between Civil Servant vs. Civil Service Employee relate to:

- a higher stability of employment relationship - dismissal reasons/possibilities strictly listed in the law;
- additional privileges - remuneration, leave;
- broadened scope of duties and restrictions, including restrictions relating to public and income-generating activities.

**1) Duties of the Civil Service Corps Members**

As part of the duties of Civil Service Corps members, they are particularly obliged to:

- obey the Constitution of the Republic of Poland and other provisions of law
- protect the interests of the State and human and civil rights
- manage public resources reasonably
- perform their duties conscientiously, impartially, efficiently and timely
- preserve statutory confidential information
- develop professional knowledge
- behave in a dignified manner in and outside service.

Further duties of the Civil Service employees and Civil Servants:

Civil Service employees	Civil Servants
<ul style="list-style-type: none"> <li>- cannot be guided in executing their duties neither by their particular nor any group interests;</li> <li>- shall not be allowed to publicly manifest their political beliefs;</li> <li>- shall not be allowed to participate in strikes or actions of protest, which would interfere with regular functioning of an Office;</li> <li>- shall not be allowed to combine employment with the Civil Service with a councillor’s mandate;</li> </ul>	



- are not allowed to hold positions within trade unions.	
Only those occupying senior positions – are not allowed to establish or participate in political parties.	All of them - are not allowed to establish or participate in political parties.

## 2) Rules Regarding Additional Income-Generating Activities

Rules regarding additional income-generating activities:

Civil Service employees	Civil Servants
Both Civil Service employees and Civil Servants are not allowed to undertake additional employment without permission from the Director General, or to perform activities or actions contradictory to his/her duties stipulated in the law or undermining the confidence in the Civil Service.	
Only those occupying senior positions cannot undertake additional income-generating activities without permission from the Director General.	All of them - cannot undertake additional income-generating activities without a permission from the Director General.

## 3) Differences Concerning Remuneration

Rules regarding remuneration

Civil Service employees	Civil Servants
<ul style="list-style-type: none"> <li>- a base salary specific to a given position;</li> <li>- a bonus for many-year duration of employment with the Civil Service.</li> </ul>	
	Civil Service bonus based on the service rank held.

#### **I.4. RECRUITMENT IN THE POLISH PUBLIC ADMINISTRATION**

Each and every citizen shall be entitled to obtain information about vacancies within the Civil Service (Public Information Bulletin). The recruitment to the Civil Service shall be publicly open, transparent and based on the competition principle (responsibility of DGs), a contract of employment for an indefinite period of time. At first employment in the Civil Service begins with a contract for 12 months and obligation of preparatory service and first evaluation. The senior positions consist of: Directors General, directors of departments or equivalent units and their deputies.

##### **Appointment to the Civil Service**

A limit of appointments is determined by the Budget Law.

Those who can become civil servants are divided in two categories:

- 1) graduates from the National School of Public Administration (KSAP), who apply for appointment;
- 2) civil service employees who successfully complete the qualification procedure for appointment. The admission procedure for nomination to the Civil Service organized every year by KSAP.

The differences between civil servant and civil service employee include:

- higher stability of employment relationship, with the dismissal reasons/possibilities strictly listed in the law;
- additional privileges – e.g. concerning remuneration and leave;
- broadened scope of duties and restrictions, such as restrictions relating to public and income-generating activities.

##### **Performance Evaluation of Civil Service Corps Members**

The first evaluation takes place after preparatory service. Afterwards, there is a periodical evaluation for all Civil Service Corps members, carried out by their direct superior every 24 months. Two subsequent positive evaluations result in promotion to higher Civil Service rank (civil servants only). The performance evaluation shall contain conclusions concerning the individual professional development programme.

## **I.5. TRAINING IN THE POLISH PUBLIC ADMINISTRATION IN GENERAL**

### **Training in Civil Service in Poland**

Training in the Polish civil service can be divided among:

- central trainings – planned, organized and supervised by the Head of Civil Service;
- general trainings - planned, organized and supervised by Directors General of Office;
- trainings under individual professional development programmes of Civil Service Corps members - planned, organized and supervised by the Director General of Office in agreement with a Civil Service Corps member;
- specialist trainings connected with typical tasks of office - planned, organized and supervised by the Director General of Office.

The Institutions responsible for the training of Civil Servants in Poland are:

- The National School of Public Administration (KSAP)
- The Diplomatic Academy
- Other institutions: public and private universities, non-governmental organizations, think tanks and private companies

### **National School of Public Administration (KSAP) – Formation and Continuing Education of Civil Service Corps Members**

The National School of Public Administration (KSAP) is engaged in training of professional Civil Servants. Its training programme is inter-disciplinary, offering full necessary preparation for those who will go on to hold executive, expert or managerial posts in the Polish governmental administration at central and provincial levels. In this way, the students of KSAP enjoy the opportunity to shape their own career paths to some extent<sup>8</sup> and (what is more important) students of these programmes enter the career path of higher intermediate service.

KSAP is a Government agency reporting directly to the Prime Minister, largely funded from the state budget, though entitled to earn its own income. It retains its autonomy in substantive areas.

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<sup>8</sup> <http://www.ksap.gov.pl/ksap/content/view/302/176/>

The Government's decision to establish it was taken in May 1990. The first recruitment to the School took place between April - June 1991. Following the Act on the National School of Public Administration (14 June 1991), and the official opening of the School and launching the training program (4 September 1991), on 15 April 1993 the first graduates left the School.

KSAP's mission is to train present and future civil servants who will take responsibility for their country's affairs, be sensitive to what matters to the citizens, act in professional manner and be up to the task of working in an international environment.

The main functions of KSAP are:

- intramural training;
- continuing training;
- cooperation with offices and institutions in the field of public administration;
- admission procedure for nomination to the Civil Service;
- think tank functions.

The aim is that these civil servants should be competent, politically neutral and capable of being held to account for all matters conferred upon them.

The mission of KSAP is achieved by:

- intensive, full time, 18 months postgraduate training of future civil servants;
- training of those already employed in the administration (continuing training) – approx. 4000 yearly;
- cooperation with other institutions (universities, public administration), including international cooperation.

### **Intramural Training of Future Civil Servants at KSAP**

The recruitment for the intramural training is based on an open competitive selection. The candidates must have a Master degree, be no more than 32 years old. The competitive procedure has 4 stages: general knowledge and psychological test, linguistic skills, written exam and interview. The enrollment between 1991-2008 took place once a year (50-60 students), between 2009-2011 twice a year (30-40 students / promotion) and in 2012 – once a year.

The program cycle lasts 18 months. The knowledge and skills curriculum comprises of courses which are general (mandatory for all) and specialized courses chosen by students. There is a strong practice orientation, focusing on both personal and collective work, including national and international internships, study tours (EU institutions and national administration of other EU member states), weekly conferences and open debates with relevant personalities (academics, politicians, diplomats etc.), participatory interactive forms of teaching (practical exercises, problem related workshops).

Subjects of training for Polish Civil Servants include:

- skills, not only academic knowledge;
- managerial skills, coordination, cooperation, consensus building;
- leadership, leading others, setting organizational goals, taking risks, achieving results, knowing how to implement change;
- oral and written communication, incl. how to write governmental papers;
- teamwork, persuading others, inclusiveness, not individual interests;
- maintaining core values, client/citizen orientation, focus on weak part of society, ethics, empathy;
- new issues that are starting to be increasingly considered during training are challenges for Public Administrations in EU countries, such as limited budget which leads to cuts in PA expenses; higher expectations of the society, which puts pressure on PA to becoming more customer-oriented, focused on quality improvement and participation; pressure to increase effectiveness, which leads to evaluation and remuneration based on individual merits;
- foreign languages.

More than 1000 graduates have completed their studies at the School. Among 6000 nominees of the Polish civil service approx. 14% are KSAP graduates.

### **Continuing Education of Civil Service Corps Members at KSAP**

Approx. 52000 members of the Civil Service Corps have been trained at KSAP so far. 100 courses provided in Polish language are on offer and additional 12 training courses are provided in English. KSAP also delivers tailored training programs - e.g. training preparing 1200 Polish civil servants for the EU Presidency.

## I. PUBLIC ADMINISTRATION IN PORTUGAL

*Helena Rato*

*Matilde Gago da Silva*

*Margarida Quintela Martins*

*César Madureira*

### 1. Basic Information about the Country

Portugal is a parliamentary, constitutional and an unitary republic with two Regions Autonomous – Azores and Madeira. It is an independent country since 1143. Portugal was the European Country to initiate the movement of maritime discoveries in the renaissance period, which led to the first globalisation. It is a founding member of the UN the European Union (including the Eurozone and the Schengen Area), NATO, OECD and the CPLP (Community of Portuguese Speaking Countries). CPLP is founded by Brazil, Angola, Mozambique, Guinea-Bissau, Cape Verde and East Timor, all countries that have being part of the Portuguese colonial empire<sup>9</sup>.

The Portuguese territory has a total area of 92,212 km<sup>2</sup>, including the Atlantic archipelagos of Azores and Madeira. It is the most western country of mainland Europe and it is bordered by Spain to the north and east and by Atlantic Ocean to the west and south.

Portugal's Exclusive Economic Zone is the 3<sup>rd</sup> largest of Europe and the 11<sup>th</sup> largest in the world, covering 1,727,408 Km<sup>2</sup>

According to the 2011 census, resident population in Portugal was 10,561,614, including about 440,000 immigrants, 25.5% of whom are Brazilian. However, on the other hand Portugal is still an emigration country. Currently Portuguese emigrants (first, second and third generation) are about 5 million.

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<sup>9</sup> Brazil became independent in 1822. All the other countries became independent following the overthrow of Portuguese dictatorship in 1974, with the exception of east Timor that suffered Indonesia occupation till 1999.

Over the last three decades Portugal experienced a remarkable development that radically dropped from 24 to 3 deaths per a 1000 newborns, and unskilled workforce dropped from 61 to 26%, although this score is far below European standards.

The sectorial composition of GDP and labor force also underwent a profound change. In 2011, the tertiary sector contributed to 75% of GDP, against 23% of the secondary sector and 2% in the primary sector. Portuguese female participation rate in the labor market is 61%, one of the highest in Europe.

However, Portuguese economy keeps some weaknesses, namely a structural external trade balance deficit and a structural fiscal deficit. Such a weaknesses turned for the worse following the 2008 world financial crisis and austerity programs applied since Portugal was put under the EU excessive deficit procedure in 2005 (Rato, 2012).

Subsequently, Portugal is in economic recession, since 2010, unemployment rate more than doubled, average households' income is decreasing and Portuguese qualified emigrations is spreading.

Actually, the active population in Portugal is over 5 millions.

Portuguese Public Administration is an important employer, by absorbing about 11% of active population; 75% of Portuguese public employees are in Central Public Administration, 20% are in Local Administration and 5% in regional Administration.

## **2. Structure of Portuguese Public Administration**

### **2.1. Organizational Structure**

The Portuguese public administration is composed by central and autonomous public administration.

The Central Administration competencies covers all matters and is conducted throughout the country, while the bodies, agents and services involved in regional and local administration (autonomous) have their own competencies limited to matters of interest to the respective communities. Some competencies however, are



constitutionally and statutorily limited to the Central Administration (for example, national defense and foreign affairs).

### **Central Public Administration Comprises State Direct and Indirect Administration**

#### *State direct administration*

The State direct administration is composed by all public bodies that are under the direct dependency of Portuguese Government and are integrated in the organic structure of ministries.

#### *State indirect administration*

The State indirect administration is composed by public entities that have legal responsibility as well as administrative and financial autonomy. However, top leaders of these entities are appointed by line ministers and have to accomplish ministers' orientations. Public Institutes, Public Agencies, Public Universities, Regulatory Entities, Public Hospitals, including Public Hospital managed by private entities, as well as Public Enterprises belong to that category.

### **Autonomous Administration**

The Autonomous administration has also legal responsibility, administrative and financial autonomy and besides it is independent to define its own objectives and public policies.

Belong to the autonomous administration the Autonomous Regions of Azores and Madeira as well Municipalities and Parishes, which compose the Local Administration and Public Associations.

Public associations are non profit organizations and their rules have to be approved by the Government in order to accomplish specific interests. Professional Orders, Chambers of Solicitors, Clearing Agents and Auditors belong to that category, as well as same Foundations.

## 2.2. Human Capital in Portuguese Public Administration

Human capital can be defined either as investments on education and training or as personal innate abilities and acquired skills by learning and training<sup>10</sup> but also as abilities and skills held by all employees of an organization and that result in work capacity and performance of the organization. Within the scope of this study it's applied the latter concept of human capital, which is represented by the distribution of public administration employees by education level.

Usually, central public administration concentrates about 80% of Portuguese public employment. Since 2010, there was a significant decrease in the number of central public administration's employees, what is essentially due to early retirement (Table 1) induced by reforms in the pension system less favourable to future pensioners, but also by downsizing public employees due to austerity measures.

**Table 1 - Contribution of Public Administration (a) to Employment (b)  
(2005 – 2012)**

	2005	2008	2010	2012
Central Administration	14.7	13.2	13.4	9.6
Regional and Local Administration (Municipalities)	2.9	3.2	3.5	3.3
<b>Total</b>	<b>17.6</b>	<b>16.4</b>	<b>16.9</b>	<b>12.9</b>

Source: BOEP (Public Employment Observatory Newsletters), December 2011

a) Not included employment contracts for services

b) Employees in paid employment; concerns only employees on behalf of others

Employees in central public administration have much higher education level than private employees (Table 2) due to a sustainable employment policy both by reducing

<sup>10</sup> Sandrani, Paulo (org.) – Novo Dicionário de Economia, 4.th edition, São Paulo, 1994, cit. by Moretto, Clide Fátima in [www.upf.br/cepeac/download/rev\\_no9\\_1997\\_art4.pdf](http://www.upf.br/cepeac/download/rev_no9_1997_art4.pdf)

low-skilled staff and recruiting high-skilled employees in order to accomplish objectives technically more demanding (Figure 1).

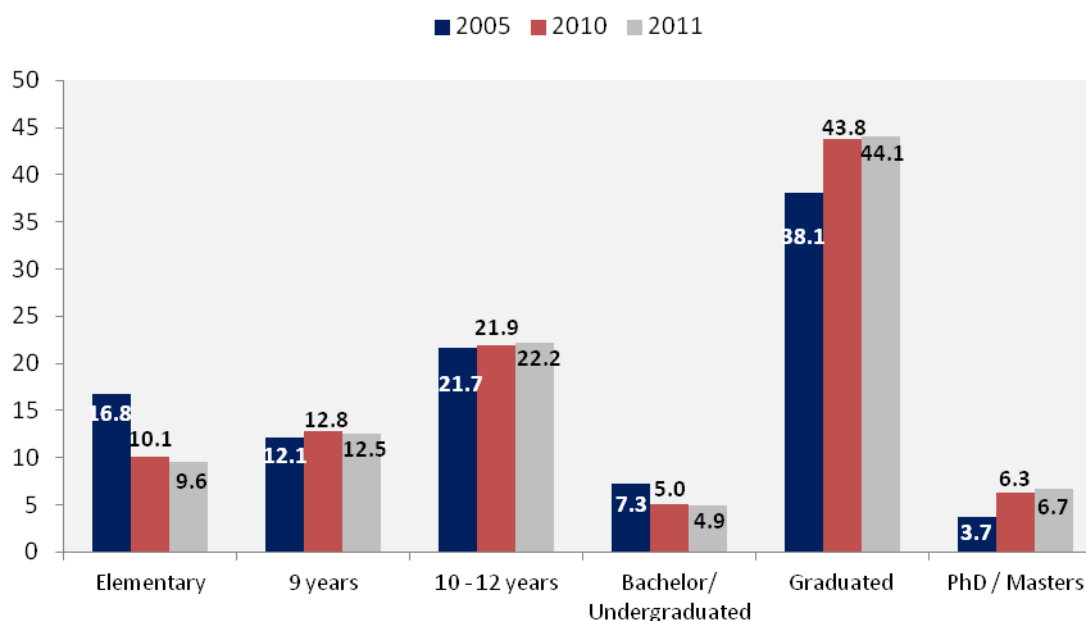
**Table 2 – Comparing Public and Private Human Capital (2011)**

<b>Educational levels</b>	<b>Central Public Administration employees</b>	<b>Overall working population</b>
Elementary level	21.6	61.7*
Secondary level	24.6	20.2
High level	53.8	18,1
<b>Total</b>	<b>100</b>	<b>100</b>

Source: DGAEP/OBSEP, BOLETIM BOEP, n.º 7, October 2012

\*Includes people without any educational level, corresponding to 3.7%

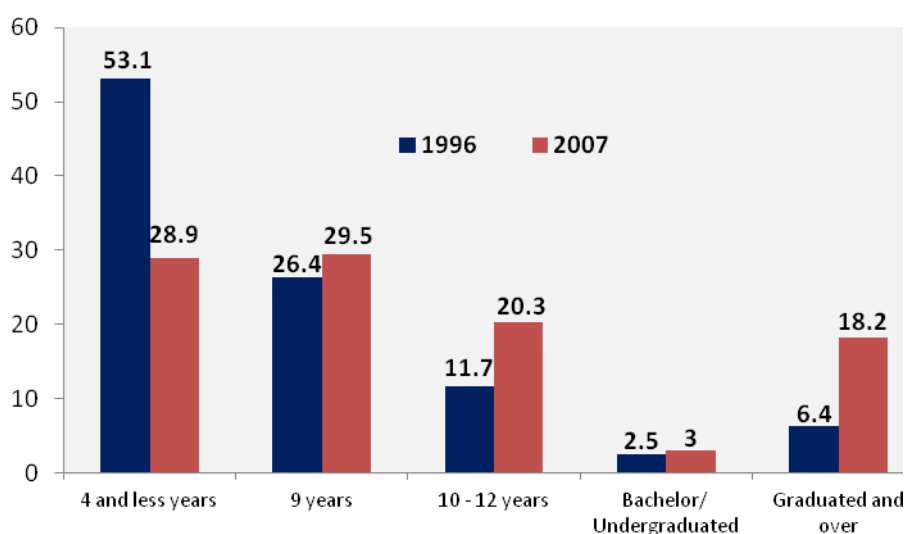
**Figure 1 - Educational Structure of Central Public Administration Employees**



Source: DGAEP/OBSEP, BOLETIM BOEP, n.º 5, September 2011

Such a development also influenced the local government employment, although this maintains a high percentage of employees with a low educational level (Figure 2).

**Figure 2 - Educational Structure of Local Public Administration Employees**



Source: DGAEP-OBSEP; RGFP/96; RHRAM (1996); Balanços Sociais das CM 2007; DGAL

Another relevant feature of human capital in Portuguese public administration is its feminization rate. Indeed, according to Table 3, female employees are better qualified than male employees both in Central Public Administration and in the private sector; although the gender differential is most evident in the case of Central Public Administration, mainly due to the predominance of female employees in sectors that require highly qualified personnel, such as education and health.

**Table 3 – Comparing Public and Private Human Capital, by Sex (2010)**

Education Level	Central Public Administration		Over all employed population	
	M	F	M	F
Elementary level	28.4	19.6	68.9	58.6
Secondary level	27.6	18.3	18.4	19.5
High level	40.3	62.1	12.7	21.9
<b>TOTAL</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>

Source: INE, Statistics on employment; DGAEP/OBSEP, BOLETIM BOEP, n. º 4, May 2011

Indeed, according to Table 4 Ministries of Health and Education account for more than 79% of total employment in central public administration and have the highest feminization rates, together with the Ministry of Social and Solidarity affairs.

**Table 4 – Central Public Administration Employment and Feminization Rates by Ministries**

<b>Employees by Ministries (June 2011)</b>		
<b>Ministries</b>	<b>%</b>	<b>Feminization rate</b>
Sovereignty bodies and independent entities	2.4	61.6
Presidency of Council of Ministers	1.0	61.9
Foreign Affairs	0.6	59.7
Finance and Public Administration	2.3	58.1
National Defence	2.7	20.4
Internal Administration	1.4	9.9
Justice	2.5	52.8
Economy and Employment	1.9	63.1
Agriculture, Fisheries, Environment and Spatial Planning	1.7	54.7
Social and Solidarity affairs	4.0	78.5
Health	27.9	75.6
Education and Science	51.5	74.5
<b>TOTAL</b>	<b>100</b>	<b>62,4</b>

Source: DGAEP-OBSEP; BOLETIM BOEP, n. º 6, December 2011

### 3. Types of Employment in Public Administration

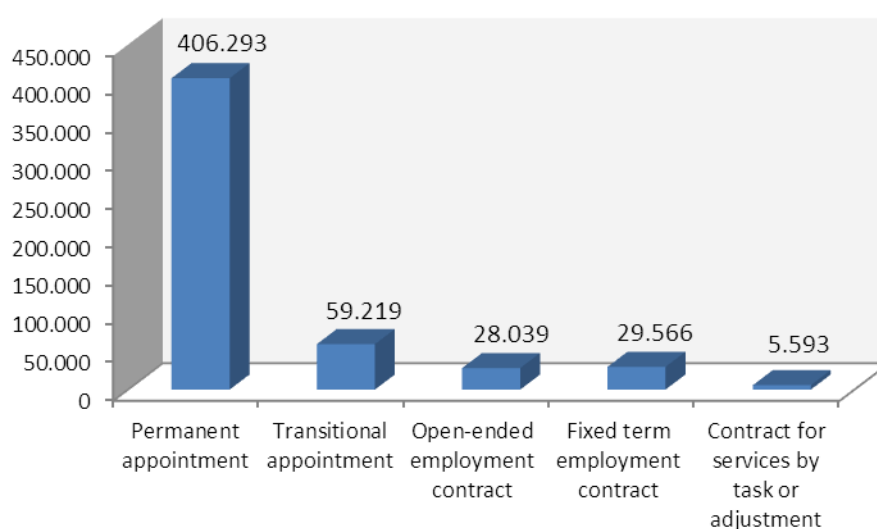
In the last decade, Portuguese public employment has suffered drastic changes following deep reforms in line with New Public Management theories.

The common concept of job security in public administration is a job for life. That was the situation in Portuguese public administration until 2008 as most of public employees were in the tenure regime with permanent appointment (Figure 3). However, since then, several laws changed public employment regime onwards private employment regime.

First, about 80% of civil servants with permanent appointment were transferred to public functions' open-ended labor contract that means for undetermined term. These public employees are split into two groups, namely those engaged before 2006 and those engaged after 2006.

Public employees with open-ended labor contract engaged before 2006 cannot be dismissed but they can be put in special mobility according to Law 60-A/2005.

**Figure 3 – Central Public Employment by Kind of Contract (2008)**



Source: PORDATA – Database of Portugal Contemporâneo, Fundação Francisco Manuel dos Santos, in Rato, Helena, Portugal: from structural reforms to austerity, ILO, 2012

Special mobility regime was created to be applied to public employees that cannot be dismissed in the case of extinction, merger, restructuring and staff reduction of services, while it is not explicitly referred the case of employee's misfit to the job. Special mobility regime has three phases that have being ruled by Law 53/2006 of 7 December. The first phase lasts 60 days and it is considered as a transition phase from a job to another. So during this phase public employees continue to receive their base wage.

Second phase lasts for more 10 months and it's called the requalification phase because it is assumed that during these months public employees will enjoy appropriate training. According to the Law 53/2006 during the qualification phase

public employees should receive 5/6 of their base wage, but by the 2012 budget law (Law 64-B/2011) that pay was decreased to 2/3. That decrease corresponds to a wage cut by 14%, i.e. from 80 to 66% of base wage. The compensation phase is the third and final phase without limit until the retirement of the beneficiary who received 4/6 of his base wage by the Law 53/2006. Now, under the 2012 budget law this pay fell to ½, corresponding to a decrease of 16%, i.e. from 66 to 50%.

Public employees with open-ended contract but engaged after 2006 can have their labor contract suspended<sup>11</sup> or be dismissed and in this case are applied to them unemployment private rules.

The second big change concerned stability of public bodies' staff. Until 2008 the composition of public bodies' staff, either in number and professional careers, could be only changed by law. But, since then, the staff has to be updated every year according to the needs of services and their budgetary resources.

Another important issue on changes in public employment regime is the spread of fixed term labor contracts that are ruled by private law.

Briefly, at present there are six types of public employment, namely:

- ✓ Permanent appointment only for the following functions: Military, Foreign Office, State Security Information, Criminal Investigation, Public Security, and Inspection Activities);
- ✓ Open-ended public employment contracts with two sub-types:
  - *Employees before 2006* - cannot be dismissed but can be put in special mobility what implies cuts of pay base up to 50%
  - *Employees engaged after 2006* – they can be dismissed and put in unemployment
- ✓ Fixed term contracts, most frequent in education, health and care activities. These contracts cannot exceed three years and can only be renewed twice. The problem with these people is that they cannot receive unemployment benefits if they have not being employed for 18 uninterrupted months.

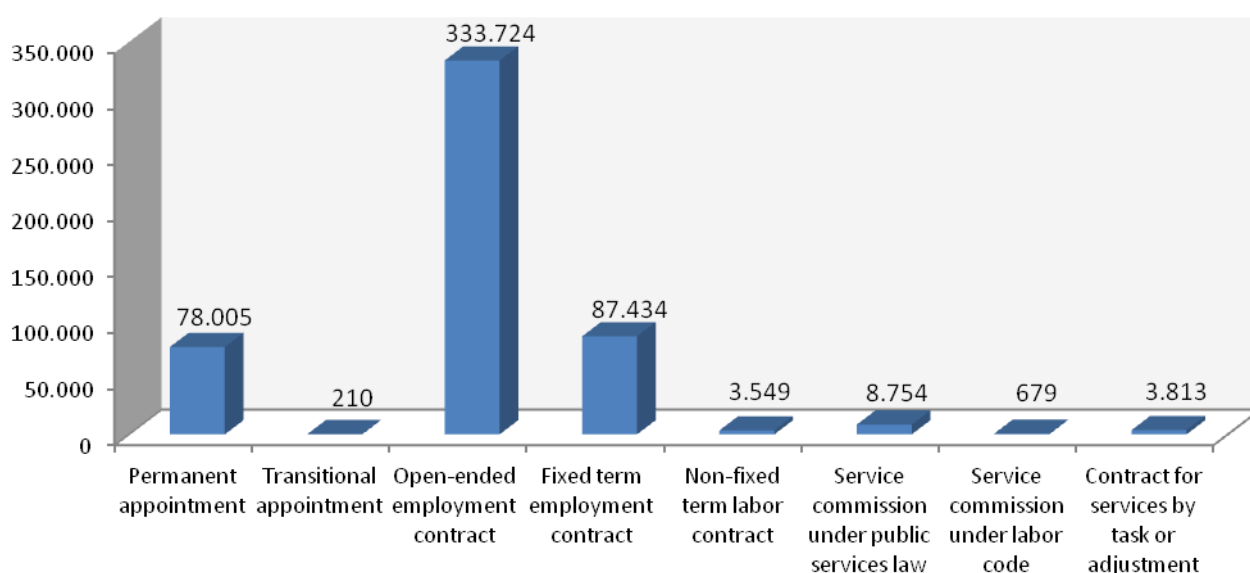
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<sup>11</sup> Law 59/2008 of 11 September, articles 232 and 259

- ✓ Non-fixed term labor contracts that are mainly used for replacing absent employees for certain reasons such as illness or military service.
- ✓ Commission service is applied mainly to managers. Under public services law commission is a supplement added to base salary.
- ✓ People with contract for services have the status of independent workers and so they are not considered as public employee. However many of these people carry out tasks under the same conditions of public employees.

Figure 3 and 4 show the evolution of the composition of public employees' status from 2008 when the reforms was implemented, to 2010.

**Figure 4 – Central Public Employment by Kind of Contract (2010)**



Source: PORDATA – Database of Portugal Contemporâneo, Fundação Francisco Manuel dos Santos, in Rato, Helena, *Portugal: from structural reforms to austerity*, ILO, 2012



#### 4. Recruitment in Portuguese Public Administration

Recruitment in Portuguese public administration is ruled by specific laws according to professional positions, which is the case for managers and employees, or professional careers. For example, the recruitment of teachers, professors, doctors<sup>12</sup>, researchers, judges or inspectors obeys its own laws.

In 2008, Portuguese parliament intended to unify the statutory regime of public administration employees, including in recruitment, by approving a law<sup>13</sup> to regulate contractual ties, careers and compensations of employees performing public functions. By this law, many specific careers were extinct and integrated in a specific scheme for general careers, so called because they are transversal to all public administration. Remained therefore the specific sectorial careers as those mentioned above.

Despite such a statutory diversity of careers, regarding recruitment all laws concern both conditions and procedures and enshrine the principle that recruitment has to be performed by open competition, regardless subsequent type of employment contract.

According to the general rule, recruitment procedure begins with the appointment of a Jury (selection board) by the top manager of the public institution where the job to be filled is. The Jury is in charge to organize and perform the competition since the publication in the Official Journal of the characteristics concerning the job to be filled and professional abilities required to applicants till the final selection.

Professional abilities that are required to applicants include the area of academic knowledge, literacy level or the vocational training area. Methods for selecting the applicants are also stipulated by law, namely tests of Knowledge and psychological evaluation. Besides these two mandatory methods the law allows the assessment of knowledge and experience thorough applicants' curriculum vitae which has to be complemented by the assessment of applicants' competencies. These methods of

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<sup>12</sup> There is currently a legal vacuum in the case of doctors' recruitment for public office because its specific law was revoked in 2009 without a new procedure has being approved.

<sup>13</sup> Lei n.º 12-A/2008 of 27 February

selection are only allowed for public employees with the professional category to which was open recruitment competition and are in special mobility<sup>14</sup>.

This procedure of recruitment has been subject to some criticism<sup>15</sup> mainly due to the way as selection boards are appointed, because it conditions the whole process. Since selection boards are usually composed by public employees of the institution that is engaged in recruitment and they are nominated by the top leader of the same institution, the chance of selecting people able to change organizational behavior is very limited. The composition of selection boards also affects areas of academic knowledge, literacy levels or the vocational training areas required to applicants as well as the content of knowledge tests and criteria for assessing applicants' curricula.

Critics on psychological assessment are also usual considering that its objectives are rather vague, assessment criteria are not defined and so they change from case to case introducing a high degree of subjectivity in the selection process. Unsuccessful applicants have the right to appeal if they don't agree to the final selection. However the appeal procedure is lengthy and rather opaque.

Another problem with recruitment concerns the decision to do it. According to the law such decision depends on top leader on condition that there is a vacant post in the organization and he has budget to engage more public employees. Now, it happens that since 1984 Portuguese government has maintained the decision to freeze new recruitments in public administration and therefore the application of the 2008 law was compromised from the beginning. Moreover, the need for public services in human capital led managers to engage people, usually young people by using contract services, by one hand, and forced government to allow opening of recruitment competitions from time to time, by other hand. Both practices led public organizations to misuse recruitment procedures aiming at selecting people that was already working in the institution under services' contracting scheme<sup>16</sup>.

However in 2000, as Portuguese government realizes the need to improve human capital in public administration in the context of freezing just outlined, it was created a

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<sup>14</sup> Special mobility concerns public employees who have no activity because they were considered in surplus or inadequate to perform specific functions and therefore they only receive part of their basic pay.

<sup>15</sup> [www.espacofuncao publica.com](http://www.espacofuncao publica.com)

<sup>16</sup> In Portugal this scheme is known as the false green receipts

new system for recruiting people with at least bachelor education degree. This system has two phases. The first one is to select a predetermined number of candidates by open competition for attending a specialization training course – Advanced Studies in Public Management, which lasts for nine months and ends with knowledge tests. Then successful students are directly engaged by public administration.

Regarding public administration managers it has to be distinguished middle and upper positions. According to a law of 2005<sup>17</sup> middle managers are selected by open competition and in general can only apply public employees with at least bachelor degree and some experience as leadership. However if there is no applicant that meets those requirements other kind of people can be accepted.

As to top managers they used to be nominated by Government, but since the present year they have to be selected through open competition. In order to operationalize these recruitments a Commission<sup>18</sup> was created, which started working in May 2012. However, recruitment process led by the Commission is long overdue and so the majority of top leaders in office have being yet selected by the government.

Finally it has to be mentioned the situation of ministerial offices' staff. These public employees are directly recruited by ministers who appoint them. Their employment status is service commission ruled by decree-law 11/2012 of 20 January.

## **5. Training in Public Administration**

In Portugal training for Public Administration as a structured policy for developing human resources' competencies in order to improve performance of public services, began in the eighties of the XX century.

Indeed as before it was not a current practice, such a policy was imposed by a mandatory law.

Nevertheless, practice doesn't fit always with the objectives of the law. It's why this chapter is structured in two main points, i.e., training by law and training by practice.

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<sup>17</sup> Law 51/2005 of 30 August

<sup>18</sup> CRESAP

### ***5.1. Vocational Training for Portuguese Public Administration by Law***

Currently training for Portuguese Public Administration is governed by a Decree-law<sup>19</sup> of 1998, which states the following objectives:

- To ensure public employees' qualifications regarding recruitment, admission and careers' intercommunication;
- To contribute to the mobility of public employees;
- To contribute to personal and professional accomplishment of public employees;
- To complement expertise and fundamental learning delivered by the education system.

These objectives concern either initial and continuous training, both of them have to be delivered according to the following principles:

Universality - every public employee has the right and the duty to do vocational training;

Continuity – training should take place throughout employees' career;  
functional

Utility – as training must fit services' performance requirements;

Multidisciplinarity – training should encompass all competencies necessary to perform employees' duties according to the technological and knowledge development.

#### *Initial Training*

For initial training, Article 11 of the Decree-Law 50/98 determines that it can be either a precondition for engaging public employees or it can be developed just after the admittance, during the probationary period, but in any case training has to be assessed. Moreover, it's established that definition of courses, syllabuses and relevant regulations are subject to joint order of line Ministers and the one who has the charge of public administration.

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<sup>19</sup> Decree-law 50/98 Of 11 March

As part of initial training it was created the Course of Advanced Studies in Public Administration Management (CEAGP) by the Decree–Law 54/2000 of 7 April. CEAGP is a specialized course in management of public affairs for graduates aiming to be hired by Public Administration. In that case, the diploma of CEAGP is a precondition to be engaged as officer in Public Administration.

However, CEAGP is also available to public servants or public employees with fix term or open-ended appointment contracts<sup>20</sup> who want to improve their knowledge in order to accede to officer's category with an open-ended appointment contract or to be promoted.

Ordinances that regulate CEAGP and orders determining the number vacancies for trainees' attendance are both established by the Ministry of Finances and Public Administration. At present CEAGP is regulated by the Ordinance n. º 213/2009 of 24 February, which most relevant rules are the following: recruitment for CEAGP is by open competition that includes a knowledge test and a professional interview; the course lasts one academic year and the assessment of learning is continuous while essentially based on tests and practical work; every year, the Instituto Nacional de Administração<sup>21</sup> (INA) that is in charged of the CEAGP has to inquiry all Portuguese public administration departments about their needs on officers' recruitment in order to support the Ministry of Finances and Public Administration's decision with regard of CEAGP's vacancies.

More recently the Portuguese government enforced the mandatory rules concerning initial training for public employees just admitted, through the Resolution of Ministers' Council, RCM n. º 89/2010 of 17 November, by establishing that it has two components, namely the general initial training and the specific initial training.

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<sup>20</sup> According to the Decree-Law 54/2000, public employees has to be public servants and so under a permanent appointment for acceding to CEAGP. However, since 2008 the Portuguese Parliament changed the employment system for Public Administration by the Law 12-A/2008. Since then public servants moved to individual open-ended appointment contract, excepting public servants performing sovereignty functions, namely, justice, foreign affairs, defense and security. The n.º 8 of the Article 56 of the Law 12-A/2008 determines that CEAGP is taught by INA (Instituto Nacional de Administração).

<sup>21</sup> Under the Public Administration Restructuring Program this Institute was replaced by a General Directorate, namely Direção-Geral da Qualificação dos Trabalhadores em Funções Públicas (General Directorate for qualifying in public functions' workers).

The Instituto Nacional de Administração was charged to plan and to improve the general initial training conceived to be of short length and common to all careers, aiming at enabling public employees with fundamentals of public service. Concerning specific initial training it was designed to be longer lasting and more appropriate for professionals of specialized careers.

### *Continuous Training*

According to the Decree-Law 50/98 the main objective of continuous training is to upgrade and to improve personal and professional capabilities of public administration staff in line with public policies requirements either by complementing public employees' basic knowledge's or by developing skills required to accomplish specialized duties or to fulfill higher position.

Furthermore continuous training is also important to improve curriculum performance aiming at career promotion where careers include more than one professional category.

Continuous training can be processed through small, medium and long term courses as well as through seminars, workshops, conferences or internships. Moreover, training courses can be processed by credit modules. Training can be carried out in classrooms, on-job or as distance learning by using new information and communication technologies.

For training assessment the Decree-Law 50/98 states that each training program has to be evaluated with regard to both trainees' professional performance and organizational results although the latter kind of assessment is not yet been applied.

As a matter of fact the most common training assessment is the use of questionnaires on trainees' satisfaction regarding the achievement of objectives displayed by training program as well as teaching techniques and methods.

Nevertheless assessment methods for long term courses can also be individual learning tests, dynamics of team development, simulations and case studies.

### *Specific Training for Managers*

In 2004 the Portuguese Parliament approved the statute of management staff<sup>22</sup> for central, regional and local public administration. According to this statute public officers have to be certificated by mandatory specific training for performing middle and top management. Such training was first ruled in 2004 and 2005<sup>23</sup> by Minister of Finances Ordinances that set up three types of courses:

- **CAGEP - Advanced course for public management** addressed to top managers;
- **FORGEP - Training for public management** addressed to middle managers;
- **CADAP - Course for senior management in public management** addressed to top and middle managers as well as to graduated public employees in public administration.

These 2004 and 2005 Ordinances determined compulsory subjects to be taught as well as the workload of each course and instructed INA (National Institute of Administration) to define training programs, their respective content and assessment criteria. Compulsory subjects were different for each of the three courses. In the case of CAGEP the emphasis was on strategic management while in FORGEP and CADAP it was provided more attention to operational management, but all of them had as compulsory subject “Ethics in Public Service”.

In 2011 the Minister of Finances changed rules<sup>24</sup> regarding specific training for managers in order to strengthen the focus on some subjects, namely strategic management, administrative simplification and modernization, the use of ICT to optimize working methods, gender equality and emotional intelligence.

The 2011 Ordinance also defined the subjects to be considered in refresher courses for public managers who have been graduated for more than five years ago.

Managers to be admitted to CAGEP or to FORGEP have only to prove that they hold leadership position. Admission to CADAP is much more demanding because candidates are selected on the base of six criteria reporting on assessment performance, degree of educational and professional qualification, self-motivation and the interest of the agency where the candidate is working. Consequently and also because CADAP’s

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<sup>22</sup> Law n.º 2/2004 of 15 January and Law n.º 51/2005 of 30 August

<sup>23</sup> Minister of Finances’ Ordinance n.º 1141/2005 of 8 November

<sup>24</sup> Ordinance n.º 146/2011 of 7 April

attendance program is much more demanding, CADAP diploma is more valued than CAGEP and FORGEP in case of open competition for management position. Besides, public employees graduated by CADAP that are appointed to management positions are exempted to do CAGEP or FORGEP courses. The knowledge and skills acquired by public managers and employees that attend CADAP, CAGEP or FORGEP are assessed through individual tests and group works.

#### *Entities Authorized to Perform Training for Portuguese Public Administration*

According to the Decree-Law 50/98 the entities responsible for delivering training to Public Administration can be either public or private. Among the public should be distinguished those with training competencies at central level and the others that can be of sector level or not. Training programs of sector entities are generally addressed to specialized issues regarding ministries' specific functions.

Concerning private entities the most common are unions, professional associations and universities.

All training entities, whether public or private, must be officially accredited excepting training entities at central level as it was the case of INA (National Institute of Administration<sup>25</sup>) and CEFA (Centre of Studies and Training for Local Government).

Actually, formal accreditation is ruled by the Ordinance 214/2011 of the Ministry of Labor and Social Solidarity<sup>26</sup>. According to the article 2 of this Ordinance, public entities that have vocational training in their Organic Act don't need to be certificated. Central public bodies specifically designed for public administration training are in that case. The others public or private entities have to be certificated by a specific body of the Ministry in charge of vocational training policy.

Following the extinction of the Instituto Nacional de Administração most of its training competencies were attributed to the General Directorate for qualifying in public functions' workers. However, in this area the mission attributed to that General

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<sup>25</sup> INA was extinct in 2012 and its training competencies were assigned to a new General Directorate for qualifying public employees' which was created within the Finances' ministry.

<sup>26</sup> This Ministry is not in the organizational structure of the current Government and most of its attributions are in charge of the Ministry of Economy.



Directorate<sup>27</sup> is to become a national reference in training field and so by competing with other training organizations either public or private.

Sector training bodies are aimed to devise and to implement training plans that take into account their activities as well as to ensure consultancy in their specific areas to other training entities of public administration. As for they have to dress both annual training plans and training evaluation reports to be presented to the General Directorate of Public Administration.

Moreover the law also recognizes the right of public employees to self-training, i.e. training by their own initiative, since in thematic areas relevant to the professional functions they perform, up to 35 hours per year.

## ***5.2. Vocational Training for Portuguese Public Administration by Practice***

As defined in articles 17 and 18 of Decree- Law 50/98, public entities have to prepare annual training, which have to be report to the General Directorate of Administration and Public Employment (DGAEP) that was in charge of producing the annual report on the over-all Portuguese public administration vocational training, until 2012.

Since then this task was attributed to the General Directorate for Qualifying Employees in Public Functions (DGQTFP-INA)<sup>28</sup>.

Analysis on Portuguese public administration's training by practice is based on the last DGAEP's report dated 2010, because it is the most recent available report. The 2011 report, which was produced by the General Directorate for Qualifying Employees in Public Functions, is yet waiting for the permission of Finances Minister to be disclosed.

DGAEP most recent available report refers Portuguese Public Administration's the 2010 DGAEP report covers the three levels of Portuguese Administrations, namely Central, Local and Autonomous as well as the Sovereignty Bodies (Parliament, Government, Presidency of the Republic and Courts). Central Public Administration incorporates data on direct and indirect administration; parishes were not considered

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<sup>27</sup> Decree Law 48/2012 28 February

<sup>28</sup> Decree Law 48/2012 of 28 February

in Local Administration and Autonomous Administration concerns only the Portuguese Autonomous Regions of Azores (RAA).<sup>29</sup> State owned companies were also excluded.

As so, the 2010 DGAEP report covers 1.958 public entities and bodies and represents 246.231 trainees of a universe of 576.456 public employees, a sample that represents 88% of the total universe of public employees covered by the report, at that time.

### *Training Entities*

Concerning the characterization of the entities and bodies represented in the report, only 22.3 % have their own training units. However, it is noteworthy the case of the Ministry of Health, where 76.5% of the entities have their own training unit.

Nevertheless 64% of training was conducted within the public entities themselves and it can be organized by their own training units or ordered to external training providers.

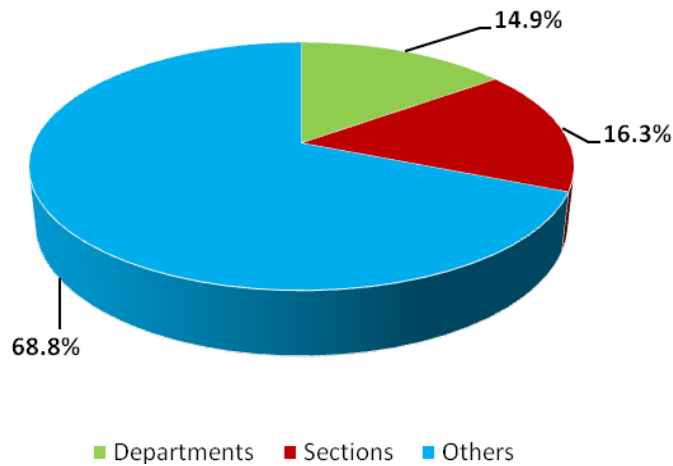
Central public bodies specifically designed for public administration training were among these external training providers. The mainly others are Universities, Unions and private entities. All these entities offer also training programs open to every public worker.

The strategic importance granted to vocational training can be evaluated by hierarchical position of training units within the organizational structure of public entities. According to 2010 DGAEP report, 69% of internal training units are not organizational structures but they are flexible and ad hoc units, while only 15% are department units that correspond to the highest middle management hierarchical position.

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<sup>29</sup> The Autonomous Region of Madeira has not send data.

**Figure 5 - Training Units by Hierarchical Organic Level**



Source – 2010 Training Report, DGAEP

#### *Organization and Implementation of Training*

Concerning organization and implementation of training, the 2010 DGAEP report presents information on a number of issues, namely, ways of training organization, training purpose, time schedule regime and modality of training. The analysis of information on these issues was based on the volume of training, i.e., the value obtained by multiplying the hours of training by the number of trainees.

2010 DGAEP's reports concerns internal and external training.

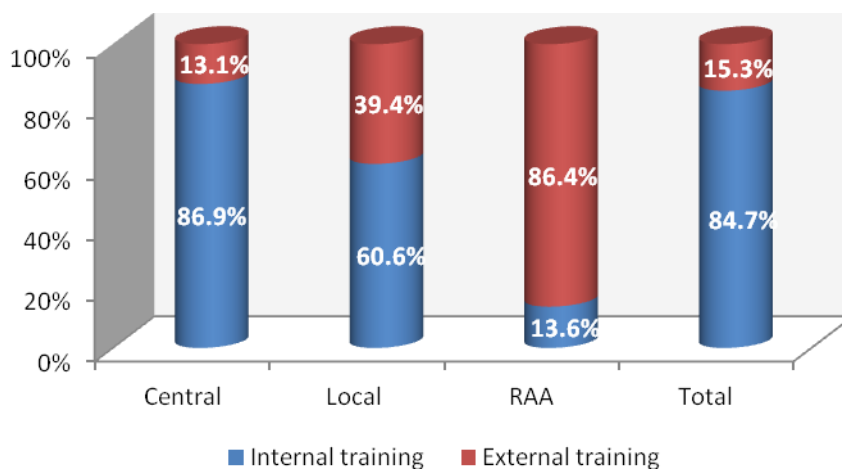
Internal training is the training organized by a public entity for its own employees, whether conducted by internal or by external trainers. In this last case the public entity can ordered tailored training to other public or private organizations that operate in the training market through procurement. In 2010, tailored training represented 39% of INA's training courses<sup>30</sup>. External training is the training that public employees receive outside their employer's entity. Access to external training is by registration in training activities that are organized, provided and conducted by trainers' entities, such as INA, universities, training companies, professional associations and unions.

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<sup>30</sup> INA Activity Report -2010.

The 2010 DGAEP report states that internal training recorded an overall average percentage about 85% that is clearly dominant over the external training (15%). Figure 6 allows comparing the relative weight of internal and external training for the major structural categories of Portuguese public administration. Accordingly to the DGAEP report it's also clear that internal training, is increasing over the last years (it represented 77.6 % in 2009 and 75.11 % in 2008), as it's cheaper than external training.

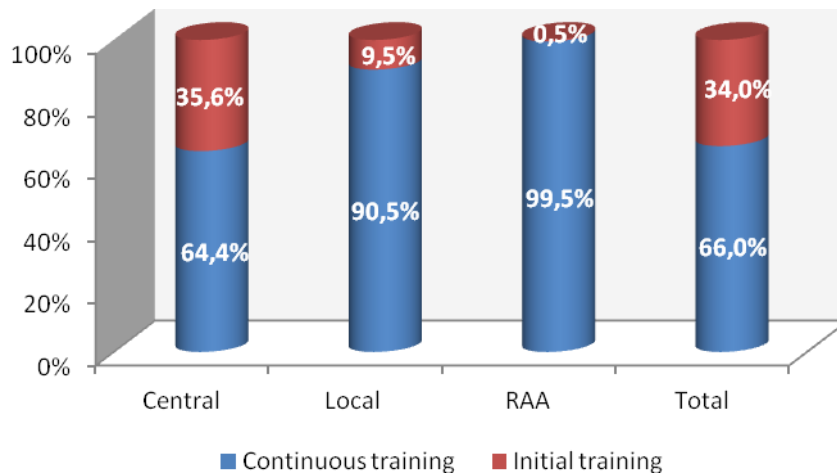
**Figure 6 - Volume of Internal and External Training by Public Administration Structural Categories**



Source – 2010 Training Report, DGAEP

Regarding training purpose (Figure 7) we observe a predominance of continuous training with an average value of 66%. On this issue all Public Administration structural categories present a similar repartition between continuous and initial training. This situation is mainly due to the fact that recruitment of new public employees is subject to severe restrictions.

**Figure 7 - Training Courses Purposes by Public Administration Structural Categories**

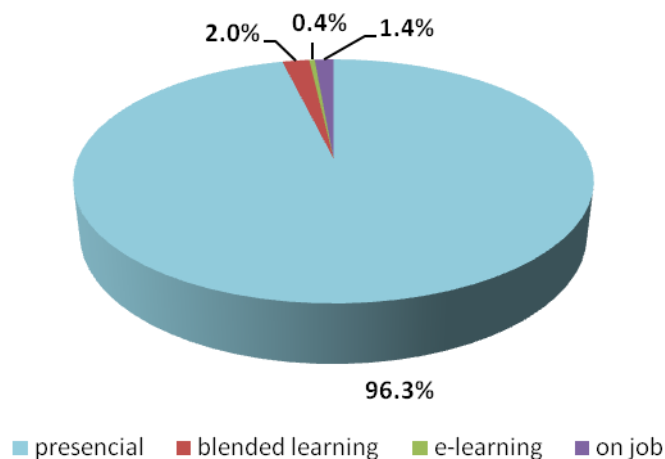


Source – 2010 Training Report, DGAEP

Regarding the time schedule regime, the training during working hours prevailed, with the average percentage of 88%, while post-work schemes or mixed time tables recorded very low rates (9% and 3% respectively). The more important exception is the Ministry of Education, with a rate of 72% of post-work training.

Training in classroom is the modality most common, about 98%, while training on job, blended learning and e-learning had only a residual representation, as presented in the figure bellow.

**Figure 8 - Volume of Training in Public Administration by Modality**



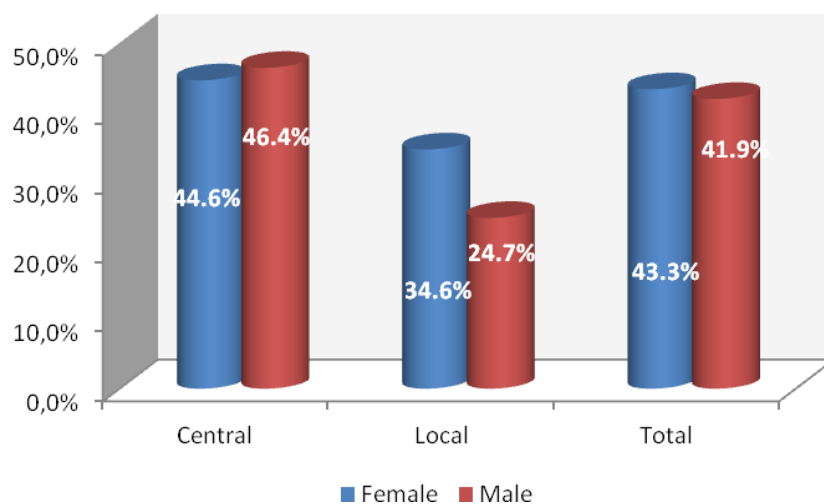
Noted, also, that only 46.7% of public entities prepared training plans, with some few exceptions. In about 83% of Ministries of Health's bodies carried out training plans, followed by the Ministry of Justice and the Ministry of Finances and Public Administration with a rate of 80%. On the opposite, Sovereign Bodies and Local Administration showed a share below the global average (22% and 40% respectively).

### *Trainees*

According to the 2010 DGAEP report the participation rate in training amounted to 42.7%.

If analyzed by gender (Figure 9) the rate is higher for women (43.3%) than for men (41.9%). Such a gap is higher for Local Administration and for the autonomous region of Azores.

**Figure 9 – Gender Training Participation by Public Administration Structural Categories**



Regarding professional groups/careers, the DGAEP report pointed out the high participation rates (above 80%), to personnel attached to the Foreigners and Borders Service, Notaries and Registry Offices, and Inspection Bodies. The Tax Administration

personnel reached a rate of 100%, Middle managers participation rate was around 70% in local government and Central Administration, whereas top managers' participation rates are ranged between 55% (local) and 38% (Central). Regarding top managers this data shows a decrease in comparison with 2009, when the participation rate of top managers was around 70% in local government and 65% in Central government.

In the opposite, prosecutors, judges and justice personnel as well as prison guards presented the lowest participation rates, clearly below 10%.<sup>31</sup>

### *Main Training Areas*<sup>32</sup>

In a brief approach to training areas, the 2010 DGAEP report shows that the major areas implemented concerned "security services"<sup>33</sup>, (54% only for Central Administration) followed by teaching issues with an average percentage 13%, (both for Local and Central Administration. Such a percentage was also found in the area of managerial sciences for local administration. Finally we can point out that training on Social Services delivered by local authorities reached a rate of 23%.

Concerning professional groups the DGAEP report also points out that the highest rates of training participation regarded assistant staff and teachers<sup>34</sup> working for local authorities as compared to the same groups in Central government. Those results contradict the general trend in the past years and can be explain by less financial constraint in local government, as well as the increasing transfer of responsibilities, from central to local government regarding school management.

### *Financing of Training*

The analysis on financing of training was also carried out. Accordingly the weight of training in public entities' budgets represented in average 0.32% of the total personnel costs and 0.15% of the total entities' budgets. This represents also a decrease if

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<sup>31</sup> As prison guards are concerned, and in relation to the figures about initial training, it is possible to admit that only the newly hired received training.

<sup>32</sup> Autonomous Administration not included in the data.

<sup>33</sup> Categories of the National Classification of Education and Training Areas (CNAEF); this area includes military and civil security, as well as health and security at work.

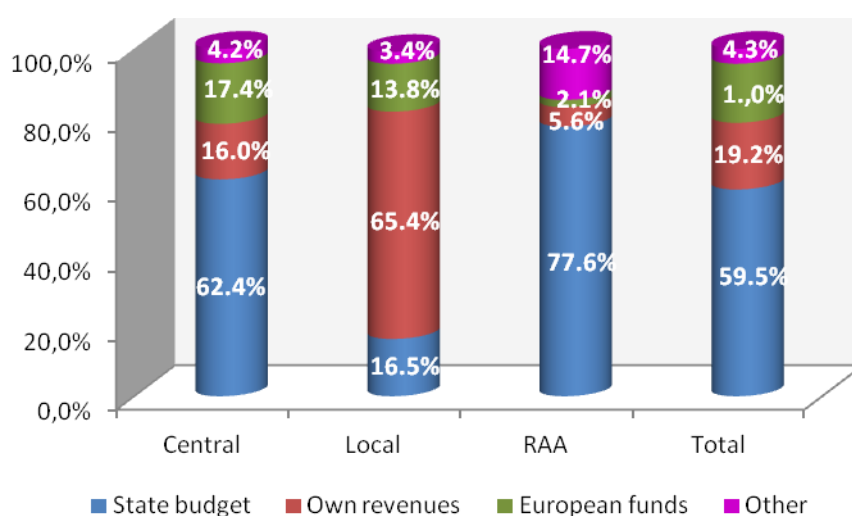
<sup>34</sup> Kindergarten , primary and secondary levels.

compared with the previous year (in 2009 the DGAEP report refers an average of 0.61% for total personnel costs and 0.28% for total entities' budgets).

Globally, the main source of training funds was government budget, which paid 59.5 % of total training costs. The second financial source (19.2%) was public entities' own revenues, followed by European funds with a share of 17% and sources non specified (4.3%). It is due to point out that, also in global terms, the contribution of European Funds increased significantly (7.8% in 2009).

However in local administration the situation was the opposite: their own revenues were the main source of financing (56.5%), followed by government budget (16.5%) and European funds (13.8%).

**Figure 10 - Funding Sources in Public Administration**



Source – 2010 Training Report, DGAEP

Finally we have to point out the low rate of self- training. Only 4.5 % of public employees attended training in this regime, with a higher rate for women (5.7%) than for men (2.8%).

Only some professional groups lie above this average percentage, namely doctors (31.2%) and nurses and other health technicians (10.1% each), inspection staff (10.9%), teachers (7.1%) and senior officers (5.9%).



## II. Introduction to Chapter on Ethics<sup>35</sup>

*Marek Kosewski*

People work not only for the sake of money. Providing work services has always had and still has its moral and dignity-involving dimension. Professional ethics is a manner, a certain style, a way of fulfilling the individual needs of dignity through work, which is specific for every organization managed in accordance with dignity-oriented principles. Modern management is heading in the direction where the process of work will be combined with the fulfillment of the employees' need for dignity. Combining the working process with the fulfillment of an individual's need for dignity means the creation of conditions enabling the emergence of dignity compliance in everyday performance of work, in the relationship between employees and their superiors and colleagues. The above requires the training of executives in dignity-oriented techniques for managing their staff and introducing changes to the organization and structure, which facilitate the entity-oriented relations in work processes, limit employees' anomy through a limited extent of exposing employees to temptation situations, hindering the processes of accepting excuses in employee groups, rejecting excuses brought from outside the organization etc.

An organization needs a code of professional ethics for several reasons:

1. A code of ethics is a condition for the surviving and development of an organization functioning in a highly competitive economy, in which quality is the priority and the demand for lower quality of services and products is decreasing.
2. A code of ethics introduces self-control in the work performed.
3. A code of ethics makes it possible to use Total Quality Management (TQM). It is not possible to manage quality in a company which does not have its code of ethics, as companies demand that employees perform self-control. Such code is also necessary for the managerial staff to efficiently manage the company.

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<sup>35</sup> Some parts of this section are developed in a supplementary article at the end of the Polish report.

4. The code of ethics in an organization is necessary for its employees in a deeper, psychological sense, so that they can fulfill their own needs for dignity through work and function properly. On average, a professionally active individual leaves at least 70% of their vital energy at work – which makes most of their actual life. It is thus natural that also most of the dignity-related needs should be met at work, while working in a company of which an employee is proud, through performing a profession about which they can boast to family, friends, neighbors, through having an ‘enviable’ occupation. If an employee does not take pride in working in their organization and in their profession, or – what is even worse – they have to be ashamed of it – then they have to fulfill their dignity-related needs outside work, within the little energy resources and capability that is still left. In such case, however, they will not be able to function well and properly either at work, or outside work.

At present employees are much better educated than in the past, and the traditional dignity-related motives of employees are supplemented by a new and the most important one - the motive of individual fulfillment and personal development. Younger and better educated people assume managerial functions, notice the connections between business and the entire social life and realize that the activity must be compliant also with moral, and not only with legal requirements. The above is reflected in the introduction of values into the concept of organizational management.

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## II. ETHICS PRINCIPLES FOR PA EMPLOYEES IN THE CZECH REPUBLIC

*Pavel Dittrich  
Lenka Hronová  
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Václav Melichar  
Aleš Svoboda*

### 2.1 Definition of Ethics Principles for Public Administration Employees

Field of public administration and offer of its services is a long-term topic for the Czech Republic. After transformation of the country starting in 1989, this public service was given a different approach. And there was a big portion of discussions related to this topic – the transparency, the professionalism, the level of service, the human resources, etc.

These topics are also tightly linked with ethics, which used to be neglected in first years of the transition period. However, the situation in this field has started to change later on and ethics began to rise on its importance. It was expected that the public administration should act this role and serve as a sample for introduction of clearly stated ethical principles for employees. Nevertheless, with the coming of international enterprises to the Czech market, the private sector was first to launch ethical standards for their employees in a form of ethical codes. This approach then served as the inspiration for public administration but its implementation was gradual. As it is described in following chapters, for a long time there has not been any general or universal code of ethics for public administration employees and authorities usually introduced internal regulation which dealt with ethical principles. In 2001 Code of Ethics of Public Administration Employees has been introduced, but mainly due to its contents and legal form, it could not have been considered as an optimal solution. The crucial step towards a state-of-art approach was made in May 2012, when the Code of Ethics of Officials and Public Administration Employees came into effect.

It is important to mention that currently the great attention is dedicated to the fight against corruption and anti-corruption measures all over Europe. The Czech Republic and its public administration is not the exception in this perspective. However, we cannot narrow the issue of ethics in public administration solely on the aspect of corruption, although undoubtedly it is one of essential topics. Therefore, this issue is

also involved in the new Code of Ethics for Public administration employees. Nevertheless, modern ethical codes should also involve other values such as appropriate behaviour of public administration officials and their attitude towards citizens who are perceived as clients, thus we can see a parallel to the private sector.

## **2.2 Legal Forms of Documents Defining Ethics Principles to PA Employees**

The Government of the Czech Republic felt the necessity of arrangement of a transparent exercise of public administration by means of the set rules of conduct of officials of public administration in relation to the private sector. In accordance with the above mentioned, the Government of the Czech Republic approved in March 2001 Resolution No. 270, on the Code of Ethics of Public Administration Employees, by which the Code of Ethics as an enclosure to this Resolution was approved and further the heads of district offices were entrusted by this Resolution with obligation to introduce the Resolution to the mayors of municipalities in their district. Furthermore, the Resolution included a recommendation to presidents of regions and mayors of city districts to acquaint the staff of their offices with the Code, to act in accordance with the Code and if needed issue for their offices their own Code of Ethics drawing on the Code.

As another tool for adhering to ethical principles in public administration can be understood also the Act No. 312/2002 Coll., on the Officials of Territorial Self-Governing Units, as Amended. Rules and principles, which support general ethical principles or are in accordance with them, are confirmed also by the new Act No. 500/2004 Coll., the Administrative Code, which shall come into effect on 1st January 2006. In Art. 4 of the Administrative Code, there is stipulated, that “public administration is a service to the public. Everybody who discharges tasks resulting from competence of administrative authority is obliged to treat the persons concerned politely and to go them towards according to possibilities.”

Generally said, the Code of Ethics published by Resolution of the Government (its whole text is a part of this document in the form of Annex I) provides field for characterization and support of ideal standards of behavior of employee to his/her

colleagues and to the public. It should also act as one of the fundamentals for confidence of public to the sector of public administration. Nevertheless, it is clear, that such a code does not mean automatically a guarantee to the effective, open and smart execution of public administration.

### **2.2.1 Usage of Codes of Ethics in the Public Administration in the Czech Republic**

On the field of codes of ethics in public administration, majority of Czech ministries and other central authorities created own code of ethics for their employees, which comes from the fundamental document - Code of Ethics provided by the above mentioned Resolution of the Government. All the central authorities of state administration had an obligation to deliver the Code (or its modification according to the needs of the respective authority) to its employees. In the field of self-governing territorial units, it was something like a “recommendation” to provide such a Code to the employees of authorities in regions, cities, etc.

According to the survey given 5 years ago, from 26 central authorities (ministries and other central authorities), only two of them didn't create their own code of ethics for their employees. These authorities have some passages related to ethics in some internal provisions and regulations as parts of some other texts.

The situation in the self-governing territorial units the (in regions, cities, towns and villages) is not mapped so clearly and in as accurate way (since the Regulation of the Government talked about “recommendation”). Nevertheless, according to the experience of the Institute for Public Administration Prague and its knowledge, lots of regional authorities are having and using their own code of ethics and the same it is with all bigger cities and towns across the Czech Republic.

Back to the survey, according to its results, the codes of ethics in the central regional authorities have the character of various internal regulations in the form of regulation of the head of the authority, decisions of the minister, somewhere the code of ethics is the part of the working and organizational rules of the authority, etc.

Majority of codes of ethics of the authorities are very easy to reach by the employees of the authorities. The codes are either on the internet website of the authority, or they are at disposal by the HR manager or some personnel department.

According to the responsible persons in the authorities, the ministries themselves are usually responsible for the possible update or revision of the code of ethics in the authority. Only for six authorities, there is a different body responsible for the revisions – this is the body responsible for this area – Ministry of Interior, prior to that Office of the Government of the Czech Republic.

The codes of ethics on various ministries are very similar to each other, somewhere they are a bit more concrete than the others, somewhere there is also a part dedicated to the corporate culture – concrete types of behavior according to the certain positions, dress codes, etc.

The Code of Ethics that used to be applied did not contain any provisions on compliance checks and enforcement. Even though the Code of Ethics was primarily a recommendation, it was a document guaranteeing high quality of services provided by public servants and was remaining as a key text to help curb and prevent corruption. Codes of ethics, however, are mostly non-binding, contain sets of recommendations and norms of conduct, and appeal to their users to promote proper and moral conduct in their workplace.

### **2.2.2 Activities in Preparing the New Code of Ethics for the Public Administration**

As mentioned above, experts have been working lately on developing a mechanism to include responsibilities stipulated by the code of ethics to the Czech legal system so that they become enforceable and legally binding. It was necessary to secure maximum level of enforceability of measures stipulated by the code of ethics.

Therefore there was established an initiative within the Government anti-corruption strategy for the years 2011 and 2012, which was dealing with the adoption of the new Code of Ethics. The new Code was also meant to have a form of the Regulation of the

Government. It should be more concrete, it should contain clear and specific rules of conduct for anti-corruption measures and for the realization of smart administration. This Code of Ethics (under the full title Code of Ethics of Officials and Public Administration Employees) came into effect in May 2012 by the governmental resolution.

The main aim of the new Code is to involve the ethic principles into the legal enactment and allow the Code to be binding and compliance enforced. Therefore there is a plan to involve the new Code into the new legal act dealing with position, rights and responsibilities of the civil servants in the Czech Republic. The new law should deal with all groups of civil servants and employees in the public administration, no matter, whether they come from the state administration or self-governing territorial units. The plan for having new Act effective is the beginning of 2014.

### **2.2.3 Provisions**

As it was mentioned in the chapter above the new Code of Ethics replaced the previous code from 2001. For illustration the previous code of ethics is attached in the annex. The new code of ethics brings a more complex material and selected provisions should be inserted to the legal act in 2014. Areas that are listed below and involved provisions are to be respected by public administration officials.

- **Legality**
- **Decision making**
- **Professionalism**
- **Impartiality**
- **Pace and Efficiency**
- **Conflict of interests**
- **Corruption**
- **Management of entrusted funds**
- **Secrecy**
- **Providing information to public**
- **Public activity**

- **Representation**
- **Applicability and enforcement**

#### 2.2.4 New Code

### **Code of Ethics of Public Servants**

#### **Preamble**

At the decision making every official and state administration employee is obliged to follow and respect the legality of all procedures and to have an equal approach to all individual and legal entities. The point of this code is to create, keep and proliferate a trust of public into public administration.

The purpose of this code is to define and support required standard of officials and public administration employees behaviour in relation to the public and colleagues.

An official and public administration employee follows measures of legality and justice resulting from the European cultural and historical heritage, he/she acts in compliance with inviolable values of human dignity and liberty, keeps respect and loyalty to the Czech Republic as well as to the authority and other officials and public administration employees.

#### **Legality**

(1) Official and public administration employee fulfills the tasks of public administration in compliance with the constitutional order, acts and other legal regulations and with the European law as well as with international treaties which the Czech Republic is bound.

(2) At conducting a public administration's assignment, the official and public administration employee acts solely in the extent given to the public administration by law and in compliance with its purpose.



### **Decision making**

(1) In the extent of law the official and public administration employee always selects the most suitable solution with respect to a public interest and decisive circumstances of the particular case. He/she ensures that the decision cannot be perceived objectively as unjust. He/she interferes with the rights of persons just at conditions set by law and only in an inevitable extent necessary to reach a purpose followed by the public interest, which he/she was entitled the authority to protect.

(2) At the choice of the most suitable procedure and within legal regulations, the official and public administration employee also respects concepts, priorities and aims of the authority, its internal regulations and orders of superiors given in the compliance with this code.

### **Professionality**

(1) The execution of public administration is a service for public. The official and public administration employee conducts the public administration on a highly professional level that is proliferated by continuous studies, with the highest level of politeness, understanding and willingness without any prejudice, in compliance with equal opportunities and without colour of skin, gender, nationality, religion, ethnicity or other characteristics taking into account. It does not allow discrimination and harassment. He/she is personally responsible for the development of his/her professional knowledge and he/she proliferates continuously the education.

(2) The official and public administration employee deals with other colleagues and employees of other public administration authorities correctly, he/she respects knowledge and experience of colleagues and other experts and utilizes it for the own professional development.

(3) In relation to the public the official and public administration employee behaves with the highest level of politeness, openness and willingness and without any prejudice.

### **Impartiality**

(1) The official and public administration employee cares to be his/her decision making objective, impartial and the final decision to be in compliance with the public interest. At the decision making he/she must not neither prefer personal or group interests nor to be influenced by positive or negative relations to particular persons. The official and public administration employee also refrains everything what could threaten trust into impartiality of his/her decision making.

(2) In identical or similar cases the official and public administration employee behaves so as not to cause any differences among concerned procedures, which cannot be justified with objective reasons, especially with concrete circumstances of the given case.

(3) The official and public administration employee acts towards participants of legal relations objectively and in the way not to mislead them about their rights and duties, informs them clearly; all assessments are conducted professionally, objectively, without emotions and without following own benefits and in compliance with the law and justice.

### **Pace and Efficiency**

(1) The official and public administration employee deals with work assignments responsibly, without any additional delays and within terms set by law at the latest.

(2) At the realization of assigned tasks, the official and public administration employee proceeds in order not to cause irrelevant costs for neither parties concerned nor the authority.

### **Conflict of Interests**

(1) The official and public administration employee does not permit personal interest to come into conflict with his/her position as an employee of public administration. Private interest includes any kind of advantage for himself/herself, his/her family,

relatives, friends, individual and legal entities with whom he/she has or has had a business or political relationship.

(2) The employee and public administration official cannot threaten a public interest by referring to his/her position or fiction in matters that do not comply with the performance of his/her assignments at the execution of public administration.

(3) The employee does not take part in any activity that is not in accordance with the correct performance of his/her work duties or that limits such performance in any way.

(4) If the employee has doubts whether an activity is compatible with his/her participation in the administration of public affairs, he/she discusses the matter with his/her superior.

### **Corruption**

(1) The official and public administration employee neither demands nor accepts gifts, services, favours or any other benefits that could influence or seemingly influence his/her decisions in certain matters or corrupt his/her professional approach to certain matters. Gifts or benefits provided by the employer are not concerned by this statement.

(2) The official and public administration employee behaves so as to avoid situations, in which, because of his/her position in public administration, he/she is bound or feels so to serve out any other person's favour.

(3) The official and public administration employee avoids relations of mutual dependence and improper influence of other persons (clientelism, nepotism), which could influence his/her impartiality.

(4) Any corruption behavior or suspicion of corruption behavior, the official and public administration employee realized in a credible way, he/she is obliged to inform his/her superior or law enforcement authorities. Furthermore, he/she is obliged to announce without any delays an offer or a gain of an unlawful benefit.

(5) In all cases when doubts could be raised, whether the official and public administration employee proceeds in compliance with this article, he/she informs the superior and follows his/her instructions.

### **Management of entrusted funds**

The official and public administration employee does his/her best in compliance with legal provisions in order to ensure a maximal efficient and economical management and utilization of financial sources, devices and services, which he/she is in charge of.

### **Secrecy**

(1) The official and public administration employee keeps the secrecy about facts that he/she realized in relation with performing of public administration assignments, which could harm or threaten the activity of the employer. The duty of secrecy is not applied to facts that bring a suspicion of corruptive behavior.

(2) The official and public administration employee is obliged to keep secrecy about facts that he/she realized in relation with performing of public administration assignments, especially about personal data or classified information in the extent set by legal provisions, in case he/she is not exempted from this duty in compliance with legal provisions.

### **Providing information to public**

In compliance with legal provisions, every official and public administration employee provides true and complete information at performance of his/her assignments. Information about the activity of public administration authority as well as further information dedicated to public is on behalf the public administration authority communicated by the official and public administration employee who is in charge of.

### **Public activity**

(1) The official and public administration employee acts politically impartially at the performance of public administration. He/she does not conduct any public activity, which could harm a trust of public into his/her ability to realize public administration assignments impartially.

(2) In private life, the official and public administration employee avoids such activities and behavior that could reduce the public's trust in public administration or to raise a cause for influencing him/her. He/she acts in a manner that contributes to a good reputation of the public administration authority.

### **Representation**

(1) The official and public administration employee wears clothes that is adequate to his/her work and correlate the dignity of his/her authority.

(2) The official and public administration employee deals with everyone attentively, in an appropriate way of his/her social skills and communication needs and respects his/her individuality. The whole communication with persons concerned is led by the official and public administration employee tactfully and in the way that respects dignity of these people.

(3) The official and public administration employee acts in a manner that contributes to a good reputation of the public administration authority.

### **Applicability and enforcement**

The Code follows basic rights and duties of employees listed in the labour code and conditions of employment. A substantial violation will be considered as a violation of the labour code and conditions of employment with all resulting consequences.

### **Final provisions**

(1) The official and public administration employee follows the set ethical provisions, actively supports ethical behavior and participates on the anti-corruption environment. He/she is aware that an individual failure in the area of ethics has impact on public administration as a whole and therefore he/she leads by example.

(2) If the official and public administration employee points on unethical behavior, his/her action will not have negative consequences in labour relations.

(3) Respecting of ethical principles is a matter of the professional honour of the official and public administration employee. It is not possible to comply with professional duties of the official and public administration without observance of these principles and observance of this Code.

### **2.3 Legal Enforcement of Codes of Ethics in the Czech Republic**

A key question at implementing of codes of ethics in the Czech Republic is their legal enforcement. Various organizations conceive their code of ethics differently. Codes of ethics are often presented and also perceived by their addressees as just a moral proclamation. A frequent absence of a mechanism of efficient sanctions and thereby their enforcement represents a problem of such codes. On the other hand, in conditions of continental law (not Anglo-Saxon case law) sanctions directly implemented in the code of ethics can interfere with general legal principles, especially with the principle of impossibility to impose sanctions by illegal norms.

Thus, codes of ethics are not a legal norm and in the Czech Republic they are usually presented by employers as a special sort of internal regulation. An internal regulation is a unilateral act of law application, which in this case collectively deals with rights of employees in labour relations at the employer that issues them. This internal regulation cannot set new duties to employees. It can only extend and specify duties that are already set in standard legal regulations. In case duties in this code interfered with legal regulations, the provision concerned would be invalid.

In the level of general legal regulations in the Czech Republic, the most dominating legal regulation, which influences codes of ethics, is in this case mainly the Labour code (Act no. 262/2006 Coll.). Simultaneously, the Labour code not only sets limits for codes of ethics but also supports their enforcement.

The new Code of Ethics of Official and Employees in Public Administration was created by the Ministry of Interior and approved by the Czech government on 9<sup>th</sup> May 2012. This code should be a prototype for codes of ethics of organizations in public administration and in the article 13 it directly refers to the continuity of basic rights and duties of employees that is stated in the Labour Code and conditions of employment (which are also a specific type of internal regulation). There is clearly stated in this article that a serious violation of the code of ethics will be considered as

a violation of the Labour Code or conditions of employment with all consequent impacts.

It is a significant shift from the so called „Code of Ethics of Employees in Public Administration“, which was approved by the governmental resolution no. 270 on 21<sup>st</sup> March 2001 and did not involve any efficient mechanism of enforcement.

Thereby, the new Code of Ethics can be more efficient in the legal enforcement on basis of rights and duties resulting from the Czech labour law and its violation will have labour consequences.

## II. ETHICS PRINCIPLES FOR PUBLIC ADMINISTRATION IN GERMANY

### Preliminary Remark

This chapter turns to the question, what ethics principles are. Two attempts are described to “define” ethics from a practical point of view. The first example points to conflicts of interests. The second example is an analysis of mission statements published by organisations of the public service. This serves also as a background for the last chapter, which enlightens training in ethics.

The second part of this chapter provides a legal perspective.

### 1. Definition of Ethics Principles

#### Conflict of Interests Reflecting a Practical Need of Ethics Principles

*Kerstin Wüstner*

The question of how to define ethics has been inspiring many disciplines for hundreds of years. Yet it shall be sufficient to focus on practical aspects in this chapter. In that respect ethics can always be perceived as a regulation modus in social systems. Hence, public administration needs ethics in order to perform in a socially appropriate way – ethics serve the purpose of guiding individual behaviour.

As described by Demmke and others “only in the USA does the Center for Ethics in Government provide for comparative information on laws of ethics and standards of ethics in the different US states”.<sup>36</sup> There are no comparable data for Europe. Data collection and comparison might be difficult, as so many different systems exist not only in public administration, but also in law, rules, standards etc.

When practitioners are confronted with ethics they sometimes might find it easier to describe *unethical* behaviour. This idea is also implicit in the discussion of conflicts of interests in the public service.

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<sup>36</sup> Demmke et al., 2007, p. 22.



Demmke and others (2007) have summarized potential conflicts of interests, which in turn might call for a code of ethics<sup>37</sup>:

“In total, potential conflicts of interests concern different issues such as:

- Violating general principles while exercising public office
- Receiving gifts
- Receiving other benefits
- Political activities
- Lobbyism
- Securing the appointment of relatives and friends
- Memberships of boards, NGOs, companies and non-profit organisations
- Affiliations with trade unions or professional organisations and other personal interests
- Involvement in secondary employment that potentially conflicts with an official’s public duties
- Relationships (such as obligations to professional, community, ethnic, family, or religious group in a personal or professional capacity, or to people living in the same household)
- Possession of important information
- Representing and acting for foreign countries
- Misuse of own position for private gain
- Misuse of government property
- Other professional activities
- Post-employment
- Future employment
- Financial interests
- Different responsibilities to different actors
- Honorary positions
- Invitations for holidays, dinners, speeches, participation in events”

Problems could occur when it comes up to receiving gifts or benefits, lobbyism or conflicts of interests when being engaged in various organisations.

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<sup>37</sup> Demmke et al., 2007.

All European countries try to avoid these conflicts by the introduction of regulation systems (see figure 1). Demmke et al. defined a model of “regulation density” which reflects the level of regulation in each country. This model includes six main characteristics and 12 sub items<sup>38</sup>: The main elements of this model are (1) outside activities (e.g. political activities and honorary positions), (2) financial disclosure (e.g. declaration of financial interests and assets), (3) gifts (e.g. missions, travels), (4) post-employment (restrictions on professional commitments or holding other posts after leaving office), (5) professional activities (professional confidentiality and loyalty) and (6) other rules and regulations (e.g. specific rules on incompatibility of posts and professional activities).

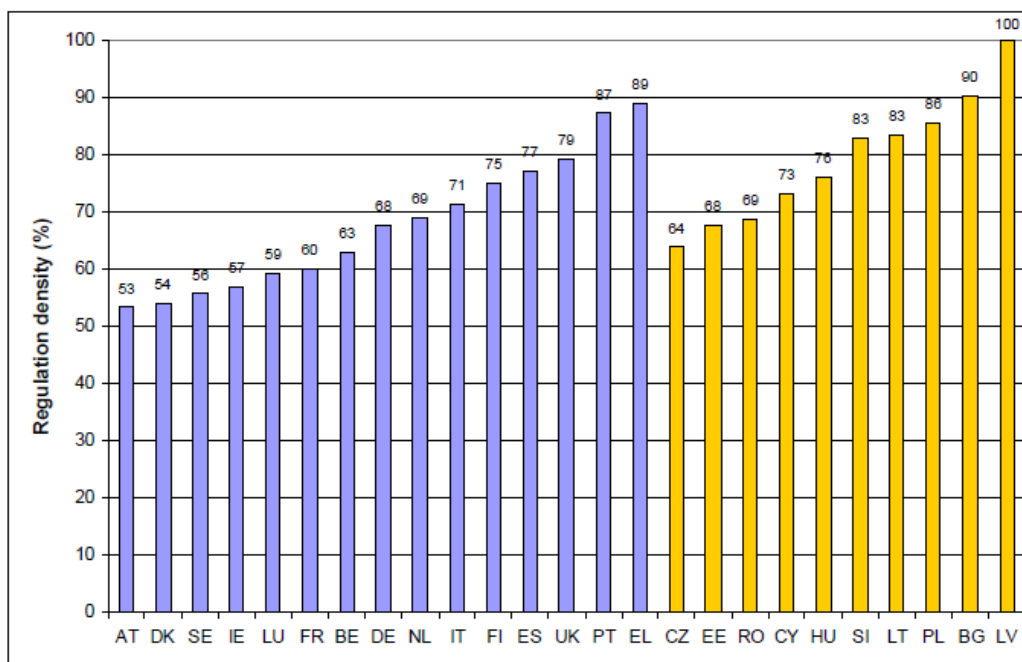
Of course, it can be difficult to collect and compare data amongst Europe. The authors tried to include all “27 countries, the European Commission, the European Parliament, the European Court of Justice, the European Court of Auditors, the European Central Bank, the European Investment Bank and a total of 141 institutions”<sup>39</sup>. The participation rate was 78%. In order to compare and interpret the data an international and interdisciplinary team cooperated. Although there might be still some doubt about effects of subjectivity or social desirability, the empirical approach by Demmke and others is very sensitive and considered. In any case, their results can serve as an excellent basis for further discussion.

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<sup>38</sup> Demmke et al., 2007, p. 20.

<sup>39</sup> Demmke et al., 2007, p. 17.

Figure 1: Conflict of Interests Regulation Density by Member State<sup>40</sup>



The density measure indicates the proportion of areas and sub areas where regulations for conflicting interests have been established by the various European states, i.e. if Latvia scores 100 % that means that all six main areas and each of the 12 sub items conceptualised in Demmke’s model are covered by regulations.

Within Europe Germany has an average level of regulations with respect to conflicts of interests. According to this study, there is more regulation density to be found in Portugal and Poland – and slightly less regulation density in the Czech Republic.

It is interesting to analyse to what extent regulation is linked to laws or codes (see table 3).<sup>41</sup>

Table 3: Regulation Mode in Some European Countries<sup>42</sup>

Country	Not regulated	Law	Code	Both
Germany	31%	27%	19%	23%

<sup>40</sup> Demmke et al., 2007, p. 44.

<sup>41</sup> Demmke et al., 2007.

<sup>42</sup> Demmke et al., 2007.

Czech Republic	33%	67%	0%	0%
Poland	17%	44%	1%	37%
Portugal	2%	62%	10%	27%

Surprisingly, the proportion of not regulated topics is ca. 30% in Germany. Laws predominantly regulate behaviour in the public service, followed by a combination of laws and codes and finally solely codes.

Codes are regulation systems. Whether they embrace particularly ethics needs to be checked in each case. With reference to Germany, some authors come up to the conclusion that codes of ethics are not very important within the German public service, but laws are very dominant. "In Germany, to start with, the mere notion of 'ethics' is still quite unusual: Instances of ethical or unethical behaviour are thought of rather in terms of 'legal' or 'illegal' behaviour. Ethics measures are mostly found to be laws proscribing certain types of behaviour, establishing control mechanisms and stating sanctions in case of violations. They are embedded in the tradition and strong systematic of the German legal system. This means that usually they form paragraphs or articles of particular law books such as the criminal law or the public service law."<sup>43</sup>

It is not possible to come up to a final statement on professional ethics in the public sector, because there are differences between the professional groups. For example, the professions of nurses or physicians have installed ethical codes and guidelines since many years. Yet, there is nothing comparable for the public administration. With respect to tasks of public administration legal regulations are the dominant mode in the attempt to control administrative behaviour.

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<sup>43</sup> N. Behncke, Monitoring public administrators or signalling trustworthiness to the demos? The two functions of ethics regulations, in: Polis, No. 61, 2007, University of Hagen, p.3.

## Mission Statements of Organisations as a Practical Form of Ethics Principles in Public Administration

*Kerstin Wüstner*

Another approach to find out more about the question which ethical principles are perceived to be relevant in practice is to analyse mission statements (“Leitbild”) or the proclaimed self-image of organisations of the public service.

In order to do so, homepages of selected organisations were analysed by referring to the following research questions:

1. Does the organisation have a mission statement, and if so, what does it comprise (research term “Leitbild”)?
2. Does the organisation provide a “search” field on the homepage and if so, what are the results of a search of “ethics” (research term “Ethik”)?

Two groups of organisations were included in this research:

1. organisations of the federation,
2. organisations of the states.

The underlying selection mode for the federation level was as follows:

- all ministries were included, as well as
- the federal foreign office as a subordinated organisation of the ministry of foreign affairs (Auswärtiges Amt),
- the office of the Chancellor (Bundeskanzleramt),
- the office of the federal president (Bundespräsidialamt),
- the federal police (Bundeskriminalamt),
- the German intelligence service (Bundesnachrichtendienst),

- the Federal Office for the Protection of the Constitution (Bundesamt für Verfassungsschutz),
- the Federal Constitutional Court (Bundesverfassungsgericht),
- the Bundesrechnungshof<sup>44</sup>.

In contrast to other chapters of our report, where we explicitly excluded police, social work etc., some organisations that also include these professions are considered here, because they also cover public administration in some areas.

On the *state level* we have included at least one organisation of each state. The selection was done by random.

As described before, two of the states have included ethics in the curricula of the study programmes. These are Baden Wuerttemberg and North Rhine-Westphalia. Therefore, it can be assumed that organisations of the public service in these two states might also provide a detailed mission description. Therefore, three examples of organisations of these two states are included in the analysis.

Furthermore, two examples of other state organisations are included as well: one state constitutional court and one Financial Audit Court (“Rechnungshof”).

For Berlin, all ministries are included.

The results of the analysis are shown in table 3 in the annex.

The analysis demonstrates that few organisations communicate their mission statement via their homepage. Those organisations, that provide such information, are mainly federal organisations. In particular, it can be noticed that organisations that either include fire brigade, police, army or social work and health care have established and published mission statements that way. In the first case, this could reflect a greater awareness of ethical problems that could be caused by police or armed forces because of the German Nazi history. In the second case mission statements could have resulted from an intense discussion about professional roles and ethical challenges of professions with a specific ethos (e.g. physicians, nurses,

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<sup>44</sup> “The Bundesrechnungshof, whose Members shall enjoy judicial independence, shall audit the account and examine the performance, regularity and compliance of financial management. The Bundesrechnungshof shall report annually directly to both Houses of Parliament and to the Federal Government”, source: [www. http://bundesrechnungshof.de/home-en?set\\_language=en](http://bundesrechnungshof.de/home-en?set_language=en).

workers). For ministries which deal with agriculture and consumer protection ethical discussions have occurred with respect to bioethics (genetically manipulated food etc.). Interestingly, ethics seem to be of minor importance for organisations that work in the fields of finance or justice. Maybe this reflects an understanding that all behaviour that follows the principle of lawfulness is ethical per se (which seems to be questionable though and which would lead to the bottom line that law substitutes ethics) – or that the financial world and economic mechanisms have nothing to do with ethics. Recent developments in the financial markets have provoked severe doubts about that, however.

The content analysis of the published mission statements shows that they often have a strong external focus on the public. Then the description is close to a list of tasks to be fulfilled by the organisation for the public welfare, security etc.

In contrast to this, the description rarely includes an internal perspective on the ethical treatment of the personnel. Quite often the mission statements are phrased as if for marketing purposes, such as: our staff is our greatest asset or: our central focus is always on people. Statements are also very general and imprecise and then most probably they may not be very helpful if they should be used to guide behaviour in every day working routine.

Finally it needs to be taken into account that the described research does not base on a complete analysis of all state ministries, but only on examples. Further, this approach enables us only to find out about what is published via the internet. It does not necessarily reflect social reality in the organisations. It is possible that an organisation has not published anything on its homepage, but has an internal discussion and reflection on ethics. Further, an organisation could have published a professional and detailed mission statement, yet the staff might not live up to it for different reasons.

Nevertheless, if (new) staff, applicants or citizens like to inform themselves about which values and guidelines are said to be important in an organisation, they might also refer to information provided by the internet and receive a picture as described above.

## 2. Legal Forms of Documents Defining Ethics Principles to Public Administration Employees

*Marianne Egger de Campo*

### Preliminary Remark

The following chapter deals with the legal regulations and sanctions concerning ethical behaviour of employees and civil servants in public administration.

For a comprehensive overview on the topic of ethical behaviour of people working on behalf of the state and thus on behalf of the public, it would be worthwhile to include the areas of police forces, health care, the judicial system as well as politicians. However, we will focus in the following on the regulations for the public employee and civil servant managing and administrating government bodies such as municipalities, state governments and national ministries. Her/his role is characterized idealtypically by the Weberian principles of bureaucracy (which are echoed in the legal regulations referred to in the following).

### Weberian Basic Principles of Bureaucracy

First and foremost bureaucratic authority is based on lawfulness. “There is the principle of fixed and official jurisdictional areas generally ordered by rules, that is, by laws or administrative regulations.”<sup>45</sup>

Lawfulness prevents that public servants act arbitrarily and thus protects a central ethical value in modern societies.

Given the principle of lawfulness, any ethical principle – be it the protection of the environment or social justice – can become a law and consequently guide the behaviour of public administration<sup>46</sup>. Therefore the practice of public administration with its tightly knit web of functionaries all bound by the law can be turned into a

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<sup>45</sup> Max Weber, Hans Heinrich Gerth, und C. Wright Mills, *From Max Weber: essays in sociology* (New York: Oxford University Press, 1946), 196.

<sup>46</sup> This can be demonstrated by the fact that each public servant of the state of Berlin is obliged to follow the State Constitution (Verfassung von Berlin - VvB), which among other articles specifies in its article 24 that economic monopolies represent an abuse of economic power and thus are prohibited, or in its article 25 that blue and white collar workers in enterprises and administrations have the right to participate in decision making and that respective laws have to guarantee this. Furthermore, article 31 of the Berlin Constitution protects the environment and calls for respecting animals.



powerful tool to establish ethical values in society although each single public servant is limited in his/her scope of autonomous decision making. The Weberian bureaucrat does not require a separate code of ethics since s/he simply obeys the laws, decrees and regulations issued by the legitimate ruler; the democratic constitution on the other hand guarantees that the power of this ruler legitimately represents the people.

Hierarchical levels of graded authority in public administration provide supervision of civil servants by superiors and guarantee conformity with the rules and regulations.<sup>47</sup>

The Weberian model of bureaucracy argues that both loyalty and independence of the civil servant are secured by tenure of life<sup>48</sup>, a salary which is adequate for the civil servant's status and thus prevents him/her from accepting bribes<sup>49</sup>, and finally that loyalty is of an impersonal manner<sup>50</sup>. Thus in the idealtypical view on the person working in public administration, the civil servant enjoys a privileged social position which immunizes him/her against people who offer favours in order to influence his/her purely legal conduct. Furthermore the idealtypical civil servant will obey his/her superior not for personal reasons – such as personal attachment or else fear from the person – but only as a representative of the law.

The above mentioned traits overlap with Webers notion of the vocation of a bureaucrat, i.e. the professional ethos of the strictly impartial, law abiding and neutral executor of the law. Weber describes the result of a professional socialisation without mentioning the details of the process of socialisation itself, he mainly mentions distinct social esteem<sup>51</sup> and special qualification, expert training and educational certificates<sup>52</sup>.

“Entrance into an office ... is considered an acceptance of a special obligation of faithful management in return for a secure existence.”<sup>53</sup>

This intrinsic motivation of the bureaucrat makes sure that civil servants experiencing a conflict of interest – private gains vs. public good – reliably decides in favour of the public good. This intrinsic motivation is based on obedience in a rigorous and strictly legal order and thus leaves only a rather small scope of autonomous decision making for the civil servant. The civil servants function accordingly as small cogs in the big machinery of bureaucracy (or today rather: public administration).

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<sup>47</sup> cf. *ibid.* 197.

<sup>48</sup> Weber, Gerth, und Mills, *From Max Weber*, 202.

<sup>49</sup> *Ebd.*, 203.

<sup>50</sup> *Ebd.*, 199.

<sup>51</sup> *Ebd.*, 199.

<sup>52</sup> *Ebd.*, 200.

<sup>53</sup> *Ebd.*, 199.

Although Max Weber does not consider the phenomenon of whistleblowing, it can be explained within the same frame work: Any attempt to abuse the strictly legal machinery of bureaucracy will make alarms of malfunction shrill. Thus, the dutiful bureaucrat can be expected to be a whistle blower in the interest of the law.

### Legal Forms of Documents Defining Ethics Principles to PA Employees

Which legal regulations contribute to the realization of the above elaborated ideal type of the vocation of the modern civil servant? In the following chapter we will focus on the German Constitution (the Basic Law for the Federal Republic = GG and the Constitution of the State of Berlin = VvB), on the Law for the Status of Public Servants (BeamStG)<sup>54</sup>, the Public Servant Law of the Federal Level (BBG) and the Public Servant Law of the State of Berlin (LBG Berlin).

### Lawfulness

The Federal Constitution or Basic Law of Germany as well as the State Constitution of Berlin lay the foundation for ethical standards of public officials (politicians) and public servants (statutory public servants with life tenure). The fact that the Basic Law states that Germany is a democratic and federal state guarantees that core principles of transparency and control by the sovereign are built into Public Administration in Germany (cf. Article 20):

#### **Article 20 GG [Basic Institutional Principles; Defense of the Constitutional Order]<sup>55</sup>**

- (1) The Federal Republic of Germany is a democratic and social federal state.
- (2) All state authority is derived from the people. It shall be exercised by the people through elections and other votes and through specific legislative, executive, and judicial bodies.
- (3) The legislature shall be bound by the constitutional order, the executive and the judiciary by law and justice.
- (4) All Germans shall have the right to resist any person seeking to abolish this constitutional order, if no other remedy is available.

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<sup>54</sup> The Law for the Status of Public Servants regulates the status of public servants of all levels (federal, state and communities) and includes sections on duties of the public servant which re-appear in the respective Public Servant Laws (BBG and LBG).

<sup>55</sup> English translation according to <http://www.iuscomp.org/gla/statutes/GG.htm#17>

In addition, this article also warrants that all agents (both public servants and public officials = politicians) are bound in their decision-making by the law and by jurisdiction. This principle of lawfulness is reconfirmed in Berlin in Art 36 and 37 of the Constitution of Berlin.

### **Impartiality**

The Law for the Status of Public Servants (BeamtStG) explicates basic duties of the public servant, among which impartiality plays a central role:

#### **Paragraph 33 BeamStG [Basic Duties]**

(1) Public Servants serve the people and not a single party (or fraction). They have to fulfill their tasks impartially and justly and have to act in favour of the common good. Public servants have to commit all of their acts to the free democratic basic order in the sense of the Basic Law and have to advocate the maintenance of the Basic Law.

(2) If Public Servants are politically active, they have to moderate and restrain their political activities according to their role towards the public and out of respect for the obligations of their office.

This paragraph is repeated identically in paragraph 60 of the Federal Public Servant Law (BBG).

The Law for the Status of Public Servants also prohibits the acceptance of presents by the public servant. This is detailed in paragraph 42 (BeamtStG):

#### **Paragraph 42 BeamStG [Prohibition of the Acceptance of Gratifications, Presents and Other Benefits]**

(1) Public Servants may not ask for or accept gratifications, gifts or other benefits for themselves or a third party with reference to their office. This applies even if the employment in public service has been terminated.

Exceptions have to be granted by the present or former employer.

(2) Whoever violates the above mentioned prohibition has to hand over the gifts to the employer if they have not otherwise been transferred to the state or been destroyed.

### **Tenure and Adequate Alimentation**

This impartiality of the public servant is guaranteed by regulations concerning the alimentation and life tenure. As far as the alimentation of the public servant is concerned, it is defined to be adequately high for the office in question, thus immunizing the public official against bribery. The adequate alimentation of the public servants is even laid down in the Basic Law (Article 33, paragraph 5).

#### **Article 33 GG [Equal Citizenship; Professional Civil Service]**

(5) The law governing the public service shall be regulated with due regard to the traditional principles of the professional civil service.

This so called alimentation principle is interpreted as the obligation of the employer to provide for lifelong adequate alimentation of the public servant and her/his family. The salary has to be graded according to the rank of the public servant, and according to the responsibilities of the office. The employer has to consider the significance of the profession of public service in society as well as the general economic and financial situation of the standard of living (cf. verdict of the Constitutional Court of February 14<sup>th</sup> 2012, 2 BvL 4/10).

Tenure again ensures independence of public administration and is regulated in paragraph 4 of the Law for the Status of Public Servants (BeamtStG) and respectively in the Federal Public Servant Law (BBG paragraph 6). Tenure is the general rule for the employment of public servants in Germany. It restricts termination of service to exceptional cases which are explicated by the legislator in the Federal Public Servant Law (Bundesbeamtengesetz – BBG) in its paragraphs 30, 34 and 35. Among these is also a dismissal according to the disciplinary code of the Federal civil servants.

Public employees enjoy a similar protection like life tenure after they have served for 15 years in public service; before that they can only be dismissed after notification (at least 6 weeks prior to the dismissal, this period increases with duration of employment). The Federal Civil Servant Law regulations for dismissals distinguish between civil servants on tenure and provisional civil servants. A provisional civil servant that has not (yet) reached tenure status will already be dismissed for offenses that would result in a mere reduction of pay of a tenured civil servant.

### **Full Commitment of the Public Servant**

Further the Law for the Status of Public Servants (BeamtStG) requires the full devotion of the public servant to the office and requires the commitment of the public official not to practice any other profession.

#### **Paragraph 34 BeamStG [Fulfilment of Tasks and Behaviour]**

Public Servants have to dedicate their full personal commitment to their profession. They have to fulfill the tasks assigned in all conscience and irrespective of personal interests. Their behaviour must justify the respect and trust required for their profession.

#### **Paragraph 40 BeamStG [Secondary Employment]**

Any secondary employment is by principle due for notification. If a secondary employment may harm the interest of the office it can be prohibited.

For the state of Berlin this regulation about secondary employment is explicated in paragraphs 62, 63 of the Public Servant Law for Berlin (LBG Berlin).

### **Eligibility Criteria for Appointment**

The democratic principle and the principle of independence is also engraved in the eligibility criteria for public officials and public servants. Thus the Federal Constitution (Basic Law) states in article 33:

#### **Article 33 GG [Equal Citizenship; Professional Civil Service]**

(2) Every German shall be equally eligible for any public office according to his aptitude, qualifications, and professional achievements.

(3) Neither the enjoyment of civil and political rights, nor eligibility for public office, nor rights acquired in the public service shall be dependent upon religious affiliation. No one may be disadvantaged by reason of adherence or non-adherence to a particular religious denomination or philosophical creed.

(4) The exercise of sovereign authority on a regular basis shall, as a rule, be entrusted to members of the public service who stand in a relationship of service and loyalty defined by public law.

This is reconfirmed in the State Constitution of the State of Berlin in article 19:

**Art. 19 Abs. 2 VvB (Citizenship Rights; Access to Public Office):**

(2) Access to public office is free to each and every one regardless of descent, gender, party affiliation or religious confession, if the person has the necessary capabilities.

Consequently each job opening in public service has to be made public in a formal job posting procedure. For the Public Servant Law of the state of Berlin, this is made specific in paragraph 8 (LBG):

**Paragraph 8 LBG Obligation to Advertisement of Vacancy**

(1) The candidates have to be found by advertisement of a vacancy; exceptions from this obligation to advertisement of jobs are decided in the State's Personnell Committee („Landespersonalausschuss“). The criteria for appointment are defined in paragraph 9 of the Law for the Status of Public Servants. This does not affect the validity of the equal opportunity law.

The criteria for the appointment enforced by the Law for the Status of Public Servants are as follows:

**Paragraph 9 LBG Criteria for the Appointment of a Public Servant**

Appointments are eligible only according to aptitude, capability, qualification, and professional performance, irrespective of gender, descent, race or ethnicity, disability, religion or conviction, political opinion, relations or sexual identity.

## **Mechanisms of Control**

The prerequisite for supervision and control of public administration is a legally defined hierarchy of competencies and authority which acts as a safeguard to realise the principles of lawfulness and impartiality on a daily basis. Thus the Law for the Status of Public Servants (BeamtStatG) specifies the subjection of the public servant to directives.

### **Paragraph 35 BeamtStatG Subjection to Directives**

Public servants have to consult and support their superiors. They are obliged to follow their official instructions and the general rules. This is not applicable to the extent that public servants are subject to special legal rules exempting them from directives and subjecting them exclusively to the law.

The Weberian notion of office hierarchy provided e.g. in Berlin in the Hierarchical Regulation of Competencies in the state's administration (AZG – Allgemeines Zuständigkeitsgesetz) regulates the competency of the authorities in the administration in controlling, supervising and if necessary overruling decisions of the districts' administrations.

Supervision is divided into a part concerning formal aspects of compliance with the general duties of the public servant (so called Dienstaufsicht) and the technical supervision (so called Fachaufsicht). While the first would concern matters such as work performance and adequate conduct, the latter concerns the supervision of the decision making of the public servant: e.g. whether the public servant uses his/her discretionary authority appropriately etc.

Any citizen has the right to file a complaint if s/he suspects that a public servant has violated his/her general professional duties, this right is included in the Basic Law which grants the right to petition (thus the complaint is regarded as a particular case of petition according to Article 17 of the Basic Law):

### **Article 17 GG [Right of Petition]**

Every person shall have the right individually or jointly with others to address written requests or complaints to competent authorities and to the legislature.

Far more powerful than the complaint (“Dienstaufsichtsbeschwerde”) is the constitutional right to appeal against decisions made by public authority if they violate a person’s rights.

#### **Article 19 GG [Restriction of Basic Rights – Legal Remedies]**

(1) Insofar as, under this Basic Law, a basic right may be restricted by or pursuant to a law, such law must apply generally and not merely to a single case. In addition, the law must specify the basic right affected and the Article in which it appears.

(2) In no case may the essence of a basic right be affected.

(3) The basic rights shall also apply to domestic artificial persons to the extent that the nature of such rights permits.

(4) Should any person’s rights be violated by public authority, he may have recourse to the courts. If no other jurisdiction has been established, recourse shall be to the ordinary courts. The second sentence of paragraph (2) of Article 10 shall not be affected by this paragraph.

The State Constitution of Berlin specifies its petitioning rights further, when it states:

#### **Art. 34 VvB (Right to Petition):**

Everyone has the right to address the responsible authorities by written applications, proposals or complaints both singly and in company with others. This is particularly applicable for the parliament of the state, the state administration (= Senat) and the district assembly.

#### **Art. 46 Clauses 1 to 4 VvB (Committee of Petitions):**

To protect the citizens’ rights the state parliament sets up a committee to decide about petitions if the parliament itself does not decide upon them.

The committee can also act in its own right if it learns about circumstances that need to be investigated. The state administration and all its supervised authorities and institutions as well as courts have to cooperate with information. The same applies to persons, associations, and legal entities if they fulfill tasks commissioned by the state of Berlin.



### **Art. 49 a Abs. 1 VvB (Information, Reporting)**

1) The state parliament and the responsible committees can request information or reports from representatives of the state in boards of directors of legal entities of public law or private law that fulfill tasks commissioned by the state of Berlin.

In terms of external mechanisms of control, Germany established a couple of formal bodies such as the Auditory Court on Federal and state level which scrutinizes all actions of the administration on a regular basis. In particular this concerns budgetary and financial management of all authorities.

For Berlin the State Constitution e.g. foresees the establishment of an Audit Court:

### **Art. 95 Paragraphs 1, 3 and 4 VvB (Financial Audit Court)**

(1) The Financial Audit Court is an independent superior authority that is only subject to the law. Its members are granted independence like judges.

(3) The Financial Audit Court is in charge of checking all invoices as well as the correctness and economic viability of Berlin's total budgetary management.

(4) Both the parliament and the central administration of the state can request that the Financial Audit Court investigates matters of particular interest.

### **Whistle Blowing**

These top-down mechanisms of control are complemented by a bottom-up provision which does not only entitle but even obliges the public servant to prevent unlawful acts of his superior.

### **Paragraph 36 of BeamStG [Responsibility for Lawfulness]**

(1) Public Servants are personally responsible for the lawfulness of their actions.

(2) Concerns about the lawfulness of professional directives have to be invoked towards their superior according to the professional hierarchical order. If the directive is maintained and if the public servant continues to have concerns, they have to report to the superior of their supervisor. If the superior of the supervisor reasserts the directive, they have to follow it and are exempt of their own liability. This does not apply if the ordered action violates the dignity of a person or if it is criminal or contrary to regulations and if this criminality or irregularity is discernable by the public servant. The reassertion of a directive has to be given in writing if so demanded.

Public Servant Law includes “(t)he duty to advise and support one’s superior, especially with reference to the legality and expediency/suitability of the superior’s action, including the duty to point out to the superior that the action he/she intends to take is inappropriate or even unlawful. (...) On the one hand, the duty to remonstrate takes account of the personal responsibility of public officials, in a relationship of service and loyalty defined by public law, for the lawfulness of their action and, on the other hand, defines the limits of their fundamental duty of obedience (duty to comply with instructions): if public officials have any doubts regarding the lawfulness of any action they are asked to perform, they have to inform their superior of such doubts. If the superior nevertheless upholds the official order, the public official has to turn to the next higher superior. It is only when the latter confirms the official order that the public official concerned must, in principle, comply with it unless he/she would thereby commit a criminal or administrative offence or violate human dignity. A public official will be protected against any subsequent claims under disciplinary regulations or liability provisions only if he/she has complied with his/her duty to remonstrate.”<sup>56</sup>

### 3. Enforcement of Respecting Ethics Principles by PA Employees

#### Offences and Penalties in Public Servant Law, Disciplinary Code and German Criminal Code

In the following section we will give an overview on the various sanctioning measures for public servants not complying with the prerequisites of lawfulness and impartiality.

On the one hand these sanctions are laid down in the Public Servants laws and the disciplinary codes. On the other hand sanctions concerning corruption – and thus a deviation from impartiality – are specified in the German Criminal Code. The latter also penalizes corruption in private enterprises.

First and foremost the Law for the Status of Public Servants (BeamStatG) states in its paragraph 47 (“Failure of Fulfillment of Duties”) that public servants commit a malfeasance in office if they culpably fail to live up to the above mentioned duties of a public servant, e.g. the paragraphs 33 (“Basic Duties”), 34 (“Fulfilment of Tasks and Behaviour”), 35 (“Subjections to Directives”) ,40 (“Secondary Employment”), 42 (“Prohibition of the Acceptance of Gratifications, Presents and other Benefits”). The Law for the Status of Public Servants (BeamStatG) mentions that details and

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<sup>56</sup> Organisation for Economic Co-operation and Development., *Trust in Government Ethics Measures in OECD Countries*. (Paris: OECD Publishing, 2000), 156f.

particularly prosecution of a malfeasance in office are specified in particular disciplinary codes for public servants.

The Disciplinary Code for Federal Public Servants (Bundesdisziplinargesetz - BDG) regulates that the respective superior has to initiate disciplinary proceedings against the public servant:

**Paragraph 17 BDG**

If there are sufficient factual grounds justifying the suspicion of an offence against legal conduct of the civil servant, his/her superior is obliged to initiate disciplinary proceedings. The supervising superior and the supreme authority have to provide that superiors act accordingly and can seize the disciplinary proceedings at any time.

The disciplinary proceedings are based on a hearing of the suspect, his/her rights to inspect files and to be assisted by an attorney. The disciplinary court can even rule to have the private premises of the suspect searched and files, technical records can be confiscated (see chapter 2, paragraphs 20-31 of the Disciplinary Code for Federal Public Servants - BDG).

The sanctions imposed by disciplinary courts are official rebukes (paragraph 6 of the Disciplinary Code for Federal Public Servants - BDG), fines up to one month's salary (paragraph 7 of the Disciplinary Code for Federal Public Servants - BDG), a reduction of salary or retirement benefits by up to 20% for a maximum period of 3 years (paragraph 8 of the Disciplinary Code for Federal Public Servants - BDG), transfer of post by downgrading in the hierarchy (paragraph 9 of the Disciplinary Code for Federal Public Servants - BDG), removal from office (paragraph 10 of the Disciplinary Code for Federal Public Servants - BDG) and finally even total deprivation of his/her retirement benefits (paragraph 12 of the Disciplinary Code for Federal Public Servants - BDG).

Berlin's Disciplinary Code for Public Servants (Disziplinargesetz – DiszG) stipulates similar sanctions for disciplinary proceedings against the public servants of the state of Berlin.

In addition, the State Constitution of Berlin specifies a personal liability of public servants for financial losses in article 91:

**Art. 91 Clause 1 VvB (Liability):**

If any of Berlin's public servants acts against the budgetary constitution they will be held liable for the damage they cause.

### **Sections of the Criminal Code: Offences and Penalties**

Further, the German Criminal Code deals with the unethical behaviour of bribery both in private business transactions and in public office. It actually also covers bribery in the political sphere; section 108b prohibits active and passive bribery of voters and section 108e prohibits active and passive bribery of delegates (cf. Strafgesetzbuch - StGB paragraph 108b & e):

#### **Section 108b StGB Bribing Voters**

(1) Whosoever offers, promises or furnishes to another gifts or other benefits for not voting or for voting in a particular manner, shall be liable to imprisonment not exceeding five years or a fine.

(2) Whosoever requests, is promised or accepts gifts or other benefits in exchange for not voting or voting in a particular manner, shall incur the same penalty.

#### **Section 108e StGB Bribing Delegates**

(1) Whosoever undertakes to buy or sell a vote for an election or ballot in the European Parliament or in a parliament of the Federation, the member states, municipalities or municipal associations, shall be liable to imprisonment not exceeding five years or a fine.

(2) In addition to a sentence of imprisonment of at least six months for an offence pursuant to subsection (1) above the court may order the loss of the ability to hold public office, to vote and be elected in public elections (section 45(2) and (5)).

Further, sections 299 and 300 of the German Criminal Code punish taking and giving bribes in commercial practice (StGB paragraph 299, 300).

Chapter 30 of the German Criminal Code specifies Offences committed in Public Office, among which the following sections concerning corruption and corruptibility of public servants deserve to be mentioned in more detail:

### **Section 331 StGB Taking Bribes**

(1) A public official or a person entrusted with special public service functions who demands, allows himself to be promised or accepts a benefit for himself or for a third person for the discharge of an official duty shall be liable to imprisonment not exceeding three years or a fine.

(2) A judge or arbitrator who demands, allows himself to be promised or accepts a benefit for himself or a third person in return for the fact that he performed or will in the future perform a judicial act shall be liable to imprisonment not exceeding five years or a fine. The attempt shall be punishable.

(3) The offence shall not be punishable under subsection (1) above if the offender allows himself to be promised or accepts a benefit which he did not demand and the competent public authority, within the scope of its powers, either previously authorises the acceptance or the offender promptly makes a report to it and it authorises the acceptance.

### **Section 332 StGB Taking Bribes Meant as an Incentive to Violating one's Official Duties**

(1) A public official or person entrusted with special public service functions who demands, allows himself to be promised or accepts a benefit for himself or for a third person in return for the fact that he performed or will in the future perform an official act and thereby violated or will violate his official duties shall be liable to imprisonment from six months to five years. In less serious cases the penalty shall be imprisonment not exceeding three years or a fine. The attempt shall be punishable.

(2) A judge or an arbitrator, who demands, allows himself to be promised or accepts a benefit for himself or for a third person in return for the fact that he performed or will in the future perform a judicial act and thereby violated or will violate his judicial duties shall be liable to imprisonment from one to ten years. In less serious cases the penalty shall be imprisonment from six months to five years.

(3) If the offender demands, allows himself to be promised or accepts a benefit in return for a future act, subsections (1) and (2) above shall apply even if he has merely indicated to the other his willingness to

1. violate his duties by the act; or
2. to the extent the act is within his discretion, to allow himself to be influenced by the benefit in the exercise of his discretion.

In addition, active bribery is punishable as well, as state Sections 333 and 334 of the German Criminal Code:

### **Section 333 StGB Giving Bribes**

(1) Whosoever offers, promises or grants a benefit to a public official, a person entrusted with special public service functions or a soldier in the Armed Forces for that person or a third person for the discharge of a duty shall be liable to imprisonment not exceeding three years or a fine.

(2) Whosoever offers promises or grants a benefit to a judge or an arbitrator for that person or a third person in return for the fact that he performed or will in the future perform a judicial act shall be liable to imprisonment not exceeding five years or a fine.

(3) The offence shall not be punishable under subsection (1) above if the competent public authority, within the scope of its powers, either previously authorises the acceptance of the benefit by the recipient or authorises it upon prompt report by the recipient.

### **Section 334 StGB Giving Bribes as an Incentive to the Recipient's Violating his Official Duties**

(1) Whosoever offers, promises or grants a benefit to a public official, a person entrusted with special public service functions or a soldier of the Armed Forces for that person or a third person in return for the fact that he performed or will in the future perform an official act and thereby violated or will violate his official duties shall be liable to imprisonment from three months to five years. In less serious cases the penalty shall be imprisonment not exceeding two years or a fine.

(2) Whosoever offers, promises or grants a benefit to a judge or an arbitrator for that person or a third person, in return for the fact that he

1. performed a judicial act and thereby violated his judicial duties; or
2. will in the future perform a judicial act and will thereby violate his judicial duties,

shall be liable in cases under No 1 above to imprisonment from three months to five years, in cases under No 2 above to imprisonment from six months to five years. The attempt shall be punishable.

(3) If the offender offers, promises or grants the benefit in return for a future act, then subsections (1) and (2) above shall apply even if he merely attempts to induce the other to

1. violate his duties by the act; or
2. to the extent the act is within his discretion, to allow himself to be influenced by the benefit in the exercise of his discretion.

Section 335 specifies the penalty for aggravated cases of the above mentioned forms of bribery which can lead to imprisonment of up to ten years. Corruption is severe, if the benefit is particularly large, or if the offender has repeatedly asked for bribes or if the offender acts in an organised gang of corruptible officials (paragraph 335 StGB).

Finally the German Criminal Code also rules in paragraph 336 StGB that the omission of an action of a public official or public servant in exchange for bribes is equally punishable.

#### **4. Criminological Findings: Frequency of Sanctions for Bribery**

To know about the measures the law offers to prevent and/or punish digressions is but one side of the medal of any criminal phenomenon. Thus, we shall also take a glance at a survey by Transparency International or the official data collected by the police about the number of prosecutions according to the above mentioned sections of the German Criminal Code (sections 108b/e, sections 299f. and sections 331ff. StGB).

According to a survey conducted among 1.000 Germans in 2010 a total of 2 % of the adult population confesses having paid a bribe in the past 12 months to any of the following nine institutions: Education, Judiciary, Medical Services, Police, Registry and Permit Services (civil registry for birth, marriage, licenses, permits), Utilities (telephone, electricity, water, etc.), Tax Revenue, Land Services (buying, selling, inheriting, renting) and Customs. Between 1 and 2 % of the German respondents state that they have paid a bribe to the above mentioned institutions except for Tax Revenue. Not a single respondent confesses bribing the Tax Revenue Service. This institutions represents public administration as such (compared to the other institutions such as police and medical services etc.) which indicates a rather low prevalence of bribery in German public administration<sup>57</sup>.

Of those 20 respondents who admitted having paid a bribe, the following reasons were given (% refer to those having given a bribe):

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<sup>57</sup> „Global Corruption Barometer 2010/11 -- In Detail“, zugegriffen 25. Februar 2013, [http://gcb.transparency.org/gcb201011/in\\_detail/](http://gcb.transparency.org/gcb201011/in_detail/).

Table 4: Global Corruption Barometer of Transparency International: Reasons for Bribes<sup>58</sup>:

<i>The bribe was paid to speed things up</i>	29 %
<i>The bribe was paid to avoid a problem with the authorities</i>	12 %
<i>The bribe was paid to receive a service entitled to</i>	24 %
<i>Don't remember</i>	6 %
<i>Don't know</i>	29 %

The number of alleged corruption offences (recorded by the police) in Germany is fluctuating quite a lot during the decade from 2000 to 2010, thus it is hard to conclude a trend of rising or declining corruption offences. In general, any offence recorded by the police very likely will have to be complemented by another 95 to 99% of unreported cases<sup>59</sup>. Figure 2 shows the number of alleged corruption offences in Germany from the year 2000 until 2010.

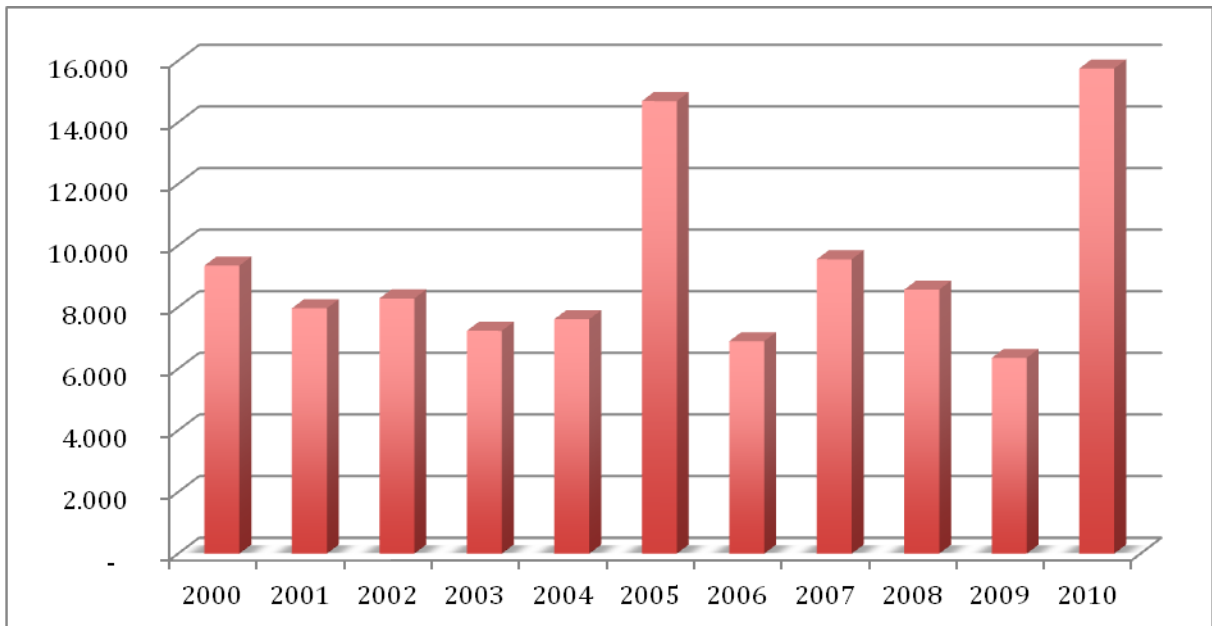
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<sup>58</sup> Ebd.

<sup>59</sup> Bannenberg 2009, S. 377 cit. in Helmut Kury, „Korruption - wird geschmiert wie eh und je? Teil 2: Schäden und Präventionsansätze“, *Kriminalistik* 3 (2012): 171.



Figure 2: Corruption Offences Identified by the Police<sup>60</sup>



The numbers depicted in figure 2 include all corruption crimes according to the Criminal Code. While the number of offences concerning bribery in the political realm is negligibly small (N<10 except for 37 cases of which a total of 34 concern proceedings against one individual<sup>61</sup>), the bribery cases in business transactions account for the larger part of the offences. Table 5 shows the numbers of corruption offences reported to the police from 2006 to 2010; the table is divided into the three areas.

<sup>60</sup> Bundeskriminalamt, *Korruption. Bundeslagebild 2010* (Wiesbaden: BKA, o. J.), 7, [http://www.bka.de/nn\\_224082/DE/Publikationen/JahresberichteUndLagebilder/Korruption/korruption\\_\\_node.html?\\_\\_nnn=true](http://www.bka.de/nn_224082/DE/Publikationen/JahresberichteUndLagebilder/Korruption/korruption__node.html?__nnn=true); Transparency International, *National Integrity System Report Germany. Short Version*, 2012, 19.

<sup>61</sup> Transparency International, *National Integrity System Report Germany. Short Version*, 19.

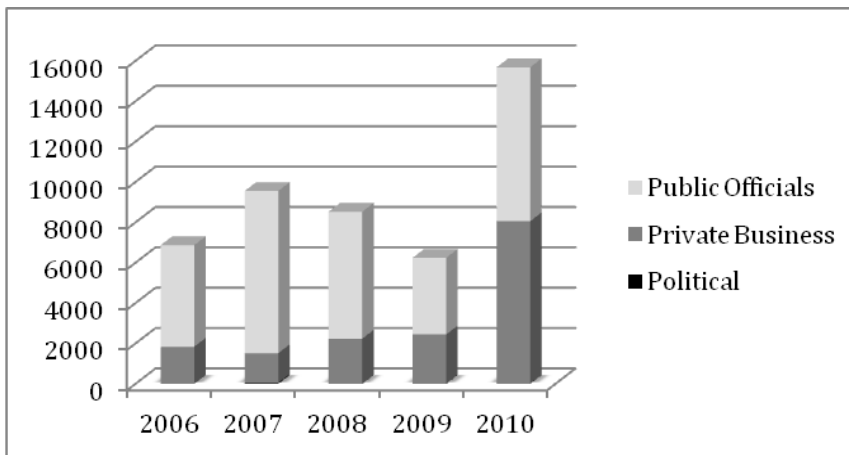
Table 5: Corruption Offences Identified by the Police According to the Respective Statutory Offence<sup>62</sup>

<b>Offence</b>	<b>2006</b>	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>
<b>Section 108b Active &amp; passive bribery of voters</b>	0	2	0	0	1
<b>Section 108e Active &amp; passive bribery of delegates</b>	0	37	8	6	2
<b>Section 299 Active &amp; passive bribery of business transactions</b>	1.032	1.025	1.530	1.833	7.511
<b>Section 300 Aggravated cases of active &amp; passive bribery of business transactions</b>	809	455	699	610	542
<b>Section 331 Taking advantages (public officials)</b>	1.277	963	962	1.376	585
<b>Section 332 Passive bribery (public officials)</b>	949	1.221	626	632	693
<b>Section 333 Giving advantages (public officials)</b>	1.322	684	1.041	973	465
<b>Section 334 Active bribery (public officials)</b>	912	1.222	725	721	797
<b>Section 335 Aggravated cases of active &amp; passive bribery of public officials</b>	570	3.945	2.937	94	5.086

As figure 3 shows more clearly, the share of corruption offences concerning public officials has diminished during the past years:

<sup>62</sup> Bundeskriminalamt, *Korruption. Bundeslagebild 2010*, 9; Transparency International, *National Integrity System Report Germany. Short Version*, 19.

Figure 3: Alleged Corruption Offences in the Realms of Politics (=Negligibly Small), Private Business and Public Administration<sup>63</sup>



The reported numbers have to be interpreted with caution. First and foremost we have a large number of unreported crimes – similar to drug offences. Secondly the numbers vary from year to year significantly which is mostly due to a few large lawsuits which account for hundreds of offences. Thirdly we have to consider that the numbers reported by the police may include innocent people charged with a corruption offence.

<sup>63</sup> Bundeskriminalamt, *Korruption. Bundeslagebild 2010*, 9; Transparency International, *National Integrity System Report Germany. Short Version*, 19.

Thus we will take a glance at the number of convictions in table 6.

Table 6: Convictions on Account of Corruption Offences<sup>64</sup>:

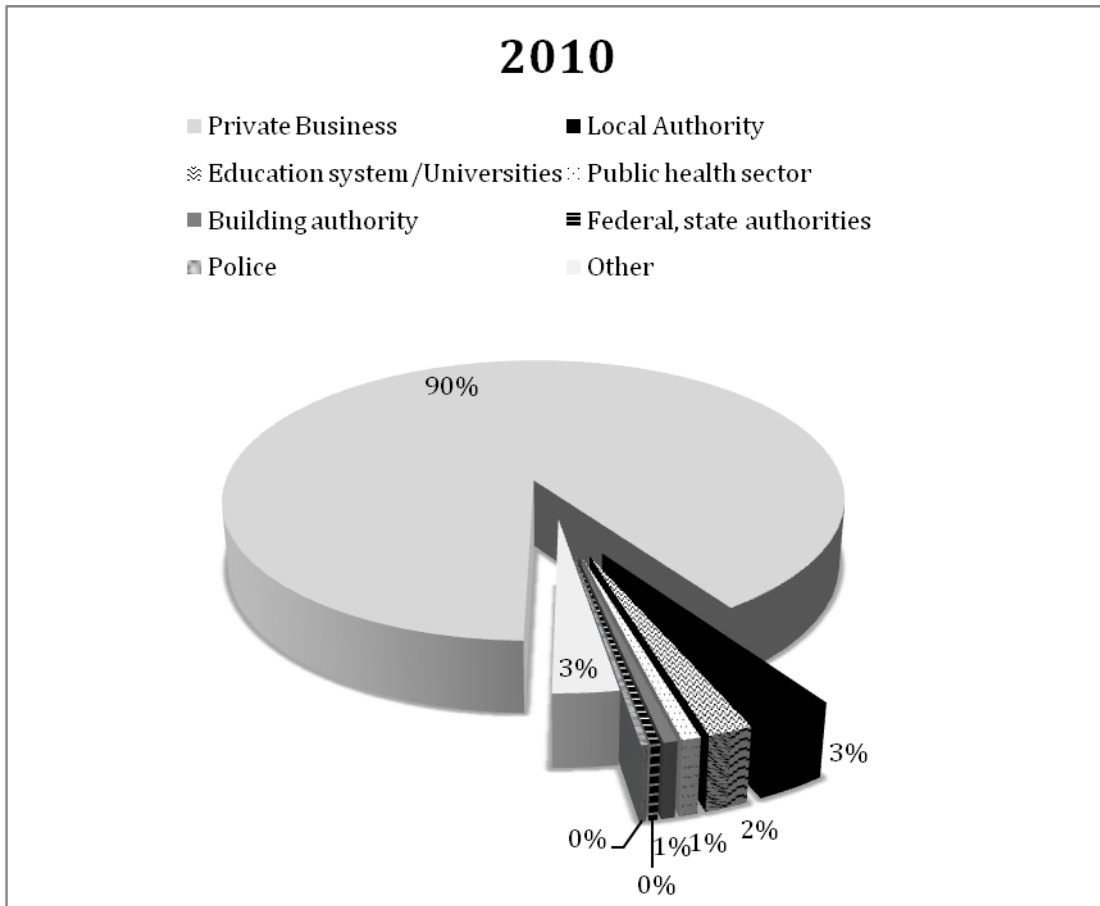
<b>Offence</b>	<b>2004</b>	<b>2007</b>	<b>2008</b>	<b>2009</b>
<b>Section 108e Active &amp; passive bribery of delegates</b>	0	0	2	0
<b>Section 299 Active &amp; passive bribery of business transactions</b>	16	64	72	60
<b>Section 300 Aggravated cases of active &amp; passive bribery of business transactions</b>		41	35	52
<b>Section 331 Taking advantages (public officials)</b>	33	43	62	80
<b>Section 332 Passive bribery (public officials)</b>	50	44	67	56
<b>Section 333 Giving advantages (public officials)</b>	91	37	54	41
<b>Section 334 Active bribery (public officials)</b>	149	224	185	160
<b>Section 335 Aggravated cases of active &amp; passive bribery of public officials</b>	32	46	33	36

Note that the number of convictions does not necessarily correspond with individuals, thus one individual may be convicted of more than one crime. Thus the higher number of convictions concerning public officials does not indicate that corruption is a domain of public administration in Germany. Rather, a single law suit concerning a corruption scandal in one public authority will affect the generally rather small numbers significantly. The same applies to prosecutions in large private companies.

<sup>64</sup> Transparency International, *National Integrity System Report Germany. Short Version*, 20.

To get an insight into the employment areas of the alleged offenders who take bribes please see the following break down for 2010:

Figure 4: Breakdown of Alleged Takers of Bribes<sup>65</sup>



For 2010 the Federal Criminal Investigation Office reports that the alleged bribe takers (public and private sector) have mainly (89%) benefited of gratifications in kind, only some 8 % received cash. Among the other recorded bribes are entertainment, vacation trips, secondary employment, and visits to a brothel<sup>66</sup>.

Between 2006 and 2010 the monetary gratifications for the alleged bribe takers ranged between 44 million EUR in 2007 and 96 million EUR in 2010<sup>67</sup>. These numbers

<sup>65</sup> Bundeskriminalamt, *Korruption. Bundeslagebild 2010*, 13.

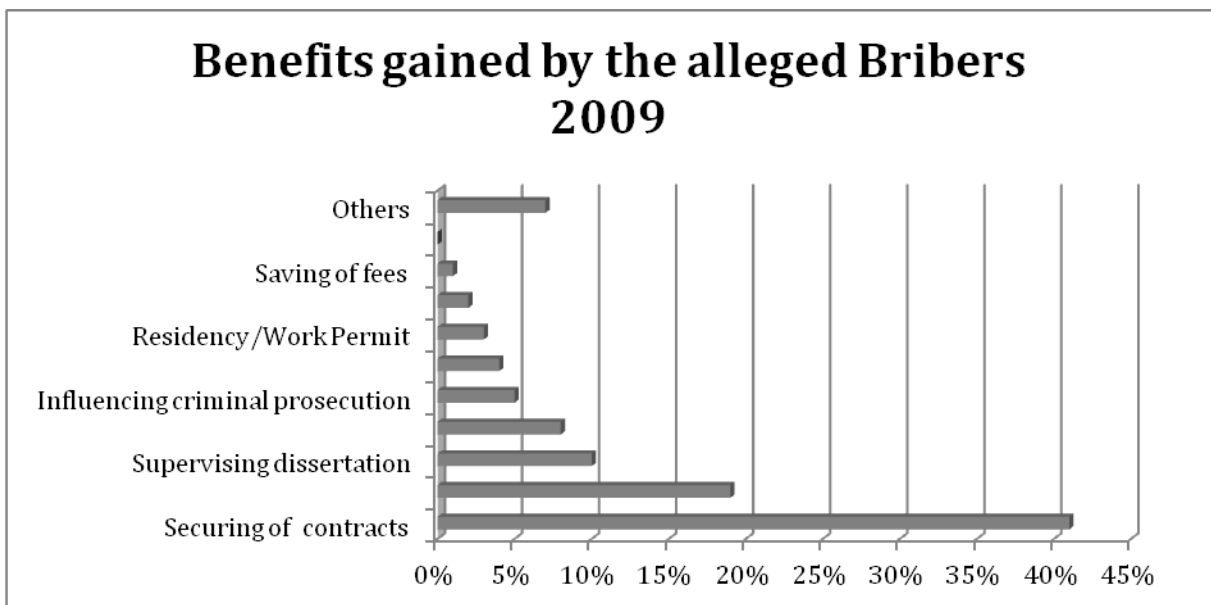
<sup>66</sup> Ebd., 17.

<sup>67</sup> Ebd.

refer to a total of 7.563 statements about the nature of advantages of bribe takers including multiple entries.

Since the aggregated numbers of the Federal Criminal Investigation Office do not differentiate between the advantages received by corrupt public servants on the one hand and bribe takers in private business a glance at the gains of the alleged bribers may enable us to estimate the prevalence of corruption in the German public administration. See figure 5 for an overview of the nature of gains for alleged bribers in 2009. The percentages refer to a total of 1.200 cases reporting the nature of the benefits a briber intended to gain<sup>68</sup>.

Figure 5: Nature of Gains for Alleged Bribers



The monetary gains for the alleged bribers range between 117 million EUR in the year 2007 and 372 million EUR in the year 2008<sup>69</sup>.

In general the shares for the various gains indicate that the gains explicitly originating in public administration – such as obtaining licences and residency/work permits or saving of fees – are much smaller than the category “securing of contracts” (which may also include public contracts, though). The Federal Criminal Investigation Office,

<sup>68</sup> Ebd., 18.

<sup>69</sup> Ebd., 19.

however, interprets the entire report as evidence for the shift of corruption from the public administration to private business.<sup>70</sup>

## Conclusion

With all due caution the interpretation of the numbers of crimes concerning unethical behaviour of public servants one may attest the German public administration to live up to the ideal of impartiality and correctness. This may also be underlined with the results of a victimisation survey conducted by Transparency International which revealed that only 1 to 2% of the respondents admitted to have made a facilitation payment over the 12 months prior to the survey<sup>71</sup>.

One may speculate about the reasons for this situation. Are the German public servants generally law abiding, honest and obedient servants of the collective good because they adhere to the culture of German bureaucracy?

Is the appeal to professional duties voiced in the respective Public Servant Laws strong enough to produce compliance with the law?

Is Weber's notion of formal training and socialisation towards a vocation of the dutiful bureaucrat functioning?

I dare to question that Weber's model is sufficient to master the challenges of ethics for the present time. To argue with a satirical piece from 1928 written by the German author Kurt Tucholsky, one can describe the motives of a person to become a public servant as follows:

“To understand how the bureaucracy in large and small states works, one has to envision, how a single person gets to become a public servant. He does of course not become a public servant, because he approves of the state or because he could not bare to not serve the public good, or other things people tend to say. He becomes a public servant in order to get provided for and to work as independently and irresponsibly as possible. And he wants to receive a regular salary. ...”<sup>72</sup>

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<sup>70</sup> Ebd., 21.

<sup>71</sup> Transparency International, *National Integrity System Report Germany. Short Version*, 19.

<sup>72</sup> Kurt Tucholsky, „Die Beamtenpest II“, in *Glossen und Essays. Gesammelte Schriften.*, 1935, <http://www.textlog.de/tucholsky-beamtenpest-ii.html>.

Although rationalization processes in government and administration have increased the extent of division of labour – which might make us believe that irresponsible behaviour will not fall back on its doer – the complexity of most tasks in public administration has actually increased. A public servant ignoring the implications and ramifications of his actions and his omitting actions will nowadays fail to contribute to an ethically functioning public administration. In fact, this consciousness of the further consequences of one's deeds had already been called for in earlier times of rationalization and bureaucracy and it lacked the German bureaucrats as Zygmunt Bauman had pointed out in his deeply disturbing analysis of the Holocaust as a result of modernity and rational bureaucracy<sup>73</sup>.

Modern public administration facing an increasingly globalized world will have to move beyond lawfulness of national legal codes; modern ethics in public administration will need to focus on a universal ethical code such as the human rights. Regarding ethical behaviour of the public servant as his/her duty to enforce the human rights will transform the public servant from an obedient subject – that can be abused, as history proved – to a courageous advocate who will not have himself intimidated by possibly unlawful superiors or powerful economic actors, such as large transnational corporations. The focus of the German corruption reports on private business may indicate that corruption – as one form of unethical behaviour – is a common and profitable strategy for business, although it causes enormous material damage for society as a whole. Thus, the danger of this strategy should not be trivialized.

The large number of unreported corruption offences (up to 99%) demands effective protection measures for whistle blowers and a culture of civil disobedience – this is also true for public administration. Public servants need to be encouraged to detect and report unethical behaviour of their administrations, they have to be educated to question authority. This new foundation of ethical behaviour, however, represents the true opposite of the Weberian bureaucrat.

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<sup>73</sup> Zygmunt Bauman, *Modernity and the Holocaust* (Ithaca, N.Y.: Cornell University Press, 2000).



## II. ETHICS PRINCIPLES FOR PUBLIC ADMINISTRATION EMPLOYEES IN POLAND

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### 1. Definition of Ethics Principles for Public Administration Employees

#### **The Civil Service Code of Ethics**

The first Civil Service Code of Ethics was introduced in 2002. Despite its precursory role, it was introduced without any legal basis leaving it in the sphere of an internal, regulatory act. Since it was not considered as a legal act *sensu stricto*, its regulations could not have been fully applied. They were treated rather as a set of universal standards that were expected to be respected by the members of the civil service, than as guidelines for implementation and compliance with ethical principles.

The assessment of the form and scope of the 2002 Civil Service Code of Ethics brought divergent views and opinions.

First, it was questioned whether the 2002 Code should be limited to civil servants only. The need to extend the application of its regulations to public administration employees was becoming more and more obvious, especially in the view of some common principles that could be shared within a larger set of addressees. It was obviously noted, that some of these principles had to be different and carefully attributed according to roles and obligations of various groups of public administration employees. Nevertheless, the enlarged version of the code of ethics so far has not been established.

Second, the 2002 Code itself was not well known within civil servants themselves, most probably because of the way in which it was adopted. In this case, contrary to the majority of ethics codes applicable to different professions, the ethics code for civil servants was levied by the superior of the civil service, i.e. the prime minister. It stems from the fact that the Polish public administration is not organized in a professional union. Therefore, there was no common sense of identification with the principles contained therein. Moreover, it was often noted that the enforcement of the 2002 Code was lacking. Namely, no institution was named to enforce its provisions, neither

were there any sanctions established for no-compliance, what consequently led to the lack of effectiveness of Code's provisions. Finally, the role of the Code was not entirely acknowledged, as it was claimed that its provisions are already universal and widely accepted by civil servants, and most of its principles could have been derived directly from the Administrative Code.

### **The Act of 21 November 2008 on Civil Service**

Art. 15 of the Act of 21 November 2008 on Civil Service states that the Head of Civil Service shall fulfill duties set out in this Act, in particular watch over the observance of the Civil Service rules. The Prime Minister shall establish guidelines on the observance of the civil service rules and ethical principles of the Civil Service Corps.

According to Art. 16: (...) in order to implement standards, guidelines and principles (...), the Head of the Chancellery of the Prime Minister upon the motion of the Head of Civil Service shall have at the disposal (...) funds for modernization of the Civil Service from the dedicated reserve provided for in the Budget Law.

Upon the obligation to determine ethical standards and rules of their application in the civil service, as defined in Article 15 para.10 of the Law on Civil Service of 2008, the new Civil Service Code of Ethics was first consulted and then introduced in the form of the **Ordinance / Decree No. 70 on Guidelines for the Principles of Civil Service and on the Principles of the Civil Service Ethics**. The document divides Principles of the Civil Service and separates them from Ethical Principles. While the former can now be inferred from the provisions of the law, the Ethical Principles are more individual and personal oriented.

The new Ethical Code creates a concise document that in addition to the content of the material contains provisions of enforcement. They are an answer to the lack of awareness among officials about the existence of such rules. The Decree/Ordinance No. 70 does not establish new principles, but organizes and gives interpretations to understanding of constitutional and statutory principles. The intention of the authors of the new Code of Ethics was to create a „compass that would be helpful in determining directions of good practice in difficult and ethically ambiguous situations“.

**The Ordinance of the Prime Minister on the Guidelines for Compliance with the Rules of the Civil Service and on the Principles of the Civil Service Code of Ethics** (29 September 2011) introduced a set of principles of the civil service and ethics principles. The entities and actors addressed by the Ordinance are: the Head of the Civil Service, ministers, the Council of the Civil Service, the National School of Public Administration (KSAP), Directors General, Directors of departments, members of the Civil Service Corps.

Concerning compliance, within the scope of observing the principles of Civil Service, ministers and other persons holding leading positions in the state administration shall cooperate with the Head of Civil Service in ensuring compliance with the rules of the Civil Service by members of the Civil Service. The National School of Public Administration (KSAP) takes into account the issues related to the rules of civil service in implementing the School's curricula and tasks.

Promoting awareness of the Ordinance has been done by training, particularly in 2011-2012. The aim of training was strengthening the awareness and increasing the knowledge on legal and ethical rules and duties of the members of the Civil Service Corps. It focused on familiarizing the target audience (approx. 4000 Civil Service Corps' members all over the country – in 16 capitals of the voivodeships) with the newly signed Ordinance.

The principles of the Civil Service include the following:

1. the principle of legality, rule of law and increasing public confidence in public administration
2. the principle of protection of human and civil rights
3. the principle of selflessness
4. the principle of openness and transparency
5. the principle of secrecy protected by law
6. the principle of professionalism
7. the principle of liability for any action or failure to undertake thereof
8. the principle of reasonable public funds management
9. the principle of open and competitive recruitment procedures

The principles of ethics (following the Prime Minister's decree no. 114 of 11.10.2002 on the establishment of the Code of Ethics of the Civil Service) include:

1. the principle of decent behaviour
2. the principle of public service
3. the principle of loyalty
4. the principle of political neutrality
5. the principle of impartiality
6. the principle of fairness

For a better understanding of the ethics principles in the Polish Civil Service, we reproduce below the whole text of the Ordinance.

**The Ordinance No. 70 of the Prime Minister on the Guidelines for Compliance with the Rules of the Civil Service and on the Principles of the Civil Service Code of Ethics**

of 29 September 2011

based on the art. 15 item 10 of the Act of 21 November 2008 on Civil Service (Journal of Laws No. 227, item. 1505, 2009, No. 157, item. 1241 and No. 219, item. 1706 and 2011, No. 82, item. 451), it is hereby ordered as follows:

**Unit 1. Guidelines on Complying with the Principles of the Civil Service**

**§ 1.**

A member of the civil service corps, in the performance of his/her tasks, is guided by the law under civil service rules, which in particular consist of the following:

- 1) the principle of legality, rule of law, and increasing public confidence in public administration;
- 2) the principle of protection of human and civil rights;
- 3) the principle of selflessness;
- 4) the principle of openness and transparency;
- 5) the principle of secrecy protected by law;
- 6) the principle of professionalism;
- 7) the principle of liability for any action or failure to undertake thereof;

- 8) the principle of reasonable public funds management;
- 9) the principle of open and competitive recruitment procedures.

## **§ 2.**

While respecting the principle of legality, rule of law, and enhancing public confidence to public administration, a civil service corps member shall, in particular:

- 1) comply with the law in the implementation of the tasks related to his/her workplace;
- 2) by his/her attitude and action towards the citizens, contribute to the implementation of the rule of the State of law;
- 3) by his/her behaviour and actions towards the citizens, influence significantly the degree of the citizens' relationship with the State;
- 4) within the limits set forth by law, act in a way ensuring an active participation of citizens in deciding on public issues;
- 5) not be guided by prejudice while dealing with issues reported by citizens, other individuals, or entities;
- 6) not participate in strikes or protests distorting the normal functioning of an office.

## **§ 3.**

While respecting the principle of the protection of human and civil rights, a member of the civil service corps does know in particular human and civil rights, does not propose nor undertake actions that violate human and civil rights, and has in mind that an effective protection thereof improves the authority of the State.

## **§ 4.**

By following the principle of selflessness, a member of the civil service corps shall, in particular:

- 1) not accept any benefits from people involved in the undertaken cases;
- 2) not accept any form of payment for public addresses as long as they refer to the occupied position;
- 3) give up additional employment or commercial activity, if continued additional employment or commercial activities may negatively influence the cases conducted under official duties;
- 4) not conduct trainings, if this could affect the impartiality of the cases under investigation.

**§ 5.**

By following the principles of openness and transparency, a civil service corps member in particular:

- 1) within the limits specified by law, shall ensure the availability of information on the principles and effects of his/her work and decisions made, which constitutes the basis for public trust towards the State, and any restrictions in this regard can only arise from the exclusion of the openness of the case settlement;
- 2) while setting forth regulations, making decisions and other rulings, shall seek to provide explicitness and comprehensibility of undertaken efforts;
- 3) shall fully justify the decisions taken, while providing the reasons for the adoption thereof, and objectives to be achieved, especially in the matters that divide public opinion;
- 4) shall know the constitutional and statutory provisions concerning the right of access to public information and shall ensure a practical execution thereof.

**§ 6.**

While obeying the principle of secrecy protected by law, a civil service corps member in particular:

- 1) shall keep secrecy protected by law confidential;
- 2) when making an information confidential, shall do so to protect the clearly indicated interests of the State, citizens and other entities, and not to limit the openness and transparency of his/her actions.

**§ 7.**

By following the principles of professionalism, a member of the civil service corps shall, in particular:

- 1) when implementing the State policy, possess the necessary knowledge concerning the functioning of the State, improve qualifications and develop professional knowledge necessary to make the best of their work at the office;
- 2) know the laws concerning the functioning of the office, where he/she is employed, and familiarize themselves with all relevant, factual and legal circumstances of the cases entrusted to them;
- 3) know the rules of civil service ethics and observe them conscientiously;
- 4) know the principles of the civil service and observe them conscientiously;

- 5) be subject to verification of knowledge on the principles of the civil service;
- 6) seek to apply high standards of public management, implement knowledge of superiors, colleagues and subordinates, share their own professional experience with them, and if relevant, seek for experts' assistance;
- 7) manage their human resources, and use their working hours in an efficient and rational manner;
- 8) in implementing the tasks assigned, seek to reach agreement based on factual, rational argumentation;
- 9) be ready to accept criticism, to recognize their errors and to remedy its consequences;
- 10) by his/her attitude and behaviour, take care of the image of the civil service as such;
- 11) while making use of the guaranteed employees' rights:
  - a) allow for the limitations in taking up work or running other businesses, under the valid rule of law;
  - b) allow for the limitations concerning the confidentiality of information also relating to their personal life, under the valid rule of law;
- 12) while making use of the special protection of the employment relationship of a civil servant provided by law, have in mind the purpose of this special protection, which is:
  - a) attracting and retaining in the civil service people who associate their future professional development with state administration bodies,
  - b) protection of employment in the civil service of people who in their work proved the ability to professional and ethical behaviour of a member of the civil service corps, and in particular they observed the principle of political neutrality and impartiality of the civil service.

#### **§ 8.**

In respecting the principle of personal liability for any action or renunciation, a member of the civil service corps shall, in particular:

- 1) perform the tasks being fully aware of a particular responsibility resulting from the public nature of the service fulfilled;
- 2) while performing delegated tasks, be guided by the principle of public interest, and effectiveness and compliance of the action taken with the legal provisions; if there is a

discrepancy between the law and the public interest, he/she reports it to the superiors;

3) at each stage of executing a task, be ready to provide account of the action taken to the superiors and citizens;

4) in the case of being charged with breach of duties of the civil service corps member, not take actions intended to disrupt the smooth course of investigation aimed to determine the person responsible for a given breach;

5) if convinced that his/her superior's order infringe the principles of the civil service, inform him or his superiors in writing.

#### **§ 9.**

In respecting the principle of rational management of public funds, a member of the civil service corps shall, in particular:

1) when using public funds to execute the tasks of the State and proposing directions of its activities, have in mind the interest of the State and its citizens and successful implementation of set objectives, with a rational use of funds entrusted to the State by citizens;

2) be ready to render an account of his/her due diligence over public funds and property.

#### **§ 10.**

In implementing the principle of openness and competitiveness of recruitment, a member of the civil service corps, while organizing and carrying out recruitment procedure in the civil service shall in particular:

1) keep due diligence in ensuring:

a) equal access to public service,

b) non-discrimination for any reason,

c) professional and reliable execution of tasks of the State by the government,

d) political neutrality of civil servants;

2) by his/her actions:

a) strengthen public confidence in the competences of people carrying out tasks of the State,

b) ensure that the recruitment procedure guarantee the selection of people best prepared for carrying out tasks of the State,

c) guarantee a transparent and effective control over the recruitment procedures;



3) do not exert any kind of non-statutory influence or pressure on the recruitment process, not yield to such influence or pressure, and report on the occurrence thereof to authorized superiors.

**§ 11.**

1. Within the scope of observing the principles of civil service:

1) the Head of Civil Service in particular:

a) explains the problems arising from the application of the principles of civil service,

b) monitors compliance with the principles of civil service in offices,

c) analyses periodic reports and other information on the implementation of civil service rules and application of guidelines, submitted by directors-general of offices,

d) makes recommendations to the directors-general of offices in order to compensate for the shortcomings in the observance of civil service rules, and controls the implementation thereof,

e) in cooperation with the directors-general of offices, takes into account the issues of compliance with civil service principles and guidelines,

f) works with directors-general of offices in order to disseminate the principles of civil service amongst the members of the civil service,

g) requires a representative designated to monitor the recruitment procedure for the posts referred to in art. 52 points 2-4 of the Act of 21 November 2008 on the Civil Service, to pay attention to the principles of the civil service during the procedure and to report on detected irregularities in this regard,

h) when granting consent to the director-general of office to undertake gainful employment, complies with the civil service rules,

i) takes into account the obligation to comply with civil the service rules in the draft strategy for human resource management in the civil service,

j) cooperates with other public administration bodies in the dissemination, application and monitoring of compliance with the rules of the civil service,

k) interacts with the social partners, NGOs, and representatives of mass media in disseminating the rules of the civil service,

l) by ordering an investigation to be taken against the director-general of office, is entitled to require an ombudsman for disciplinary matters of the persons positioned as directors-general of office, to determine whether a breach of the duties of the civil

service corps member does not constitute at the same time a breach of particular rules of the civil service;

2) the Council of Civil Service, while expressing opinions and carrying out tasks defined in the Act of 21 November 2008 on the Civil Service, takes into account the principles of the civil service;

3) the director-general of office or head of the office performing the tasks under the Act of 21 November 2008 on the Civil Service of the director-general of office shall, in particular:

- a) ensure that the principles of the civil service in the office are complied with,
- b) be guided by civil service rules when granting consent for additional employment of a member of the civil service or for undertaking gainful employment by a civil servant and/or civil servants occupying senior positions in the civil service,
- c) take into account the principles of the civil service while developing programs for human resource management,
- d) take into account the principles of the civil service, while setting the scope of preparatory service,
- e) render available to the civil service corps members the information on complying with the principles of the civil service and on application of guidelines for compliance with the principles of the civil service in the office, at the same time submitting to the Head of Civil Service a report on the execution of the provisions set forth in the Act of 21 November 2008 on the Civil Service for the previous year,
- f) provide information on complying with the principles of civil service in a report on the implementation of tasks under the Act of 21 November 2008 on the Civil Service for the previous year,
- g) ensure compliance with the principles of the civil service while conducting inspections and internal audits in the office,
- h) in the manner adopted in the office, disseminate rules of the civil service amongst the civil service corps members employed in the office,
- i) provide training civil service corps members employed in the office on complying with the principles of civil service, under general trainings in the civil service,

j) in the manner adopted in the office, provide the content of this decree to the civil service corps members employed in the office, requiring them to confirm in writing they become acquainted with the decree,

k) when ordering an investigation, request the office's ombudsman for disciplinary matters to determine whether a breach of the duties of the civil service corps member does not constitute at the same time a breach of particular rules of the civil service,

4) a member of the civil service corps, supervising subordinated members of the civil service shall, in particular:

a) be responsible for ensuring compliance with civil service rules by subordinated civil service corps members,

b) issue orders aimed to remove the identified shortcomings in the observance of civil service rules and monitor the execution thereof.

2. The provision of par. 1 item 4 shall also apply to persons referred to in art. 2 section 3 of the Act of 21 November 2008 on the Civil Service, holding clerical posts related to management of subordinated workers who are civil service corps members. These people, while ensuring compliance with civil service rules, cooperate with the director-general of office.

#### **§ 12.**

Within the scope of observing the principles of civil service:

1) ministers and other persons holding leading positions in the state administration shall cooperate with the Head of Civil Service in ensuring compliance with the rules of the civil service by members of the civil service;

2) National School of Public Administration takes into account the issues related to the rules of civil service in implementing the School's curricula and tasks.

### **Unit 2. Code of Ethics of the Civil Service Corps**

#### **§ 13.**

Civil service corps member observes the principles of ethics of the civil service corps, which consist in the following:

1) the principle of decent behaviour;

2) the principle of public service;

- 3) the principle of loyalty;
- 4) the principle of political neutrality;
- 5) the principle of impartiality;
- 6) the principle of fairness.

#### **§ 14.**

The principle of decent behaviour shall consist, in particular, in:

- 1) carrying out the work with respect for the rules of social interaction and sophistication, respect for the dignity of others, including subordinates, peers and superiors;
- 2) good will towards people and the prevention of conflicts at work, in relationships with citizens and colleagues;
- 3) proper behaviour out of work, avoidance of undesirable behaviour that may adversely affect the image of the State, civil servants, and the very office.

#### **§ 15.**

The principle of public service is expressed, in particular, in:

- 1) ancillary nature of work for the citizens, aimed at realization of the values underlying the law of the Republic of Poland;
- 2) providing service to the State, which basic element is to protect its interests and development;
- 3) participating in the creation of the image of the civil service and influencing the perception of the Republic of Poland both inside the country and worldwide;
- 4) valuing the common good of citizens over personal individual, or group interests;
- 5) non-evading making difficult decisions and bearing responsibility for their actions, bearing in mind that the public interest calls for prudent, yet effective actions that are resolutely implemented.

#### **§ 16.**

The principle of loyalty shall consist, in particular, in the following:

- 1) loyalty to the Republic of Poland;
- 2) loyal and reliable implementation of the policy of the Government of the Republic of Poland, regardless of personal beliefs and political views;

- 3) loyalty to the office and superiors, colleagues and subordinates, readiness to perform the official instructions, while taking care not to violate law or commit a mistake;
- 4) providing superiors with objective, consistent with the best of one's will and knowledge, advice and opinions while developing proposals for actions to be taken by the state administration;
- 5) demonstrating discretion in the public expression of views on the work of his/her office and other offices, especially when such views might undermine citizens' confidence in these institutions.

**§ 17.**

The principle of political neutrality, taking into account the fact that political parties in a democratic state are provided for under the Constitution of the Republic of Poland and accepted by the citizens the mouthpiece of their will, and that a civil service corps member may use the guaranteed freedoms and human and civil rights, including the right of participation in public life, shall consist, in particular, in:

- 1) non-manifesting in public his/her political opinions and affiliations, and particularly refraining from any agitation of a political nature within and/or outside the service;
- 2) distancing themselves from any political influences and pressures that may result in biased measures be taken;
- 3) not taking any public actions that directly support the activities of a political nature;
- 4) not arising suspicions of supporting political parties and observing the restrictions in force;
- 5) ensuring clarity and transparency of relationships with persons performing political functions, taking into account that these relationships cannot undermine the confidence in the political neutrality of the civil service corps member.

**§ 18.**

The principle of impartiality is expressed in, in particular:

- 1) avoiding the suspicion of a conflict between public and private interests;
- 2) giving up any work or activities that conflict with official duties;
- 3) equal treatment of all participants in the conducted administrative matters and not giving in to any forms of pressure;

4) not manifesting any intimacy with publicly known persons, having a reputation for their political, economic, social, or religious activity, and not promoting any of the groups of interest.

#### **§ 19.**

The principle of fairness is expressed, in particular, in:

- 1) conscientious, thoughtful performance of assigned tasks;
- 2) meeting the obligations under the principles of law;
- 3) creative approach towards the tasks and active implementation of obligations, with the best will in the social interests, not limited to mere compliance with the rule of law.

### **Unit 3. Final Provisions**

#### **§ 20.**

The decree comes into force upon 14 days from the date of publication thereof.<sup>74)</sup>

Chairman of the Council of

Ministers

## **2. Legal Forms of Documents Defining Ethics Principles for Public Administration Employees<sup>75</sup>**

The so-called system of anti-corruption security consists of various anti-corruption laws. Those of them who are the sources of universally binding law (Constitution, international treaties, European law, laws, regulations and acts of local law) can be defined as - hard law. Those which are the internal laws (and therefore are valid only within the government structures of their employees) and those acts which are created at the supranational level, but not possess a legally binding, we consider as soft law.

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<sup>74</sup> The following decree was preceded by the Prime Minister's decree No. 114 of 11 October 2002 on the establishment of the Code of Ethics of the Civil Service (M.P. No. 46, item 683).

<sup>75</sup> Some parts of this section are developed in a supplementary article at the end of the Polish report.

## Corruption in Poland

The European Union has regularly cited corruption as an important problem in Poland and criticized the Government's insufficient efforts to tackle it. In 1998 it was pointed out that the statement in the *EC 1998 Regular Report* – that the fight against corruption needs to be intensified – had not met with an adequate response “and little progress has been made on the establishment of a genuine anti-corruption policy”<sup>76</sup>. In the 1999 *Regular Report*, corruption still was “a source of serious concern”, and Poland had to “address this serious problem”. It was further stated that the implementation of the reform to the statutes of civil servants could provide an important element to remedying this problem”<sup>77</sup>. The 2000 Regular Report expressed the opinion that the available evidence “points to a... series of deficiencies which create an environment in which corruption can flourish: excessive but poorly managed bureaucracy, insufficient controls, lack of transparency and a general lack of accountability”<sup>78</sup>.

In a 2001 Report on Poland, which the European Commission viewed as the one of the more corrupt candidate countries, the Commission commented that: “Irrespective of whether the specific allegations turn out to be true or not, there is a general perception that corruption is widespread. This is damaging both domestically and internationally”<sup>79</sup>.

One should agree with the statement of Open Society Institute (OSI) Report that there is still little comparative research available to provide clear evidence of the extent of corruption in the “new” Member States, and no detailed comprehensive study of corruption in the EU “old” Members and CEE States that would yield sufficient data to make serious comparisons<sup>80</sup>. Different sources of data try to identify the situation among countries but do not give the clear answer if the existence of strict and numbered of legislation relates somehow to a decreasing level of corruption. Contrarily: there is no sufficient data that prove such correlation.

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<sup>76</sup> Commission of the European Union, *1998 Regular Report from the Commission on Poland's Progress towards Accession*, p. 11, [www.eu.int](http://www.eu.int)

<sup>77</sup> Commission of the European Union, *1999 Regular Report*, p. 15, [www.eu.int](http://www.eu.int)

<sup>78</sup> Commission of the European Union, *2000 Regular Report*, p. 18, [www.eu.int](http://www.eu.int)

<sup>79</sup> Commission of the European Union, *2001 Regular Report*, p. 21, [www.eu.int](http://www.eu.int)

<sup>80</sup> *Monitoring the EU Accession Process: Corruption and Anti-Corruption Policy*, OSI, 2002, p. 60; [www.eumap.org](http://www.eumap.org)

It is generally known, that the corruption is a serious danger for the good functioning of the state. It is stressed that it destroys not only legalism and free competition, but the whole economy, changing the free market into a “market of dependencies”.

The criticism of the public officials is even more seen, when we have a look at the practice. According to the respondents the most popular “sin” among the public officials is nepotism (favoritism based on kinship) and cronyism (favoritism based on informal links). And this is one of the most important issues covering the conflict of interest, because it might appear not only in the financial dimension (as it is in the case of corruption) but also as a phenomenon in the “softer area”, especially by nepotism or cronyism. When the private or personal interest comes into the conflict with public obligations, “official duties”, there exists the conflict of interest. This conflict usually interferes with professional responsibilities making danger the impartiality of professional acting.

In addition to the Polish researches on the phenomenon of corruption, there are also some researches conducted at the international level, allowing us to observe the situation of Poland compared to other countries. The following presents the results obtained by Poland in the two major world rankings, i.e., *Corruption Perceptions Index* and *Global Corruption Barometer*.

The first - the Corruption Perception Index (CPI), developed by Transparency International (TI) annually since 1995 (Poland is included from 1996). The study from 2010 covers 178 countries of the world, while Poland was on the 41 position with a score of 5.3). This result is better compared to the 2009 Index by 0.3 percentage point. Index ranks countries according to their perception of corruption among public officials and politicians and is based on several surveys and studies carried out by independent institutions (including Gallup International World Bank, PricewaterhouseCoopers and The World Economic Forum). Questions are asked of businesses and national experts, as well as national citizens and foreigners. It is important at the same time that this indicator does not reflect the actual level of corruption of the countries studied, but reflects only a subjective perception of corruption by respondents. Thus, his credibility is different for each country. CPI classifies countries because of corruption perceived, measured on a 10 points scale. The ratio is closer to 10, including greater transparency



and less corruption. In a recent study, among top countries - with a score of 9.3 points - were New Zealand, Denmark, Singapore and Sweden. The lowest score belonged to Somalia (1.1), Afghanistan, Myanmar and Iraq (1.3). It is visible that there is a clear correlation between the level of corruption in the country and its stabilization efficiency of political and state structures.<sup>81</sup>

Another study on an international dimension of corruption is based on the Global Corruption Barometer (leading to a Global Corruption Report), with the objective assessment of the personal experience of corruption by society. In 2009 it was based on the opinions of over 73,000 respondents in 69 countries and territories. In 50 countries for the survey was conducted by Transparency International (TI) by Gallup International as part of Voice of the People Survey, and in 19 countries not covered by Gallup, TI commissioned a study to other organizations. Poland participates in the Global Corruption Barometer surveys since 2003, i.e. since its first edition. According to recent studies, 4% of Poles said they bribed or had knowledge that another person from the circle of their family participated in such action within the past 12 months. However, since this kind of question is a thorny issue, this figure is probably an underestimate. For comparison, the average of EU countries was slightly higher and amounted to 5% and on a global scale this index remained at 13%.

The main elements of the anti-bribery framework have all been in place only since 1998. There appears to have been an increase in conviction for giving bribes. The number of convictions is smaller – notably for acceptance of bribes – than in other countries accessing to the EU, relative to country size.

Polish regulations in the field of acceptance of gifts, hospitality and sponsored trips are not of concrete restrictions. However, it is very difficult to distinguish between what is a gift and what is a bribe, the provisions on accepting gifts are developed by the *Local Self-Government Acts*; the cases of bribes are regulated in the *Criminal Code*. The procedure of giving and accepting gifts is quite popular in Poland, and has different shapes: money, alcohol, trips to foreign countries (for example, in 2002, members of the Regional Health Office in Białystok were offered and accepted a sponsored trip to

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<sup>81</sup>CBA, Poradnik antykorupcyjny dla urzędników, Warszawa 2010, s. 85-86, źródło internetowe: <http://antykorupcja.edu.pl/index.php?mnu=12&app=docs&action=get&iid=10292>

the Republic of South Africa, by a pharmacy company), dinners in restaurants and others.

### **Potential Reasons and Sources of Corruption in Polish Public Administration**

As it is shown in the OSI Report 2002, there is widespread consensus that corruption in CEE countries is more serious problem than in other OECD countries, including “old” EU Member States<sup>82</sup>. But it should be stressed that the dividing line between CEE countries newly accessed to the EU and previous Member States in terms of corruption is not as clear as is often implied. Probably both the legacy of communism and the nature of post-communist countries provide powerful reasons why corruption may be expected to be a bigger problem in Central and Eastern Europe, than in its Western part.

A. Kubiak distinguishes between two types of people who are most frequently involved in corruption. The first of those types are people with better education and higher income, generally active at work and in life; whereas the other type are people with lower income, often unemployed and less active. Consequently, in the opinion of A. Kubiak, there are people who give bribes in order to have more, and people who give bribes in order to survive<sup>83</sup>. However the first statement can be assumed as the reason of corruption in all EU Member States, the second is characteristic for CEE countries, as the transition cost.

According to public surveys, corruption is most widespread in the healthcare system, judiciary, sub-national governments and central State administration. Corruption appears to have been a pervasive problem in privatization, the activities of off-budget agencies, political party finance and the tax and customs administrations, while private sector corruption is thought to be growing rapidly.

Opportunities and incentives for corruption are growing steeply as the territorial reform became established and the massive shift in disbursement of funds from central to local tiers took place. Risks and opportunities for corruption are also greater

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<sup>82</sup> *Monitoring the EU Accession Process: Corruption and Anti-Corruption Policy*, OSI, 2002, p. 43; [www.eumap.org](http://www.eumap.org)

<sup>83</sup> A. Kubiak, *The Voice of General Public and Business People on Corruption*, Report on Survey, CBOS, September 2003, p. 9, [www.batory.org.pl](http://www.batory.org.pl)

where region, district and community powers exist in the same area, complicating and reducing transparency in lines of responsibility and decision paths.

According to a World Bank Report<sup>84</sup>, widespread corruption in sub-national administrations undermines efforts to promote local and regional development, to improve services and to reduce local and rural poverty. It mirrors many of the issues that arise at Parliamentary and high political levels of the central government administration. Local administrations tend to be highly politicized, with close links between political parties, elected councilors, administrative staffing and payment decisions. In big cities, it is reported that members of the public need political party support to schedule meetings with influential officials. The control rights that local governments exercise over zoning decisions, licenses and permits for economic activity, contracts for construction works, goods and services, property rent controls and other distortions in setting tariffs, furnish ample opportunities to extract bribes and trade favours. These activities have an adverse impact on local revenues and expenditures, and also can result in serious misallocation of resources, with consequent damage to the local economy and society.

Municipal ownership of large amounts of land and real estate aggravates the situation and adds to the opportunities and incentives for corrupt behaviour. The corruption linked to election funds can also be a problem at the local level. Companies that refuse to cooperate may be excluded from the procurement process.

Licenses and permits confer control rights on officials and also are the sources of the corruption. Most significant are those relating to architecture, construction, land registration, land survey, and any other matters to do with municipal land and buildings.

Public procurement at municipal level is notorious. Malpractice concerning the conflict of interest can include, for example, contracts given to companies belonging to the family of council members. Procurement abuses can be a particular problem where construction projects are concerned, such as those involving bridges or office buildings. Corruption in public contracts, whether during the bidding process or during contract execution, can also result in poor quality of construction and inadequate

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<sup>84</sup> *The World Bank Review of Priority Areas and Proposals for Action*, 1999, [www.worldbank.org.pl](http://www.worldbank.org.pl)

safety standards. The risks to public safety are even higher where there is also corruption in inspection procedures.

### **Historical Perspective on Fighting Corruption in Poland**

Since the beginning of 1990s, Poland has undertaken a lot of efforts, and it particularly introduced laws, meant to reduce the corruption. There is no one single act dealing with the problem of the corruption and the conflict of interest in Poland. Different regulations are provided by the number of laws, starting from the Polish Constitution through administrative law, labour, criminal and civil specific ones.

Accepting a bribe is criminal offence under the *Polish Criminal Code*. Since 2003, giving a bribe is not a crime anymore. The Criminal Code fulfils the requirements of international anti-corruption conventions, with the exception of the requirements of the Council of Europe Criminal Law Convention on Corruption to criminalize bribery in the private sector, introduce criminal liability of legal entities and criminalize the provision of non-material benefits to third parties.

Acceptance of bribe is punishable by 6 months to 8 years imprisonment, and up to ten years if bribery was to secure an infringement of law. Public officials who accept material gains of considerable value or a promise thereof are subject to 2 to 12 year imprisonment. Active bribery is limited in scope to acts which are either directed towards or perpetrated by a “person who performs a public function”.

*The Law on Community Self-Government* (1990) has initiated the process of building the decentralized local government. Also the *Law on Local-Government Employees* (1990) has created the first professional group of local-government public officials. But the process of putting attention on the corruption issues has started in 1997, with implementing the *Law on Reducing Opportunities to Do Business for Persons Performing Public Functions*. That law, called “*Anti-Corruption Act*”, has initiated the process of developing and implementing a number of legislative and other measures against corruption and the conflict of interest. As the OSI report on *Corruption and Anti-Corruption Policy in Poland* assumes, none of the initiatives were introduced by the Government<sup>85</sup>.

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<sup>85</sup> Open Society Institute, EU Accession Program, Monitoring the EU Accession Process: *Corruption and Anti-corruption Policy*, p.405, 2002

However, many of those laws to a great extent remained on paper only because not enough emphasis has been given to their efficient execution. In the face of those instances of corruption that come to light the tendency is to pass new laws rather than to implement the existing ones. As many reports stood, instead of passing new laws some of those already existing should be amended and their institutional execution should be strengthened. In some cases the law only specified what is considered illegal but did not include provisions concerning the consequences or punishments for breaking those regulations.

In 2000, several legislative amendments modified bribery legislation considerably, including the following:

- the *Act on Competition and Consumer Protection* was amended to include “bribery of a person performing a public function” in the definition of unfair competition.
- the *Public Procurement Act* was amended to prohibit persons or companies whose members of statutory organs or managers have been convicted of corruption from bidding for public contracts.
- procedures were established to facilitate international cooperation and legal assistance in the fight against corruption (for example in the *Banking Act*).

Polish Government in 2002 and then in 2006 developed prospective *State Strategy for Combating Corruption*<sup>86</sup>. The strategy proposed three dimensional projects for counteracting corruption. The dimensions are: 1) legislative changes; 2) organizational changes; 3) educational and informative actions.

As the Group of States Against Corruption (GRECO), created by the Council of Europe, recommended, the Polish authorities promised in the strategy to undertake steps towards progressively reducing the scope of discretionary powers of administrative officers, enhancing the transparency of the procedures and abolishing whenever possible, licensing and authorization procedure needed for many economic and social activities<sup>87</sup>. The strategy also obliges the Minister of Interior to prepare the project of law creating the corps of the local-government employees (similar to the civil servants

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<sup>86</sup> *The State Strategy for Combating Corruption*, the 17th of September, 2002, [www.mswia.gov.pl](http://www.mswia.gov.pl)

<sup>87</sup> see: the GRECO, *First Evaluation Round, Evaluation Report on Poland*, Strasbourg, March, 2002. [www.greco.coe.int](http://www.greco.coe.int)

one), as well as to prepare the project of law concerning the audit in the local-government.

As to the organizational improvements, the Minister of Interior was obliged to introduce the ethical training program for the local-government officials. In the educational and informative dimension, the same minister promoted the program “Friendly office”, which comprised basic standards for local-government administering. The *e-Government* services were also an instrument in the strategy to make the local-government more transparent and the process of undertaking the administrative decisions – objective.

On 27 November 2002, the Polish Parliament has passed a new law as an answer to external pressure (coming from organizations such as the World Bank, OECD, the Council of Europe or the EU) and internal pressure (coming from the Supreme Auditing Chamber- NIK, or NGO’s). A new law, which formulates a significant modernization of anti-corruption rules at all local-government tiers is in force since 1 January 2003.

However, several gaps remain in anti-corruption legislation. Legal persons are still not criminally liable for corruption; however, in June 2002 Poland ratified the Council of Europe Criminal Law Convention on Corruption, which means the criminal law must be changed to introduce criminal liability for companies. Corruption in the private sector is not yet criminalized, although a proposal was introduced to the Parliament in early 2002. Third, non-material benefits provided to a third party cannot yet be classified as a bribe under Polish law.

### **Basic Principles, Bodies and Mechanism of Control**

Poland has some good legal solutions and institutions at its service that can be used to improve the transparency or to implement the good governance principles. The problem is that, in many cases, these instruments are lifeless or only used partially.<sup>88</sup>

The Polish Constitution established by Constitutional Act in 1997 is typical for modern, democratic states of civil society. Constitutional principles based on the general rule of law (art. 2) support basic ethics principles: lawfulness (art. 7), social justice (judicial fairness)—art. 2, proportionality (art. 31, art. 228), rule against bias (art. 153),

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<sup>88</sup> <http://www.publicserviceeurope.com/article/1594/polands-anti-corruption-efforts-lifeless>

openness and transparency (art. 61), equality before the law (art. 32), protection of legitimate trust and vested rights (art. 2), and the right to recover damages for public authorities' illegal activities (art. 77).

According to art. 153 § 1 of the Constitution, a Corps of Civil Servants shall operate the agencies of government administration in order to ensure a professional, efficient, impartial, and politically neutral discharge of state obligations. This rule strongly supports impartiality in the Civil Servant Corps. Extension of this rule to public officials' corps at local governments is strongly needed as well.

Most important is the rule of equality (art. 32 § 1 and 2), which states that all persons shall be equal before the law and all persons shall have the right to equal treatment by public authorities. For administrative bodies it means that when cases are essentially the same, their official treatment must be the same as well. When cases are objectively different, there will be corresponding differences in treatment.

These general, basic principles are applied in specific laws—substantive, procedural and internal laws, and they even influence extralegal regulations. In a legal analysis concerning conflict of interest, one has to point out that it is mostly about restrictions. Thus, it is very important to stress that effective restrictions have to be actually incorporated into law, (and not subject to interpretation); sanctions must be clearly defined (and not subject to interpretation); and an authority must be in charge to impose sanctions. It should be prohibited to use precedents in the application of the law.<sup>89</sup>

The Constitution, Civil Service Law, Anticorruption Law lay the foundation for ethical standards of public officials and public servants (Art 115 §13 Criminal Code).

First of all, the organs of public authority shall function on the basis of, and within the limits of, the law (Article 7 Constitution).

The principles of incompatibility of the public office with any other salaried office apply to officials of local government, government and state.

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<sup>89</sup> P.J. Suwaj (2004), "Difficulties with Implementation of Conflict of Interest Regulation in Polish Local Government" in *Combating Conflict of Interest in Local Governments in the CEE Countries*, ed. B. Kudrycka, Local Government and Public Service Reform Initiative, Open Society Institute–Budapest, OSI/LGI 2004, p. 159.

### **Article 103 of the Constitution of the Republic of Poland**

The mandate of a Deputy shall not be held jointly with the office of the President of the National Bank of Poland, the President of the Supreme Chamber of Control, the Commissioner for Citizens' Rights, the Commissioner for Children's Rights or their deputies, a member of the Council for Monetary Policy, a member of the National Council of Radio Broadcasting and Television, ambassador, or with employment in the Chancellery of the Sejm, Chancellery of the Senate, Chancellery of the President of the Republic, or with employment in government administration. This prohibition shall not apply to members of the Council of Ministers and secretaries of state in government administration.

No judge, public prosecutor, officer of the civil service, soldier on active military service or functionary of the police or of the services of State protection shall exercise the mandate of a Deputy. Other cases/examples of incompatibility (like e.g. prohibiting the holding of a mandate of a Deputy or prohibiting the performance of a mandate jointly with other public functions) may be specified by statute.

### **Article 80 of Civil Service Law**

Members of the Civil Service cannot take additional employment without the written permission of the General Director or perform acts or activities inconsistent with the obligations of law or undermine confidence in the Civil Service.

### **Local Government Employees, Art 24a Local Government Act**

The Councillor cannot hold the position of other local authority. This concerns areas where the councillor has obtained a mandate.

All Civil Servants in Poland are banned from creating political parties and belonging to them. Civil Servants (all or selected categories) also encounter some limitation in the area of trade union membership, trade union activity or participation in strikes.<sup>90</sup>

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<sup>90</sup> P.J. Suwaj (2007), "The Problems of Politicians' and Civil Servants' Status: the Specificity of Preventive European Solutions in the Scope of Conflict of Interest" in *Leadership and Management in the Public Sector: Values, Standards and Competencies in Central and Eastern Europe*, ed.: L. Vass, O. Kulenkova-Orzhel, Ch. Pollitt, NISPAcee 2007, p. 166.



Regulations of this kind form the largest group of prevention instruments protecting from conflict of interests. Monitoring politicians' and officials' financial situations is standard in European states. Income declarations are commonly used as an instrument. Poland has the most restrictive regulations against certain groups of local government officials.

The additional employment ban is a frequent solution – it is sometimes connected with the limitation or exclusion of the possibility to perform a public function simultaneously with conducting a business activity. 'Post employment' bans are also instruments protecting against corruption and conflict of interests. These regulations limit the possibility of employment in legal entities after having worked in the administration if this entity was supervised or audited by the Civil Servant or if the Civil Servant signed a contract with it or make decision concerning it.

The rules for administrating public affairs, settings standards of behaviour and inspiring officials' actions, are usually found in legal regulations of a different rank: starting with Constitution, through parliamentary acts, concluding with case – law rules and judiciary opinions relevant to administrative issues.<sup>91</sup>

**The Local-Self Government Acts** define the incompatibility between the posts of councilor and member of Parliament or senator, office of voivode<sup>92</sup> (governor) or lieutenant governor of a region, or membership in other local government units. Moreover, the specific laws provide that the mandate is equally incompatible with the posts of prosecutor, judge, a member of the Regional Accounting Chamber (RIO<sup>93</sup>), and a member of the Self-Government Board of Appeal (SKO<sup>94</sup>); occupying any of these positions would cause an obvious conflict of interest. Making clear the situation of compatibility of posts, Polish law provides the sanction for violating this rule, which is the loss of mandate. The authority charged with implementing this sanction is the municipal/district/regional council.

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<sup>91</sup> P.J. Suwaj, p. 167.

<sup>92</sup> The voivode shall be the representative of the Polish Government (the Council of Ministers) in a region charged with examining individual administrative decisions undertaken by the local government agencies.

<sup>93</sup> See Constitution of the Republic of Poland, Art. 152.

<sup>94</sup> Responsible for controlling the finances of local governments.

Another legal framework regarding the duplication of posts is presented by the Local-Self Government Acts, pursuant to which a councilor may not simultaneously perform the function of a head or deputy head of municipal, district or regional (adequate) administrative unit, for example the position of principal or deputy principal of the municipal primary school, the director or deputy director of a district hospital, etc. The sanction is the loss of mandate. The authority empowered to execute this sanction is the municipal/district/regional council.<sup>95</sup>

All local government public officials (except for professional local government employees) are obliged to make a disclosure on income and property. This disclosure covers their separate estate and joint property of spouses (with the exception of a particular spouse's property). The declaration includes information about:

- funds, real estate, shares in commercial companies and the purchase of property from the Treasury or from other state legal entity, local government units or their associations or from local government legal entities (the property that was purchased by vendees); information on any business activity and positions at private companies;
- income received from employment or from other commercial activity or occupation stemming from the sources mentioned above;
- personal property with a value exceeding PLN 10,000 (about €2,500);
- pecuniary obligations with a value exceeding PLN 10,000 (about €2,500), including debts and loans as well as contractual obligations.<sup>96</sup>

These restrictions, however, are not absolute and allow some exceptions: for example, Mayors in Poland can work in private schools.

### **Measures to Reduce Corruption in Poland<sup>97</sup>**

Formulating programs to counteract corruption and conflict of interest in public administration should be started with an investigation on where within them corruption can occur and what is the source of it. Efforts to reduce corruption have so

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<sup>95</sup> P.J. Suwaj (2004), "Difficulties with Implementation of Conflict of Interest Regulation in Polish Local Government", p. 160.

<sup>96</sup> P.J. Suwaj (2004), "Difficulties with Implementation of Conflict of Interest Regulation in Polish Local Government", p. 172-173.

<sup>97</sup> about the measures to prevent corruption and the conflict of interest in Poland, see: P. Suwaj, "Looking for Sufficient Implementation of Conflict of Interest Regulations in Polish Local Governments", in: *Conflict of Interest Policy*, OSI 2004

far focused on attempts to introduce laws rather than to make a significant change. These efforts are commendable in themselves but have missed the broad middle ground in which public administration elites actually operate and where they may have a strong interest in resisting change. According to the World Bank *Review of Priority Areas and Proposals for Action*, there is a need to strengthen the legislative framework with some specific, closely defined pieces of legislation, but in general the emphasis has tended to be too much on passing laws rather than on implementing them effectively. As the World Bank reported in 1999, Poland had most of the instruments it needs but not yet enough will and capacity to use them well<sup>98</sup>.

Polish laws provide some specific measures to reduce corruption directly or indirectly, such as prohibit the duplication of powers, economic conflict of interest, employment of close relatives, rules of transparency. The *Local Self-Government Acts* provide specific restrictions for councillors and executives - prohibition of employing communal/district/region property in individual or joint economic activity. All public officials (civil servants and local-government employees) are obliged to depose a declaration of income and property. Regulations on declaration of income and property were the subject of a large change made by the Polish Parliament in November 2002. The established Register of Benefits is prepared for senior officials of central and local levels both and their spouses.

But still Polish regulations do not provide the restrictions concerning using the official information for personal profits. However there are the regulations concerning confidential information, but they do not matter in the case of information not being secret. For example for buying municipal properties (grounds, buildings, etc.) it is very important to know the fact of selling them. Such a situation is governed by the rule that "it is better who is the first". That is why it is quite common situation when the public officials of central or local level, their families and friends buy with a very occasional price state or municipal grounds.

The process of selecting human resources in public administration is a weakly regulated area in the Polish law and at the same time it can be potentially a source of nepotism and cronyism. Contrarily to the selection process for the Civil Service Corps,

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<sup>98</sup> *The World Bank Review of Priority Areas and Proposals for Action*, 1999, [www.worldbank.org.pl](http://www.worldbank.org.pl)

in the local-government there is no pre-work qualification procedure, as for example required entry exams, checking the merit knowledge, the communication skills and knowledge of foreign languages. Although in 2009 the preparatory service was introduced in the local-government, the system based approach is still missing.

Unfortunately, the human resource system, in regard to the local-government employees, is not generally based on the merit, substantial abilities of the candidate, not on the rules of the competition but on the family or friendship relations. This situation does not concern directors of schools (community), hospitals (districts), museums, theatres (regions) – where the competitions are undertaken. It has to be stressed, that in regard to the specific administrative units which provide services (as mentioned schools, kindergartens, etc.) the competitions are announced due to the legal regulations, and merit based.

There is a growing role of extralegal regulations, internal regulations and procedures such as codes of conduct, codes of ethics and by-laws in Poland. One can stand that these extralegal regulations play an important role in the prevention of corruption and conflict of interest. Local authorities which support their activities by other than legal instruments (e.g. codes of ethics) show their openness and transparency and have a great contribution in development of “clean” (in sense of free of unethical behaviour) and “clear” (accessible, transparent) public administration.

Despite the fact that in Poland Codes of Ethics for the Civil Service and for the members of the Parliament exist, regulations facing the maladministration (conflict of interest, conflict of roles, conflict of obligations) and developing a strong basis for ethical decision-making process in Poland are more popular in the professional associations (for example medical, engineer, legal, business ones etc.). Such codes are also becoming more popular in Polish local-governments<sup>99</sup>.

The anticorruption policy measures that the European Commission has recommended to Candidate States have been generally oriented towards the adoption (apart from the control paradigm) of Codes of Ethics for public officials. But it appears to endorse a

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<sup>99</sup> In the 2000 the Bialystok School of Public Administration was an initiator for the analysis of organizational, legal and procedural instruments supporting ethical management in the community for the City of Cracow and Bialystok, where in consequence the ethical codes were created. But the city of Cracow and Bialystok are the quite rare examples.

“top-down” approach to such codes, in which they are imposed from above<sup>100</sup>. Likewise, the approach taken by EU Candidate Countries in adopting such codes does not take into consideration some of the more important lessons learned in Western countries that have adopted ethical codes: for example, that effective codes are detailed, and need to be developed through a process of consultation with the officials to whom they apply.

Corruption is not the only problem facing public administration in Poland and this fact should be taken into account when designing reforms, as we can read in the OSI 2002 Report. The best way of fighting corruption may often be not to fight against corruption but to pursue other primary policy objectives whose fulfilment reduces corruption as a side-effect<sup>101</sup>.

### **3. Sanctions for Misconduct of Public Officials**

Regulations on local government public officials' legal responsibilities and, in consequence, their obligations are provided by the Act on Local Government Employees, Local Government Acts, Law on Civil Service, Act on Reducing Opportunities to do Business for Persons Performing Public Functions, Act on the Rules of Election to the Local Councils, Act on Direct Mayoral Election, Code of Administrative Proceedings, Labor Code, and Criminal Code.

#### **Regulations for Sanctioning and Overruling**

##### **Local Government Employees:**

###### Political Accountability

In discussions on the political life in Poland, there is a decreasing interest in elections—and in participation in democratic procedures in general.<sup>102</sup> At the same time, according to a 2002 poll, political institutions and politicians do not have the sympathy of the Polish people.<sup>103</sup> On the contrary, a general indifference prevails. Even the most

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<sup>100</sup> see: *Monitoring the EU Accession Process: Corruption and Anti-corruption Policy*, OSI 2002, [www.osi.hu](http://www.osi.hu)

<sup>101</sup> *Monitoring the EU Accession Process: Corruption and Anti-corruption Policy*, OSI 2002, p. 72, [www.osi.hu](http://www.osi.hu)

<sup>102</sup> The CBOS poll on: Does Poland Need a New Political Party?, BS 14/2003, [www.cbos.pl](http://www.cbos.pl), January 2003.

<sup>103</sup> The CBOS poll on: Actual Problems, BS 150/2002, [www.cbos.pl](http://www.cbos.pl), November 2002.

popular political parties winning elections encounter indifference instead of acceptance.

The public's interest in taking part in local elections does not enjoy high esteem in Poland. The average participation at the last local government elections was from 44.24 percent (in the first round) to 35.02 percent (in the second round). Poles are not especially interested in participating in public life, and they do not trust politicians.

Political responsibility of politicians who are public officials at the local government level and at the same time are empowered to make administrative decisions is difficult to prove. The loss of confidence in a politician due to illegal and corrupt activities means that he/she will probably not be re-elected. Internal political accountability slowly starts to take place at the top level, when politicians of a party suspend a colleague to preserve the party's reputation (for example by a disciplinary procedure), after the press discloses illegal or corrupt behavior.<sup>104</sup>

#### Legal Liability

Apart from political liabilities, the most important role is played by legal responsibilities, such as official responsibility, disciplinary responsibility, liability of damages, and criminal responsibility.

There are several forms of official liability for councilors and executive board members, such as loss of mandate, loss of per-diem, dismissal. In several cases, Polish regulations determine the kinds of liability for local government employees (mayors, deputy mayors, heads of the district executive boards, their deputies, marshals and deputy marshals, executive board members, secretaries, treasurers, and other employees empowered to pass administrative decision on behalf of senior officials) and civil servants, such as the Act on Reducing Opportunities for Persons Performing Public Functions to do Business. The provided sanctions are loss of mandate or dismissal (local government employees) and misconduct, which is subject to disciplinary responsibility or a basis for termination of employment without notice fault of the employee (civil servants)<sup>105</sup>. It is worth noting in this context that the majority of administrative decisions are made by ordinary employees who are not authorized to

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<sup>104</sup> P. J. Suwaj, *Difficulties with Implementation of Conflict of Interest Regulation in Polish Local Government*, p. 185.

<sup>105</sup> Art 4 of the Act on Reducing Opportunities for Persons Performing Public Functions to do Business (2001).

pass administrative decisions. In such cases, they are in the position of actual decision-makers—they draft the decision which is then signed by the person formally in charge of issuing the decision.

The notion of personal liability of a public servant for a gross breach of law was introduced by the act of 20 January 2011. The main purpose was to create a new, effective mechanism allowing the State Treasury to recover compensations paid to aggrieved parties. Because pursuant to Art. 77.1 of the Polish Constitution and Art. 417 of the Civil Code the liability for unlawful actions performed by public bodies shall be borne by the State Treasury, the local government or another person exercising that power under law or an agreement, the burden of paying the compensation rests upon these authorities. The loss, however, was caused through the fault of a public servant employed by such an authority, when through unlawful actions a ruling (decision, resolution) was issued, causing a gross breach of law.

In order to ensure that the regression mechanism works effectively against the public servant, the public authority must launch suitable proceedings after the compensation has been paid to the aggrieved party and entrust an independent prosecutor with carrying out such proceedings. The effectiveness of the mechanism is additionally safeguarded by sanctions for failure to comply with the provisions of the act.<sup>106</sup>

The essential obligations of all local government employees include: public service performed in the best interest of the general public; compliance with effective laws and regulations; efficient, reliable and impartial execution of tasks; polite and kind behavior with supervisors, other employees and clients. Disciplinary responsibility is not provided for local government employees anymore.

The sanctions for disciplinary responsibility follow the Civil Service Act and the legal Act on State Agencies Employees. The construction of instructional and disciplinary liability is that the officials bear the liability for the violation of their obligations in front of the direct superior (for the breach of a lesser degree) or before the disciplinary commission, in cases of first and second violations (of a more serious nature).

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<sup>106</sup> M. Haczkowska (2001), "The Property Liability of Public Officials for Gross Violation of the Law", in: „Zeszyty Prawnicze Wyższej Szkoły Ekonomii i Administracji w Bytomiu” nr 11/2011.

Disciplinary actions can include the following: a reprimand, a reprimand with warning, a reprimand with suspension of promotion for up to two years, a demotion, and a dismissal.<sup>107</sup>

Also the Criminal Code provides the specific sort of regulations penalizing corruption.<sup>108</sup>

### **Disciplinary Liability of a Civil Service Corps Member**

A Civil Service Corps member shall be disciplinarily liable for violating his/her responsibilities as a Civil Service Corps member. Disciplinary proceedings involving Civil Service Corps members shall be executed by the following disciplinary commissions:

- in the first instance - by the disciplinary commission;
  - in the second instance - by the Higher Disciplinary Commission of the Civil Service
- Disciplinary proceedings of persons employed as Directors General of Office shall be executed in the first and second instance by the Higher Disciplinary Commission. Disciplinary penalties are listed in the law.

#### Disciplinary Penalties

Civil Service employees	Civil Servants
- a warning;	
- a reprimand;	
- decreasing the basic salary by not more than 25% for a period not exceeding 6 months.	
- expulsion from employment in an office;	- depriving a Civil Servant of opportunities of promotion to a higher rank for a period of two years;
	- downgrading to a lower rank in the Civil Service;

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<sup>107</sup> P.J. Suwaj, "Difficulties with Implementation of Conflict of Interest Regulation in Polish Local Government", p. 186.

<sup>108</sup> Chapter XXIX: there are crimes of bribery (art. 228, 229), abuse of power (art. 231), protectionism (art. 230).



- expulsion from the Civil Service.

## II. ETHICS IN PORTUGAL

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### 1. Definition of Ethics Principles for Public Administration Employees

In 1993, Portuguese Council of Ministers approved a Deontological Charter for Public Services<sup>109</sup> aiming at improving ethics in Portuguese public administration. According to core values stated in that Charter, public employees has to be responsible, principled and neutral, always putting public interest over individual interest without breaking the law.

Later, in 1997, another Portuguese Council of Ministers abrogated<sup>110</sup> the Deontological Charter for Public Services without having substituted it by another mandatory document although the Council Ministers states in the resolution to be aware of a new Ethical Charter that was issued from negotiations with trade unions. Since, there was no further resolution taken by Portuguese government concerning ethical principles for public administration.

So what is the current situation?

As the 1997 Council of Ministers decided not to approve the Ethical Charter but stated having taken note of it, it follows that there is no mandatory ethical principles for Portuguese public administration but just some recommendations on which there is broad consensus.

Indeed, the website of DGAEP (Directorate General for Administration and Public Employment), which is the entity with responsibility in this area, presents the *Ethical Charter* referred by the 1997 Resolution of Ministers' Council as a directive to be used

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<sup>109</sup> Resolution of Ministers' Council, RCM n.º 18/93 of 17 March

<sup>110</sup> Resolution of Ministers' Council, RCM n.º 47/97 of 23 March

by public services. That Charter is structured in the following ten ethical principles addressed to public administration:

1 - Principle of Public Service

PA workforce must work exclusively at the service of the community and citizens, always placing public interest over individual or group interest.

2 - Principle of Legality

PA workforce must act according to constitutional principles and in accordance with the law.

3- Principle of Justice and Impartiality

In performing their duties, PA workforce must deal fairly and impartially with all citizens, acting according to strict principles of neutrality.

4 - Principle of Equality

PA workforce may not benefit or prejudice any citizen for reasons of lineage, gender, race, language, political convictions, ideologies or religion, economic situation or social condition.

5 - Principle of Proportionality

In performing their duties, PA workforce may only request of citizens that which is indispensable to the performance of their administrative work.

6 - Principle of Collaboration and Good Faith

In performing their duties, PA workforce must collaborate with citizens, according to the principle of good faith, with a view to implementing community interest and encouraging the community to participate in implementing administrative measures.

7 - Principle of Information and Quality

PA workforce must provide information and/or explanations clearly, simply, courteously and quickly.

8 - Principle of Loyalty

In performing their duties, PA workforce must act with loyalty, solidarity and in a spirit of cooperation.

9 - Principle of integrity

PA workforce, are governed according to criteria of personal honesty and integrity of character.

### 10 - Principle of competence and accountability

PA workforce act in a responsible and competent, dedicated and critical manner, committing themselves to their professional upgrading.

## **2. Legal Forms of Documents Defining Ethics Principles to Public Administration Employees**

Actually, in Portugal the legal forms of documents for public administration employees according ethical principles are, the Fundamental Law of Portuguese Republic, other Laws and Decree-Laws.

In Portugal, the legislative procedure rests on Parliament or on Government. The diplomas issued by the Parliament have the designation of Laws and diplomas issued by the Government have the designation of Decree-Law. Both pieces have to be promulgated by the President of the Republic.

### *The Fundamental Law*

In the Portuguese Fundamental Law there is a chapter for Public Administration (Chapter IX). Both article 266 – Fundamental Principles and article 269 on the Regimen of Civil Service that stipulate:

Public Administration as a all and public employees must pursue public interest exclusively, while respecting the rights and legally protected interests of citizens.

The bodies and administrative officials are subordinate to the Fundamental Law and the Law and they should act with respecting the principles of equality, proportionality, fairness, impartiality and good faith.

### *The Code of Administrative Procedure*

In the Code of Administrative Procedure, published by Decree-Law 442/1991, 15<sup>th</sup> November, there are also principles and duties that public administration employees must obey. Such as articles 5, 6 and 6-A, as shown bellow:

### *Article 5 - Principles of Equality and Proportionality*

When dealing with individuals, public administration must be governed by the principle of equality and can not favor, benefit, harm, deprived of any right or exempted from any duty for any reason, namely for ancestry, sex, race, language, place of origin, religion, political or ideological convictions, education, economic situation or social status.

### *Article 6 - Principle of Justice and Fairness*

In the exercise of its activity, the Public Administration must deal fairly and impartially everybody who contact it or with whom it has any relationship.

### *Article 6-A - Principle of Good Faith*

1. In the exercise of administrative activity and in all its forms and phases, Public Administration and individuals must act and relate to following the rules of good faith.

### *Other Legal Instruments*

One of the most important legal instruments is the Disciplinary Statute of Workers Exercising Public Functions - Law 58/2008 of 9 September, which is analysed in section 3 (Enforcement of ethics principles by public administration employees/penalties for non-respecting).

As for the rules over incompatibilities and impediments, they are covered, also by the Disciplinary Statute, as well as by the Status of Public Managers<sup>111</sup> and by the Contract Regime of the Public Employees.<sup>112</sup> These rules define the activities not allowed to persons under a public contract or appointment, and in certain cases even after the appointment, during a defined period of time.

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<sup>111</sup> Law 2/2004 and Decree Law 71/2007

<sup>112</sup> Law 12-A/2008, approved by Parliament

### 3.Enforcement of Ethics Principles by Public Administration Employees

As ethical principles are concerned, we have to consider the legal instruments and the public entities responsible for their enforcement.

#### *Legal Instruments*

The main legal provisions regarding ethics are the Disciplinary Statute of Workers Exercising Public Functions<sup>113</sup>, the Criminal Code, and a number of provisions related to

Regarding the Disciplinary Statute of Workers Exercising Public Functions, Law 58/2008 defines two types of situations: the disciplinary procedure, addressed usually to one public employee (or to a small group of employees) being suspected of an infringement, and inquiries or investigations addressed to the malfunctioning and/or illegal procedures of a department or entity.

The disciplinary statute defines a number of principles, some of ethic nature (and already part of the ethic chart mentioned above), some more centered to the work itself (as is the case for punctuality).

In its second chapter, Law 58/2008 defines “disciplinary infringement as a behavior, by act or by omission, which violates the general or specific duties of public employees when carrying out their functions”.

These general principles are the following:

- a) Pursuit of public interest, as a duty to defend the law and the rights and interests of the citizens, according to the Fundamental Law;
- b) Exemption, which means not to use the public function to take personal advantage, directly or indirectly, monetary or otherwise;

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<sup>113</sup> Law 58/2008 approved by the Parliament.

- c) Impartiality in dealing with the different interests and nondiscrimination in respect of the citizens' equality;
- d) Disclosure of the information requested by citizens or other entities, within the limits permitted by law;
- e) Diligence, perceived as being full informed in order to apply, orders and instructions given by superiors, and to work in accordance with the pre-established objectives and related competences;
- f) Obedience, complying and fulfilling their superior's instructions when given in work context and legal form;
- g) Loyalty, defined as to the perform public functions subordinated to the institution objectives;
- h) Correctness (politeness) in dealing with clients (citizens) colleagues and superiors;
- i) Attendance and punctuality, regarding the duty to attend work regularly and under the define schedule.

The infringement of these duties can originate a disciplinary procedure and penalties that range from written reprimand, to pecuniary penalty, suspension or even resignation from civil service, as well as compulsory resignation regarding top or middle managers. The degree of the penalty is related to the gravity and recurrence of the infringement.

The Disciplinary Statute defines that all public employees are disciplinary responsible towards their superiors and so, top managers are also disciplinary responsible towards the respective line Minister.

The disciplinary procedure is decided by the competent authority that is always the superior of the person under inquiry. The inquiry takes place within the rules defined by law (timing, appointment of the instructor, rights of the accused, testimony procedures, means of proof, etc...).

As inquiries/investigations are concerned, the Statute defines that they can also be ordered by the entity top manager or the line Minister.

Nevertheless, some disciplinary infringements can be defined as crimes and so, they can fall under the scope of the Criminal Code<sup>114</sup> as is the case for the three issues described hereinafter, and concerning specifically public staff.

Criminal Code, section I

*Article 372 - Undue Accepting of Advantage*

1. The public official who, in the course of his duties or because of them, by himself or through another person, with his consent or ratification, either demands or accepts, for himself or a third party, any undue advantage, whether of economic nature or not, is punished with imprisonment up to five years or with fine up to 600 days.
2. Whoever, by himself or through another person, with his consent or ratification, either gives or promises to a public official or to a third party with the public official's knowledge any undue advantage (whether of economic nature or not), which the public official is not entitled to in the performance of his duties or because of them, is punished with imprisonment up to three years or with a fine up to 360 days.

*Article 373 - Passive Corruption*

1. The public official who by himself, or through another person, with his consent or ratification, demands or accepts, for himself or a third party, any undue advantage whether of economic nature or not, or its promise, for any act or omission contrary to the duties of his position, even if prior to such demand or acceptance, is punished with imprisonment from one to eight years.
2. If the act or omission is not contrary to the duties of his position and if the advantage is undue the offender is punished with imprisonment from one to five years.

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<sup>114</sup> Law no. 59/2007 as amended by Law no. 32/2010 of 2<sup>nd</sup> September 2010

*Article 374 - Active Corruption*

1. Whoever by himself, or through another person, with his consent or ratification, gives or promises to a public official, or to a third party with the public official's knowledge, any undue advantage whether of economic nature or not, with the purpose mentioned in Article 373 (1), is punished with imprisonment from one to five years.

2. If the purpose is the one mentioned in Article 373 (2), the agent is punished with imprisonment of up to three years or with a fine penalty of up to 360 days.

Additionally the Criminal Code states that the holder of a public position, public official or agent of the administration, who, in the performance of the activity to which he was elected or appointed, commits a crime punished with imprisonment of more than three years, is also prohibited to perform such duties for a period ranging from two to five years, depending on the seriousness of the crime, or he is suspended from the duty.

Other crimes are also defined by the Criminal Code such as embezzlement, abuse of authority, violation of confidentiality, forgery, usurpation of functions, personal favoring and trading in influence.

In the context of the Criminal Code, public official is defined in Article 386 CC. The definition is broad and covers civil officers, administrative agents and "whoever" (including provisionally or temporarily employed staff, paid or on a voluntary basis) who perform public administrative or judicial functions and out of court procedures as well as. Employees of State owned companies. Furthermore, paragraph 4 of Article 386 CC covers public officials who perform political duties (i.e. elected officials). The definitions include officials such as mayors, ministers and elected representatives of various types of assemblies.



### *Public Entities*

The entities responsible for enforcing the legal instruments are the State Audit Court, Inspections Bodies that exists in every Ministry, the Criminal and Administrative Courts and, more recently, the Council for the Prevention of Corruption<sup>115</sup>.

As referred bellow, top managers and line Ministers are also responsible for the disciplinary procedures, in the context of the Disciplinary Statute.

The Council for the Prevention of Corruption (CPC) is an independent entity, created at the Court of Audit, and aimed to develop activities concerning the prevention of corruption. As examples of recommendations lay down by CPC we point out the instructions that all public bodies are bound to prepare and apply a corruption risks prevention plan<sup>116</sup>, the obligation to publicize these plans, and, more recently a specific recommendation<sup>117</sup> over the prevention of conflicts of interest and the inventory of management measures to prevent it, to identify concrete situations and the respective penalties, to promote a culture of responsibility and ethical behavior and to implement training, among others.

Simultaneously, many public bodies, as well have drawn their own Codes of Conduct, mostly inspired by the Ethics Principles defined Section 1 on definitions of Ethic Principles for Public Administration Employees.

Finally it should be noted that Portugal has joined The Group of States Against Corruption (GRECO), created by the Council of Europe, having ratified the Criminal Law Convention on Corruption (ETS 173) on 7 May 2002. Portugal also signed (15 May 2003), but not ratified, the additional Protocol to the Criminal Law Convention on Corruption (ETS 191).

Although the information collected at GRECO web page<sup>118</sup> still mentions the non-ratification, most of the measures and legal diplomas recently approved appear to be going in the sense of adjusting the country to the actual fight against corruption.

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<sup>115</sup> Law n° 54/2008

<sup>116</sup> CPC Recommendation 1st of July 2009

<sup>117</sup> CPC Recommendation, 7<sup>th</sup> of November 2012

<sup>118</sup> <http://www.coe.int/greco>

### III. TRAINING OF PUBLIC ADMINISTRATION EMPLOYEES IN ETHICS PRINCIPLES IN THE CZECH REPUBLIC

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#### 3.1 Background

As stated in the previous chapter - the code of ethics in public administration functions as a set of recommendations. There are no compliances and obligations resulting from the code of ethics for employees of public administration. This situation has a direct impact on the field of training on ethics principles and influences the way of delivering and type of training in this field in the Czech Republic.

The desk research has been carried out on training on ethics and ethics principles within the public administration. Generally speaking, no stable systematical offer of training or specific courses on ethics principles or training in code of ethics does exist in the Czech Republic. The major factor influencing this fact is the situation described above. The public employees are not forced to undergo special training or course on ethics and ethical principles. However, it does not mean that no courses or training on ethics are offered at all in the Czech Republic. Nevertheless, it only depends on the will of each office, municipality, ministry, etc. whether its employees will undergo this type of training. This means, the participation of public administration employees on this type of training is voluntary based.

#### 3.2 Ethics and Training of Public Administration Officials in Ethics

Public administration in the Czech Republic has undergone a significant development in past more than 20 years. It has showed that the original orientation on economics, productivity increase and public administration efficiency after 1989 is not enough for public administration to work and serve in compliance with needs of citizens and the state. It appeared to be real threat that ethics and other values would slowly disappear. Therefore, in the administrative theory there began to appear studies originating from the recognition of need to embed a new aim of administrative reforms labeled with E. Beside the original ones Economy, Effectiveness and Efficiency it is Ethics.

The lack of ethics in public administration was not observed only by the administrative theory, but also by practice. In practical administration, there is a tight link between practical administration and other traditional values, especially responsibility: if behaviour of an official is not responsible, it cannot be identified as ethical. There are mentioned three ways how to keep and improve ethical behaviour of public administration officials:

- acceptance of written rules, especially codes of ethics of public administration employees;
- training in ethics before the start of service and further in job training
- influence of role model of senior employees in public administration

We would like to focus on the second point – training in ethics before start of the work in public administration and on further in job training.

Future public administration employees are prepared at secondary specialized schools, higher specialized schools and universities. Especially in the field of secondary and higher specialized schools, it is difficult to monitor, what part of training is dedicated to the issue of ethics. Most often study programmes are Public Administration, Law and Public Administration, Public Administration with focus on social work, Diplomacy and Public Administration, International and Public Relations. Ethics is involved in most programmes either as an independent subject or as a part of more generally called bloc of subjects.

In total, thirty universities provide a university degree with focus on public administration and ethics represents an indispensable part of training programmes.

Further training of territorial self-governing units is established in the Act No. 312/2002 Coll. and training of employees in administrative authorities is set in the document „ Rules of training of employees in administrative authorities“

After the start of labour contract in public administration, all employees undergo the initial training during first three months and this training involves the issue of ethics as well. The Ministry of Interior prepared for needs of territorial self-governing units sample learning texts for the initial training. Employees of territorial self-governing units can pass the further training in a form of special professional competences for particular administrative agendas. Training of ethics is not a part of this type of officials preparation. For proliferation of ethics knowledge and ethical behaviour, there are dedicated accredited courses of continuous behaviour, which are offered by various training institutions.

Training of senior officials of territorial self-governing units is divided to a general and special part and includes the issue of ethics in the following scope:

Ethics and anti-corruption mechanisms

- ethics and its meaning, codes of ethics and their enforcement
- corruption and related branches, quality of public administration
- fight against corruption and increase of ethical level

Employees in administrative authorities further undergo following initial training obligatory, which is being usually realized in a distance form and issue of ethics is one of its parts. Within 4 hours bloc „Human sources in state administration“ in the face to face form, there is also dedicated one hour donation for the topic „Ethical aspects of work and employee’s behaviour, impacts and legal aspects of non-ethical behaviour“ . This topic is a separate chapter of the eLearning form course

Proliferating training of administrative officials contains managerial training for senior officials, language training and training in other areas, where ethics is also involved.

Due to the the increasing demand for training programmes focused on ethics, there was created the project for employees of administrative authorities called “Training in Ethics Area”. Training in ethics and anticorruption mechanisms is offered free of charge within this project that has been realized through the operational programme Human Resources and Employment and follows the document “Governmental Strategy in Fight against Corruption for years 2010-2012”. The provided training is designed in a unique way as not only a transfer of theoretical problem knowledge, but mainly as a practical training of detection of corruption opportunities and appropriate behaviour in such situations. Such a completely non-standard approach aims to provide officials with a broad knowledge and skills basis enabling to react flexibly and in compliance with desirable ethical principles. The training project, which will have continued by 2014, contains two products – eLearning course and face to face seminar. In total, more than 4,000 employees of ministries and administrative authorities should undergo the training.

As far as it concerns the contents, training of public administration officials originates from the OECD document “Recommendation for Improval of Ethical Behaviour in Public Service” and its following principles:

- Ethical standards for public administration must be clear.
- Ethical standards must be embedded in law.
- Public administration officials must have ethical leadership.
- Public administration officials must know their rights and duties in case they are accused of improper procedures.
- Political engagement for sake of ethics must reinforce ethical behaviour of officials.
- Decision making process must be transparent and open for control.
- There must be clear rules for interaction between public and private sector.
- Senior employees must behave ethically and support ethical behavior of all.
- Management policy, administrative procedures and practice must support ethical behaviour.
- Conditions of public service and human resources management must support ethical behaviour.
- Public administration must dispose of adequate mechanisms of responsibility.
- Suitable procedures and sanctions for incorrect behaviour of employees in administrative authorities must be set.

Currently, there are conducted intensive works on a legal act about officials, which should also significantly deal with training of public administration officials. Undoubtedly, there will be paid a great attention to ethical principles as well, because ethics is perceived as a substantial tool for a suppression of corruption behaviour. It is often presented as a contrary to ethics. It is not completely right indeed, because ethics and ethical behaviour are more multidimensional than anticorruption and non-corruption behaviour. On the other hand, efforts for non-corruption behaviour and fight against corruption pursue various other values and relations except ethics. To cover ethical principles in their whole extent and incorporate them efficiently into the system of officials training is an indispensable prerequisite for their application into everyday practice of authorities and necessary step for the increase of quality of their work.

## 2.3 Research on Vocational Training for Civil Service Employees in Prevention of Corruption

According to the available open database of training institutions and training events of the Ministry of Interior (see <http://www.mvcr.cz/clanek/vzdelavani-ve-verejne-sprave-a-akreditace-vzdelavacich-instituci-676573.aspx?q=Y2hudW09NQ%3d%3d>), it was found out that it involved 41 different titles with the topic “ethics and corruption in public administration” in 2012. These training courses and seminars were included in the portfolio of 31 training institutions from all over the Czech Republic.

Overview of accredited courses at the Ministry of Interior of the Czech Republic on „prevention of corruptive behaviour“ in 2012

### **1. VOX, a.s.**

Corruptive Behaviour in the Czech Republic

### **Aliaves & Co., a.s.**

Corruption and Anti-corruption Policy in Public Administration  
Corruption, its Prevention and Elimination

### **AQE Advisors, a.s.**

Anticorruptive Behaviour and Transparent Communication

### **BNV consulting, s.r.o.**

Fight against Corruption

### **Český a moravský účetní dvůr, s. r. o. / Czech and Moravian Court of Auditors Inc.**

Preventive Measures and Procedures in Fight against Corruption in Public Administration

### **Everesta, s.r.o.**

Prevention of Corruption, Ethics in Public Administration  
Training in Corruption Area- its Prevention and Elimination- for Management and Senior Employees

### **Fakta, s.r.o.**

Prevention of Corruption

### **Infacility, s.r.o.**

Issue of Corruption in Public Administration – Current Issue of Anticorruption Measures in Public Administration

### **Institut pro veřejnou správu Praha/ Institute for Public Administration Prague**

Corruption and Anticorruption Policy in the Czech Republic

**Kariérový a personální servis, s.r.o. / Career and Personnel Service Inc.**  
Prevention of Corruption

**Kraj Vysočina - Krajský úřad/ Vysočina region-Regional office**  
Corruption in Public Administration and Defense against

**Martynek Radim, Ing.**  
Prevention and Impacts of Corruptive Behaviour of Official of Central Administrative Unit

**Valašské Meziříčí municipality**  
Prevention and Elimination of Corruption

**NOVEKO 96, s.r.o.**  
Ethics in Public Administration and Measures against Corruption

**Oživení, o. s.**  
Prevention of Corruption in Procurements

**Petr Otáhal, s.r.o.**  
Corruption and Anticorruption Policy in Public Administration

**POE EDUCO, s.r.o.**  
Prevention of Corruption

**Prioris, s.r.o.**  
Corruption, its Prevention and Elimination  
Corruption, its Prevention and Elimination and Act of Conflict of Interests  
Issue of Corruption for Employees

**PROFIMA EFFECTIVE, s.r.o.**  
Prevention of Corruption

**RENTEL, a.s.**  
Elimination of Corruption in Public Administration

**Senior Tennis Club ČR, o.s.**  
Corruption – Phenomenon of Our Society

**Společně k bezpečí, o.s. / Together for Safety,o.s.**  
Protection of Authority against Corruption – Anticorruption Minimum for Officials

**Staněk Jiří, Dr. Ing.**  
Prevention of Corruption

**STAR Learning, spol. s r.o.**  
Transparent Authority without Corruption

**TEMPO Training & Consulting, s.r.o.**

Corruption, its Prevention and Elimination

Prevention of Corruption and Budgeting of Municipality

Issue of Corruption for Employees

Procurements, Corruption and Ethics

Training in Area of Corruption – its Prevention and Elimination for Authority Management and Senior Officials

**TSM, s.r.o.**

Ethics of Public Administration and measures against Corruption

**UNIT, spol. s.r.o.**

Prevention at Corruption

**Vysoká škola evropských a regionálních studií o.p.s./ College of European and Regional Studies**

Elimination of Corruption in Public Administration

**Vysoká škola sociálně-správní, Institut celoživotního vzdělávání Havířov, o.p.s./ Social-Administrative College, Institute of Lifelong Learning Havířov**

Prevention of Corruption

**Vzdělávací institut Středočeského kraje – Zařízení pro další vzdělávání pedagogických pracovníků/**

**Training Institute of Central-Bohemian Region – Facility for Further Training of Pedagogical Specialists**

Corruption in Territorial Self-governing Units

**Západočeská univerzita v Plzni (ZČÚ), Ústav celoživotního vzdělávání (UCV)**

**University of West Bohemia, Lifelong Learning Centre (UCV)**

Prevention and Elimination of Corruption

In January and February 2013 web “catalogues” and offered courses of all these institutions for the first half of the year were analyzed and only 6 courses, whose annotations are listed below, were advertised.



### 3.3.1 Annotation and Evaluation of Courses

#### 1./ Training institution 1.VOX, PLC

##### **Course title: CORRUPTION BEHAVIOUR in the CZECH REPUBLIC**

The Prague company, PLC belongs to the biggest training institutions with a complex offer of courses for stakeholders from all over the Czech Republic. It cooperates with prime experts – lecturers for given topics from universities as well as practice. This one day course with the duration of 8 hours is lectured by Mr. Pavel Kolman from the College of International and Public Relations in Prague.

The course is dedicated to all employees/officials of state organizational units, state allowance organization, state enterprises, regional and self-governing units, organizational units and legal bodies founded and established by territorial self-governing units, in case they execute public administration.

Following topics represent the essential structure of the programme focused on anti-corruption behaviour:

1. Introduction – historical, cultural, political and social-economic correlations of of corruption's origin
2. Definition of crucial terms, corruption, bribery, public official, dealing with public interest
3. Evolution processes, types and forms of corruption, procuration factors
4. Verge phenomena – conflict of interests, lobbying, clientelism, nepotism
5. Examples of corruption appearance within administrative activities and its indicators
6. Anticorruption legislation (international legal instruments, Czech implementation of international norms and relation to criminal and commercial law)
7. International bodies and organizations acting in fight against corruption Greco, OLAF
8. General principles in fight against corruption
9. Anticorruption tools
10. Consequences of corruption-economic, political and legal
11. Information to the Governmental programme on fight against corruption in the Czech Republic

12. Practical examples and cases investigated by the Czech police



## EVALUATION CRITERIA

### Vocational training for civil service employees in prevention of corruption

Course title: **CORRUPTION BEHAVIOUR in the CZECH REPUBLIC**

#### 1. Type of training

- a.  mandatory  
 non-mandatory
- b.  initial  
 continuous
- c.  internal  
 external
- d.  financed by own resources  
 financed by EU funds

#### 2. Type of participation

- a.  by category / rank
  - managers
  - senior officers
  - junior officers
  - administrative staff
- b.  other professional group  
*if so, please specify .....*

#### 3. Scope/Content

- a.  focused on anticorruption plans
- b.  specifically focused on the prevention of infringements
- c.  transversal (cross-cut) in a broader context of training on ethical behaviour.

#### 4. Objectives

- a.  aimed to deliver the legal framework
- b.  aimed to promote ethical behavior and ethical culture

#### 5. Training methods

- a.  presentations by the trainer
- b.  active participation of trainees (case studies, role play, problem solving, discussions, etc...)

#### 6. Length and structure

- short – up to 8 hours
- medium – from 2 up to 5 days
- long term – more than 5 days

#### 7. Training impact

- evaluation

*if evaluation is used, please specify the form*

Evaluation questionnaire of 1.VOX,PLC

- non-evaluation

#### 8. Possible to be considered a good practice

- yes

*if so, please specify aspects of the good practice to be shared*

Czech case studies were discussed during the course (see point 12)

- no

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## **2./ Český a moravský účetní dvůr, s. r. o. / Czech and Moravian Court of Auditors Inc.**

### **Course title: Anticorruption Procedures and Measures at Procurement Assigning**

This training institution from Pardubice is focused on economic, financial and accountings training events. One day course is given by the internal lecturer Mr. Bohdan Dvořák. Currently, this institution significantly stresses the supply regarding the amendment to the procurement act.

A course with this contents is prepared for 2013:

1. Options to minimize corruption influences at procurement assigning
2. Links on anticorruption audits
3. Options for transparent procurement announcement, electronic forms of assigning (electronic auctions, dynamic purchase system).

Furthermore, the course presents practical procedures at identification of possible corruption or influencing the course of the assigning process in relation to the amendment of the procurement act.

**The course does not require any previous knowledge and is suitable even for complete beginners.**



## EVALUATION CRITERIA

**Vocational training for civil service employees in prevention of corruption**

**Course title: Anticorruption Procedures and Measures at Procurement Assigning**

### 1. Type of training

- a.  mandatory  
 non-mandatory
- b.  initial  
 continuous
- c.  internal  
 external
- d.  financed by own resources  
 financed by EU funds

### 2. Type of participation

- a.  by category / rank
  - managers
  - senior officers
  - junior officers
  - administrative staff
- b.  other professional group

*if so, please specify .....*

**3. Scope/Content**

- a.  focused on anticorruption plans
- b.  specifically focused on the prevention of infringements
- c.  transversal (cross-cut) in a broader context of training on ethical behaviour.

**4. Objectives**

- a.  aimed to deliver the legal framework
- b.  aimed to promote ethical behavior and ethical culture

**5. Training methods**

- a.  presentations by the trainer
- b.  active participation of trainees (case studies, role play, problem solving, discussions, etc...)

**6. Length and structure**

- short – up to 8 hours
- medium – from 2 up to 5 days
- long term – more than 5 days

**7. Training impact**

- evaluation

*if evaluation is used, please specify the form*

A mode of evaluation is not known.

- non-evaluation

**8. Possible to be considered a good practice**

- yes

*if so, please specify aspects of the good practice to be shared*

.....

- no

### **3./ Martynek Radim, Ing. – Akademie nevšedního vzdělávání, s.r.o. / Academy of Remarkable Training Inc**

#### **Course title: Impact of Corruptive Behaviour for Official and Metropolitan Policeman**

Academy of Remarkable Training from Brno follows up a seven-years successful history of the accredited training institution and realizes closed vocational seminars not only for public administration and commercial sphere but also for unemployed and socially disadvantaged people.

A general aim of the seminar is to point out that the elimination of corruption is a common responsibility of government and public administration, non-governmental organizations and business sector. The specific aim is prevention of corruption opportunities and transparency at the execution of public administration and self-governance. The training programme is constructed attractively on the exchange of (mediated) experience as well as perspective of politicians and municipal offices employees.

There is offered only the closed seminar for approximately 20 people on demand in 2013.

1. Prevention of corruption opportunities and transparency of acting of politicians and officials
2. Prevention, detecting and decrease of risks at the execution of public administration and self-governance
3. Active and passive bribery, presents and sponsor subsidies
4. Prevention and detection of corruption
5. Examples of corruption
6. Role of private sector at prevention of corruption
7. Prevention of corruption in private sector
8. Role of auditors at detecting corruption
9. Role of private sector at prevention of corruption and protection of whistleblowers



## **EVALUATION CRITERIA**

### **Vocational training for civil service employees in prevention of corruption**

#### **Course title: Impact of Corruptive Behaviour for Official and Metropolitan Policeman**

##### **1. Type of training**

- a.  mandatory  
 non-mandatory
- b.  initial  
 continuous

- c.  internal
  - external
- d.  financed by own resources
  - financed by EU funds

## 2. Type of participation

- a.  by category / rank
  - managers
  - senior officers
  - junior officers
  - administrative staff
- b.  other professional group  
*if so, please specify* Metropolitan police

## 3. Scope/Content

- a.  focused on anticorruption plans
- b.  specifically focused on the prevention of infringements
- c.  transversal (cross-cut) in a broader context of training on ethical behaviour.

## 4. Objectives

- a.  aimed to deliver the legal framework
- b.  aimed to promote ethical behavior and ethical culture

## 5. Training methods

- a.  presentations by the trainer
- b.  active participation of trainees (case studies, role play, problem solving, discussions, etc...)

## 6. Length and structure

- short – up to 8 hours
- medium – from 2 up to 5 days

long term – more than 5 days

## 7. Training impact

evaluation

*if evaluation is used, please specify the form*

A mode of evaluation is not known.

non-evaluation

## 8. Possible to be considered a good practice

yes

*if so, please specify aspects of the good practice to be shared*

Focus on particular target group enables to adjust the content to specific requests.

no

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## **4./ Institute for Public Administration Prague**

Institute for Public Administration Prague is a state allowance organization established by Ministry of Interior. Its focus is on the training of public administration officials, i.e territorial self-governing units and (central) administrative authorities. It creates own training programmes resulting not only from current changes in legal provisions but also from needs of authorities. All three below listed courses were prepared from contents as well as pedagogical (methodological) point of view in cooperation with Institute's external lecturers.

### **4. 1 Course Title: Corruption and Anticorruption Policy in Public Administration**

This 6 hours course was prepared in cooperation with Transparency International-Czech Republic (TIC) and was also lectured by TIC staff. It was dedicated to employees of administrative authorities and to officials and senior officials of territorial self-governing units, who participate on execution of administration activities.

Participants become acquainted with:

1. term corruption, its types and negative impacts
2. anticorruption policy in public administration
3. ways of causes analysis
4. identification of signs and corruption measurement
5. anticorruption tools in public administration and assessment of efficiency of anticorruption measures
6. information about international anticorruption tools



## EVALUATION CRITERIA

### Vocational training for civil service employees in prevention of corruption

#### Corruption and Anticorruption Policy in Public Administration

##### 1. Type of training

- a.  mandatory
  - non-mandatory
- b.  initial
  - continuous
- c.  internal
  - external
- d.  financed by own resources
  - financed by EU funds

##### 2. Type of participation

- a.  by category / rank
  - managers
  - senior officers
  - junior officers
  - administrative staff

- b.  other professional group

*if so, please specify .....*

##### 3. Scope/Content

- a.  focused on anticorruption plans
- b.  specifically focused on the prevention of infringements
- c.  transversal (cross-cut) in a broader context of training on ethical behaviour.

#### 4. Objectives

- a.  aimed to deliver the legal framework
- b.  aimed to promote ethical behavior and ethical culture

#### 5. Training methods

- a.  presentations by the trainer
- b.  active participation of trainees (case studies, role play, problem solving, discussions, etc...)

#### 6. Length and structure

- short – up to 8 hours
- medium – from 2 up to 5 days
- long term – more than 5 days

#### 7. Training impact

- evaluation

*if evaluation is used, please specify the form*

in compliance with internal methodology of Institute for Public Administration  
Prague discussed with TIC

- non-evaluation

#### 8. Possible to be considered a good practice

- yes

*if so, please specify aspects of the good practice to be shared*

Current cases from the Czech Republic were presented in the course.

- no

*In autumn 2012 within the governmental project OPLZZ (Operational programme Human resources and employment) this course was replaced by two following courses.*

#### 4. 2 Course Title: Tracing Corruption

The new 8 hours course is dedicated to officials and senior officials of territorial self-governing units as well as employees of central administrative authorities within their continuous training. Under the guidance of Institute, the course was prepared and lectured by employees of Office of the Government of the Czech Republic – Section for coordination the fight against corruption in cooperation with member of the Czech Police – Department of detection of corruption and financial criminality.

Course contents:

1. Definition of essential terms related with corruption
2. Corruption in international context
3. Bribery in Czech legal code
4. Prevention of corruption
5. Procedural arrangement of corruption
6. Operatively-investigative means and other options of bodies active in criminal proceedings

Beside the lecture, the course comprises a moderated discussion, analyses of videos and small case studies too.



## EVALUATION CRITERIA

### Vocational training for civil service employees in prevention of corruption

#### “Tracing Corruption”

##### 1. Type of training

- a.  mandatory  
 non-mandatory
- b.  initial  
 continuous
- c.  internal  
 external
- d.  financed by own resources  
 financed by EU funds

## 2. Type of participation

a.  by category / rank

- managers
- senior officers
- junior officers
- administrative staff

b.  other professional group

*if so, please specify .....*

## 3. Scope/Content

- a.  focused on anticorruption plans
- b.  specifically focused on the prevention of infringements
- c.  transversal (cross-cut) in a broader context of training on ethical behaviour.

## 4. Objectives

- a.  aimed to deliver the legal framework
- b.  aimed to promote ethical behavior and ethical culture

## 5. Training methods

- a.  presentations by the trainer
- b.  active participation of trainees (case studies, role play, problem solving, discussions, etc...)

## 6. Length and structure

- short – up to 8 hours
- medium – from 2 up to 5 days
- long term – more than 5 days

## 7. Training impact

- evaluation

*if evaluation is used, please specify the form*

in compliance with internal methodology of Institute for Public Administration Prague

non-evaluation

#### **8. Possible to be considered a good practice**

yes

*if so, please specify aspects of the good practice to be shared*

Theoretical background with practical examples of current Czech cases, which are investigated by the criminal police are appropriately combined in the course.

no

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#### **4.3 Course Title: Project OPLZZ (*Operational programme Human resources and employment*)**

##### **“Training in Ethics “**

The project OPLZZ follows up the document „Strategy of Government in Fight Against Corruption for Period 2011-2012“ and has a relation to the governmental resolution approved on 16<sup>th</sup> January 2013 „From Corruption to Integrity- Strategy of Government in Fight Against Corruption for Period 2013-2014“. It was launched in autumn 2012 with eLearning course, which is dedicated to all stakeholders – employees of authorities listed in the Competence Act. The Competence Act is the act 2/1969 Coll., about establishing ministries and other central authorities of state administration of the Czech Republic by which particular central authorities are set and their charge is defined.

4.3.1 The basic course has **eLearning form** and is dedicated to become acquainted with basic information of ethical principles and anticorruption mechanisms.

It contains 4 modules:

1. **Ethics** – introduction, theory, general principles, samples of codes of ethics
2. **Corruption**- principles of anticorruption mechanisms, legislative and non-legislative measures, risks of corruption behaviour, current anticorruption strategy of Czech Government
3. **Interactive training of problem situations** – display of possible solutions, self-testing
4. **Introduction into social behaviour** - communication, asertivity, etiquette and image of official/employee

## EVALUATION CRITERIA

### Vocational training for civil service employees in prevention of corruption

#### “Training in Ethics“ (eLearning)

##### 1. Type of training

- a.  mandatory
  - non-mandatory
- b.  initial
  - continuous
- c.  internal
  - external
- d.  financed by own resources
  - financed by EU funds

##### 2. Type of participation

- a.  by category / rank
  - managers
  - senior officers
  - junior officers
  - administrative staff
- b.  other professional group  
*if so, please specify .....*

##### 3. Scope/Content

- a.  focused on anticorruption plans
- b.  specifically focused on the prevention of infringements
- c.  transversal (cross-cut) in a broader context of training on ethical behaviour.

**4. Objectives**

- a.  aimed to deliver the legal framework
- b.  aimed to promote ethical behavior and ethical culture

**5. Training methods**

- a.  presentations by the trainer
- b.  active participation of trainees (case studies, role play, problem solving, discussions, etc...)

**6. Length and structure**

- short – up to 8 hours
- medium – from 2 up to 5 days
- long term – more than 5 days

**7. Training impact**

- evaluation

*if evaluation is used, please specify the form*

.....

- non-evaluation

**8. Possible to be considered a good practice**

- yes

*if so, please specify aspects of the good practice to be shared*

The complex eLearning course involving chapters of ethics as well as anticorruption behaviour.

- no

**4.3.2 Two Days (16hours) Face to Face Course**

This course is dedicated to senior employees and employees on exposed working positions, which are threatened by corruptive behaviour. The course is focused on practical training of behaviour in potentially corruption situations.

Passing the eLearning course is necessary for the participation in the interactive face to face course in form of a two days seminar. Its aim is a summary and proliferation of knowledge gained in the eLearning course, which is followed by a moderated discussion about potential corruption situations and suitable behaviour. The videotraining is realized throughout the

vast majority of the seminar. Reactions of participants in various problem situations are recorded and subsequently analyzed under the guidance of experienced lecturers.

The course is divided to 2 training sections:

1. Corruption –
  - a. recapitulation of crucial terms
  - b. analyses of case studies
  - c. practical experience of the Czech police at detecting of corruption behaviour
  
2. Ethics and communication skills –
  - a. detection of manipulative techniques of behaviour and communication
  - b. suggestions of efficient defensive mechanisms
  - c. communication strategy against this behaviour
  - d. application of principles of code of ethics to workflow



## EVALUATION CRITERIA

### Vocational training for civil service employees in prevention of corruption

#### “Training in Ethics“ (Face to Face)

##### 1. Type of training

- a.  mandatory  
 non-mandatory
- b.  initial  
 continuous
- c.  internal  
 external
- d.  financed by own resources  
 financed by EU funds

##### 2. Type of participation

- a.  by category / rank
  - managers
  - senior officers
  - junior officers



administrative staff

b.  other professional group

*if so, please specify .....*

### 3. Scope/Content

- a.  focused on anticorruption plans
- b.  specifically focused on the prevention of infringements
- c.  transversal (cross-cut) in a broader context of training on ethical behaviour.

### 4. Objectives

- a.  aimed to deliver the legal framework
- b.  aimed to promote ethical behavior and ethical culture

### 5. Training methods

- a.  presentations by the trainer
- b.  active participation of trainees (case studies, role play, problem solving, discussions, etc...)

### 6. Length and structure

- short – up to 8 hours
- medium – from 2 up to 5 days
- long term – more than 5 days

### 7. Training impact

evaluation

*if evaluation is used, please specify the form*

in compliance with internal methodology of Institute for Public Administration Prague

non-evaluation

## 8. Possible to be considered a good practice

yes

*if so, please specify aspects of the good practice to be shared*

Interactive, training course with expert from the fight against corruption and criminal police.

no

### Summary:

Although training institutions have got various accredited courses on ethics and corruption at Ministry of Interior, there were announced only 3 courses for the first half of 2013, involving one course solely on demand and for closed groups.

The exception is represented by the Institute for Public Administration Prague – training institution established by Ministry of Interior in order to train all officials and public administration employees in the state. Institute was also assigned by its founder and bearer to prepare and realize both above mentioned forms of courses of the project.

It is apparent from the courses supply on the market in the Czech Republic that the observed area is quite broad and it is designed either from the perspective of ethics (also at preparation of new officials at universities at least) or as an interpretation of the new procurement act or as a more complex area of corruption in the Czech Republic. The whole subject has been throughout 2012-2013 supported by materials in charge of Strategy of Government in Fight against Corruption. In compliance with that, contents and forms of their fulfilling are heading from the topic presentation to interactive forms, training and analyses of cases discussed in the Czech public administration.

This trend of interactive and complex courses with lecturer's participation of experts in anticorruption and ethical behaviour from the Office of the Government together with policemen from the Department of detection of corruption and financial criminality can be considered for the "best practice" for preparation and realization of courses from the given area.

### 3.3.2 Workshops, Debates and Conferences on Ethics

Some non-government organizations are active in the field of ethics and ethics code of public administration employees. Basically, they mainly focus on corruption and the fight

against it. They monitor the situation, do the research, hold the workshops, debates and conferences for stakeholders as well as for public, nevertheless the main discussed topic within the ethics is always corruption. Unlike the courses offered by training companies, workshops, debates and conferences hold by the NGOs are for free. Again, there are no systematical and regular events or trainings provided by the NGOs. The actions are organized spontaneously and occasionally.

Sometimes, such events are organized with cooperation with some ministries.

### III. TRAINING IN ETHICS IN GERMANY

The following chapter gives an overview over some examples for training in ethics. It shifts its focus from initial academic training, to further academic training and finally to one specific example: the training for the prevention of corruption.

#### 1. Training in Ethics during Initial Education:

##### **The Example of Education in Public Administration at Universities of Applied Sciences - Study Programmes for the Higher Intermediate Service**

*Kerstin Wüstner & Marianne Egger de Campo*<sup>119</sup>

Since the group of staff working in general public administration represents the largest number of all public employees our report about the consideration of ethical training in the curricula will refer to training in general public administration only. That is, we exclude e.g. training for the police force or the military etc. In the case of public administration, all applicants have to attend a University of Applied Sciences either at the level of federation (FH Bund) or of one of the 16 states. Students of these programmes enter the career path of higher intermediate service. As stated before, there are internal and external study programmes.

Table 1 in annex 4 presents an overview of education systems in the states.

The proportion of legal training in the curricula ranges between 31% of the ECTS workload<sup>120</sup> in Saxony Anhalt and 63% in Thuringia. In comparison, social sciences only cover between 3.5% (Bremen) and nearly 15% in Berlin.

We also analysed, whether the explicit training in ethics was part of the curriculum. In most states, this was not the case. At the “Hochschule für öffentliche Verwaltung und Finanzen Ludwigsburg” in Baden-Wuerttemberg (1) the curriculum includes a module worth 5 credit points titled “Public Management/Ethics of administrative behaviour/Gender

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<sup>119</sup> We would like to thank Elina Ehrlich, who assisted with some research of this chapter.

<sup>120</sup> Cf. [http://ec.europa.eu/education/lifelong-learning-policy/doc48\\_en.htm](http://ec.europa.eu/education/lifelong-learning-policy/doc48_en.htm).

Mainstreaming". With regard to the further description of the module it puts an emphasis on criminal law and official liability. At the second University of Applied Sciences in Baden Wuerttemberg, at the "Hochschule für öffentliche Verwaltung Kehl" (2), the name of the module does not include ethics anymore, yet its description is identical to that of the University of Applied Sciences in Ludwigsburg.

The second state in which ethics is at least mentioned in the description of the module is North Rhine-Westphalia. The curricula of all three fields of study (3, 4, 5) include ethics as a subject of the module on social sciences. It comprises 1.5 credit points (which are 0.8% of the total amount of credits). Students are expected to gain an understanding e.g. in what respect ethics could be important for administrative behaviour, or to identify ethical and unethical behaviour. Further, ethics is discussed with reference to the legal framework (for example the German constitutional law).

Our analysis demonstrates that training in public administration predominantly consists of legal training. Training in ethics will most likely be included in legal training but also in the subject budgeting ("Haushaltsrecht"), since the latter contains regulations for tenders (which helps to prevent corruption), however without explicit reference to the term ethics. Matters such as protection of data privacy are covered in legal training also refer to ethical aspects of public administration, and are part and parcel of the curricula of general public administration. Thus, a special course on ethics is rare to be found.

## 2. Training in Ethics during Further Academic Education:

### The Example of Master Programmes

*Kerstin Wüstner*

For public employees one way of further development and training is to enrol for a master's degree. This can enable them to work their way up from the higher intermediate service to the higher service.

Again master study programmes are analysed with a focus on ethics as a training module. The result is pretty similar to the analysis of Bachelor programmes (see table 2 in annex 5). Only in one case a training module which is explicitly declaring to teach ethics can be found (at the FH Ludwigsburg, again Baden Wuerttemberg). In other study programmes some concrete ethical problems are included as an example, e.g. in modules like law, human resource management or quality management.

## 3. Training in Ethics during Continuing Education:

### The Example of Training for the Prevention of Corruption

*Kerstin Wüstner*

#### Continuing Education in Germany General

In 2009 nearly 8 million of the total working population attended classes of continuing education.<sup>121</sup>

Table 7: Participants of Continuing Education (in Thousands) – Professional Background<sup>122</sup>

	Total	Men	Women
Self-employed	894	568	326

<sup>121</sup> Statistisches Bundesamt (2010): Weiterbildung. Report.

<sup>122</sup> Statistisches Bundesamt (2010): Weiterbildung. Report.

Civil servants	833	460	372
Employees	5 255	2 382	2 873
Blue collar workers	965	765	200

This table illustrates that most of them were employees, followed by blue collar workers, self-employed and civil servants.

These numbers only present how many employees of each group participate in continuing education.

To find out how many employees of the public service receive training in ethics, it has to be taken into account how broad ethics is “defined” or “interpreted”, especially from the point of view of practice (see chapter II.1). Therefore, it is not possible to analyse “training in ethics” of employees of public organisations in general, because many courses could be defined to be training in ethics. Some of them can be labelled as “ethics”, others could promote ethical behaviour without being labelled likewise. It would be insufficient to restrict an analysis only on courses called “ethics” and it would lead to a biased picture of social reality.

Courses that could include an ethical dimension could be training in law, e.g. new questions of medical law, or it could be training for conflict management and avoidance of bullying, or it could provide training for customer orientation and so on. In fact, all mentioned conflicts of interests could be a topic for training in ethics as well.

Therefore, it was decided within the international research team to pick out one concrete example that could provide information on training in ethics: training for preventing corruption.

**Training for the Prevention of Corruption: the Example of the International Frontex Study (2012)**

Training for the prevention of corruption is relevant in practice and had been a research topic under an international perspective already. As described in chapter II.3, some statistical data exist for the police.

An international study which focuses mainly on border control enlightens measures used to fight corruption in that area.<sup>123</sup> Relevant measures could be:

- transparency and public awareness,
- operational management measures (e.g. superiors’ responsibility for the actions of their subordinates, four eyes principle, audio/video recording, plain-clothes corruption patrols, limited cash payments to police officers, streamline administrative procedures or proactive measures, that are partly used in the USA, such as integrity testing, drug and alcohol tests, and periodic reinvestigations),
- human resources management measures (again integrity tests, background checks, disciplinary actions, introduction or strengthening of programmes to encourage the reporting of corruption),
- corruption monitoring and investigations (e.g. inspectorates/complaints bodies, internal affairs units).

The study emphasises the importance of a detailed analysis of the risk of corruption in individual tasks to identify vulnerable areas. Further, it should include a risk analysis of structural and opportunistic corruption.

There are great differences in the extent to which such measures are installed in countries auf the European Union. The following table gives some examples:

Table 8: Examples of Anti-corruption Measures in Three Countries<sup>124</sup>

	Czech Republic	Germany	Poland
Assessment of positions/units at risk and corruption pressure for various levels of officers	No info	Regularly	Occasionally

<sup>123</sup> Frontex (2012): Anti-Corruption measures in EU border control. Sofia: Published by the Center for the Study of Democracy. All information on that study is taken from this report.

<sup>124</sup> Frontex (2012), pages 143, 146. There are no data available for Portugal in this report.



Assessment of work/operational procedures and their amendment to reduce risk of corruption	No info	Regularly	Regularly
Developing of risk profiles of officers	No info	Occasionally	Occasionally
Internal audit reports	No info	Regularly	Regularly
Offering bribes to officers	Not implemented	Not implemented	Limited
Polygraph tests for new officers	Not implemented	Not implemented	Widespread

For the Czech Republic some information had not been available. Some measures that had been implemented in Germany and Poland are similar, yet offering bribes to officers and polygraph tests are only used in Poland, but not in the other two countries.

Training and education is another mentioned measure to prevent corruption, yet it is described only briefly and the report does not give detailed information:

“In several MS [member states] anti-corruption training is limited to issues related to police codes of conduct, ethics and integrity issues, and education on criminal law (...). Anti-corruption issues are also addressed during the initial training of border guards, but are not always followed by any ongoing practical training (...). In other MS, however, border guard officers may receive specific instructions on the non-acceptance of bribes, and anti-corruption education is an on-going process (...).”<sup>125</sup>

There are no data for Germany about concrete training measures in this report. In general, this study puts an emphasis on measures other than training.

Above that, an analysis of training for the prevention of corruption offered to staff working in border control is only one example for training activities in the public service. It could

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<sup>125</sup> Frontex (2012), pages 109-110.

differ from training measures for other police departments and of course from training provided for public administration staff.

### **Training for the Prevention of Corruption in the Public Service: the Situation in Germany**

Two perspectives can deliver important knowledge on experiences made with training for the prevention of corruption: the perspective of those providing such courses and the perspective of participants. As the international research team has decided for an organizational analysis, not participants themselves were questioned, but organisations. Another objective was to find out if it was possible to describe best practices. Therefore the emphasis has been put on the second perspective, because only the organisation could assess effects of training. Therefore, the perspective of providers of training is only described by referring to some examples.

### **The Perspective of Organisations that Provide Training for the Prevention of Corruption**

In the following passage, some examples are presented for training measures. We got back three answers with interesting and detailed information, yet the respondents wished to remain anonymous. Because of this, their results are not included in the following examples.

#### **Example 1: ZAKS (Zentrale Antikorruptionsstelle, Bremen)<sup>126</sup>**

ZAKS is an internal provider of training of the state of Bremen. ZAKS is responsible for prevention and counselling, but also for criminal prosecution. The department is led by a former public prosecutor, a lawyer and a counsellor work in the field of training and counselling; four C.I.D. officers (criminal investigation department – “Kriminalpolizisten”) and an economist work in the second unit (criminal prosecution). ZAKS also provides information in the intranet and a hotline.

ZAKS offers courses for several groups, e.g. for public administration employees, police officers or for staff working in the field of real estates.

Contents of training public administration employees are, for example:

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<sup>126</sup> All information bases on material that has been sent to us by ZAKS. This organisation gave consent that it can be used for this report and that the organisation can be mentioned in the report.

- definition of corruption,
- effects of corruption,
- legal framework,
- examples from practice,
- cases – how would you handle it?,
- motives of corruption,
- types of corruption,
- rewards and gifts,
- prevention and correct behaviour.

Contents of training for police officers or for staff working in the field of real estate are similar to the course described before, yet the first group also focuses on typical challenges in their profession, e.g. tasks/units that are especially vulnerable of corruption, the second group learns about sponsoring, advertisements, donations, too.

ZAKS offers a course in the study programme “risk and security management” provided by the university for academic education of public administration in Bremen (“Hochschule für öffentliche Verwaltung”), that embraces the listed topics.

All courses provided by ZAKS put an emphasis on prevention on different levels: prevention by structural measures (e.g. mission statements, which include values/guidelines of integrity, fairness and lawfulness, or a code of ethics, structures that ensure that all employees receive corresponding information, weak point analysis and consequences for risk reduction), on fiduciary for staff and on the level of the individual that should try to exhibit representative behaviour.

In that respect, the courses embrace a wide range of measures.

All courses are evaluated by asking participants about their satisfaction.

### **Example 2: Course on Prevention of Corruption by a State Institute in Bavaria<sup>127</sup>**

The Bavarian internal university for the academic education of public administration employees (“Fachhochschule für öffentliche Verwaltung und Rechtspflege in Bayern“) offers

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<sup>127</sup> The “Fachhochschule für öffentliche Verwaltung und Rechtspflege” has given permission to be mentioned in this report.

courses for the prevention of corruption, too. They started with these courses in 2006. The 2 to 3 days course consists of a lecture with discussion and a seminar. The course is held by professors and judges.

Contents are:

- what is corruption,
- basic patterns of corruption,
- corruption as a social process,
- criminal career of a corrupt person,
- institutionalisation of corruptive networks,
- prevention of corruption,
- legal limbo of corruption.

The course aims to sensitize and to inspire prevention activities. It is evaluated by asking participants about their satisfaction with basic conditions, lecturer and topics.

**Example 3: Course on Prevention of Corruption Organised by a State Institute in Brandenburg<sup>128</sup>**

The academy for public administration in Brandenburg offers a course on prevention of corruption. It is addressed to superiors, junior superiors and staff working in the higher service. It is a one-day course, which includes film clips and discussion. It embraces the following topics:

- state code for the prevention of corruption,
- definition of corruption,
- types of corruption,
- how to detect corruptive behaviour,
- effects of corruption,
- risk and weak point analysis within an administration,
- warning signals, indicators and initial suspicion,
- rewards and gifts,

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<sup>128</sup> Information was provided by the Ministry of Justice in Brandenburg.

- code of conduct,
- the exemplary superior,
- sponsoring.

**Example 4: Courses Offered by the Behördenspiegel<sup>129</sup>**

A private organisation that offers training for the prevention of corruption is the Behördenspiegel. The five courses of the programme include the following contents (examples are given):

1) Compliance and prevention of corruption in the public service

This two days course provides in seven modules information on

- types of corruption,
- tasks and units within the public service that are particularly at risk of corruption,
- corruption in Germany in international comparison,
- analysis of internal measures to prevent corruption in an organisation of the public service (risk analysis, separation of planning, awarding and accounting, obligatory documentation requirement, four-eyes-principle, controlling and awareness raising of staff, education),
- internal audit,
- contact person(s) for prevention of corruption,
- contractual measures,
- strategies of preliminary proceedings and criminal proceedings.

Experts who are responsible for the modules are interdisciplinary and work in different fields, but are mostly employed in an organisation of the public service: a senior prosecutor, an employee of the Federal Chancellery, a police officer working in the Federal Ministry of the Interior and one former police officer, a professor of an University of Applied Sciences, and a member of Transparency International.

2) Acceptance of rewards and gifts

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<sup>129</sup> All information bases on material that has been sent to us by the “Behördenspiegel”. This organisation gave consent that it can be used for this report and that the organisation can be mentioned in the report.

This is an one-day-course with three modules. They focus on law, duties of the authority due to the public services law and the suggestion to formulate a code of ethics or a mission statement.

Involved experts are a senior prosecutor, a police officer working in the Federal Ministry of Interior and a lawyer.

### 3) Sponsoring for financing public tasks

This is an one-day-course with three modules, too. Topics of the course are definition and types of sponsoring, criminal proceedings aspects of sponsoring, and contractual and other measures to respect law.

Responsible for this module are a senior prosecutor, a lawyer, and an expert from the Federal Ministry of Interior.

### 4) Revision of acquisition

The course takes two days and focuses on general aspects of revision of acquisition, revision of contracts with vendors, contracts for work and labour, service contracts and contracts with counsellors as well as indicators for corruption and starting points of control.

The expert giving this course is a certified internal auditor for the Federal Employment Agency.

### 5) Internal audit and prevention of corruption

There are several modules which can be booked individually or in combination. All courses are held by a police officer working in the Federal Ministry of the Interior.

One one-day module is about internal auditing and prevention of corruption and provides information on structure and methods of internal auditing, internal auditing as a management tool, basics of prevention (instruments to analyse risk of corruption, chart of risk, internal mechanisms of control, prevention in everyday working routine), zero-tolerance strategy, communication.

Another one-day module is on internal auditing in the field of allowances. Contents are controlling, preparation of audit, auditing, audit report and recommendations.

A two-day course offers detailed information on internal auditing in public administration and in particular on planning the audit, steps of auditing, audit report and follow-up.

Another two-day seminar is on prevention of corruption in public administration. Corruption is analysed with a criminalistic focus, other topics are positive aspects of prevention, target groups, instruments of prevention, cases and plans for interventions.

No precise information about evaluation was provided.

**Example 5: Courses on Prevention of Corruption Provided by “Rechtsanwälte szk”<sup>130</sup>**

“Rechtsanwälte szk” is also a private provider for a one-day-course. Since 2010, they offer training for public service employees, mainly for those who work in local authorities in the field of acquisition and the building authority. The method used in this course is a lecture and discussion, held by lawyers. Contents of the course are:

- definition of corruption,
- causes of corruption,
- development of corruption,
- effects of corruption,
- criminal law,
- public services law,
- prevention.

Aims of this course are to enable the participants to detect corruptive behaviour and to initiate prevention. The courses are not evaluated.

All examples show various sophisticated anti-corruption courses. Each of them embraces legal and practical perspectives and focuses on preconditions, possible causes and consequences, including prevention.

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<sup>130</sup> The institute has given permission to be mentioned in this report.

## **The Perspective of Organisations that Make Use of Training for the Prevention of Corruption**

### **The Questionnaire**

It was agreed within the international research team on an analysis of the training measures, whether they are mandatory, non-mandatory in the organisation, whether it is initial or continuing training, whether it is provided by external or internal experts and by which resource they are financed. Organisations are also asked which groups are sent to such training (managers, junior officers...), and what the scope, contents and aims are. Training methods are to be described as well as the length of the courses. Finally, the training impact is to be estimated.

This questionnaire was shared among all partners. Most items of this questionnaire were used for a survey in Germany. One question was replaced - "Possible to be considered a good practice – yes – no". Instead of this, the German respondents were asked if they observed impacts of training and if so which. In addition some more questions were added to make it easier to interpret the answers. This was also necessary, because the background of the German researcher is different to those of the partner countries, where researchers also provide such training. Above all, the situation is complex: there are various institutes that offer training, sometimes it is provided by the employers themselves, and the organisations of the states organise continuing education differently as they are autonomous due to Federalism.

### **Interviewed Organisations and Some Remarks on Data Collection**

The questionnaire was sent to all ministries and important public organisations (e.g. police) on the federal and state levels. It was necessary to ask organizations, because they are the place where problems with corruption could occur, they decide about measures against it and they can assess the outcomes of the chosen measures. Of course, a clear causality between corruption cases and training for prevention of corruption does not exist. Nevertheless, an analysis can provide some information on how many organizations offer their staff education on that topic and it also could provide some examples for experiences made with training.



Despite assumptions, that some organisations might be likely not to respond, we made no selection in advance. Firstly, this would be discrimination, if some organisation were excluded just because of vague prejudices. Secondly, it could provoke the question of those organisations that do receive a questionnaire, why they were chosen and not the others.

The questionnaire was sent out by the end of the first week of February 2013. In all cases it was addressed to the human resource department. We assumed that this department is involved in the organization of the training courses or at least they send participants to the training institutes. Respondents were asked to send back their answer by end of February. It turned out that this time slot was too narrow. Quite often, the questionnaire was passed on from one unit to another, which led to some delays. All responses that were sent back by end of March were included.

### Response Rate

The response rate can only be described quite vaguely, because of five reasons.

- 1) Some respondents sent back an answer without indicating their organizations. Then, we just know, someone has answered, but we do not have further information.
- 2) Some organizational units have answered the questionnaire, although we did not send the questionnaire to them. In these cases, the questionnaire must have been passed on within an organization or state.
- 3) The vast majority of the respondents asked for anonymity (61%). Therefore, no names of the organisations that took part in the study can be mentioned. Due to this, it is also not possible to give detailed information on the participants.
- 4) In the case of one state, it was decided that the ministries should not answer the questionnaire directly to us, but that the information has to be provided to a central internal unit before.
- 5) In another case one central unit answered the questionnaire for all ministries in this state.

Therefore, it can only be stated that by the end of March 2013 92 out of 234 organisations responded to our request (40.3%). If the one state, which has decided to answer for all state ministries, is counted as one, the response rate is 92 of 224 (41.6%). 23 organisations

explained why they could not answer the questions. Reasons were e.g. “the courses are centrally organised”, “there are no resources in our organisation”, “we are not allowed to take part in surveys like this”. Three organisations found the questionnaire not suitable for their perspective and sent it to a training institution. Two organisations answered in a letter. The response rates varied from states to states and to the federation.

The following table displays the differences, taking into account all answers which means, if respondents sent back information and explained why they were not able to fill out the questionnaire, this was qualified as a feedback and included in the response rate. The lowest rate was 25.0% and the highest 64.3%, in average 40.3%.<sup>131</sup>

Table 9: Response Rates of All Answers – Comparison of Federation and States

<b>Response rate</b>		
<b>...below average: 0-34%</b>	<b>About average: 35-45%</b>	<b>Above average: 46%-</b>
Federation	Rhineland Palatinate	Baden-Wuerttemberg
Bavaria	Saarland	Berlin
Brandenburg	Saxony-Anhalt	Mecklenburg West Pomerania
Hamburg		North Rhine Westphalia
Hesse		Schleswig Holstein
Lower Saxony		Thuringia
Saxony		

If those answers are left out that only explain why organisations felt unable to answer the questionnaire, response rates are like this:

<sup>131</sup> For the case of Bremen, no response rate was included, because this state decided to answer the questionnaire for all ministries by one central unit.

Table 10: Response Rates of Answered Questionnaires – Comparison of Federation and States

<b>Response rate</b>		
<b>...below average: 0-24%</b>	<b>About average: 25-35%</b>	<b>Above average: 36%-</b>
Federation	Hamburg	Berlin
Baden-Wuerttemberg	Hesse	Mecklenburg West Pomerania
Bavaria	Lower Saxony	North Rhine Westphalia
Brandenburg	Rhineland Palatinate	Schleswig Holstein
Saxony	Saarland	
	Saxony-Anhalt	
	Thuringia	

The rates range from 7.7% (Bavaria) to 57.1% (Mecklenburg West Pomerania).

It is also interesting to look at the fields of duty of our participants. Although a concrete analysis is not possible, because ministries on the state level are not structured in completely comparable ways, it becomes obvious that three areas are more represented in our sample than others: organisations dealing with interior affairs (including police), justice and finance.

In contrast to this, health or social ministries are underrepresented.

This result is partly coherent, partly in contrast to the research results on the mission statements (see above). Openness and transparent communication about training activities was found e.g. for organisations dealing with interior affairs. It was demonstrated before that police departments often communicate a mission statement on their web pages. On the other hand, especially for organisations dealing with health or social affairs we could have expected more responses, as they were the ones that often had information on mission

statements and/or ethics published on their web pages. They rarely gave information on their training measures against corruption, however.

The differences in response rates between organisations of different areas could result from competences and traditions of an active discussion on the phenomenon of corruption and anti corruption measures. Yet, it could also reflect different communication cultures. Courses could exist for the staff of those organisations as well, but the organisational culture may not see any need to communicate about them or to answer questionnaires like ours.

## Results

58 organisations provide training for the prevention of corruption for their employees. In six cases, no training exists. One respondent explains s/he cannot give a reason for that. Three other organisations report that training courses are being developed at the moment. In another case the position of the anti corruption representative had been vacant for quite a long time. Obviously training activities are bound to this position in that organisation.

One organisation has installed training for the prevention of corruption already in 1990, 7 organisations in the years of 1991-1999, all others in or after 2000.

In most cases, training was provided for the mere reason to prevent corruption. Some organisations responded to regulations that were enacted on the state level.

38 organisations offer the courses for all employees, while they are non-mandatory. In seven organisations the training is mandatory for all employees. Most organisations have chosen a mix: the training is mandatory for some groups but not for all. For example, in ten cases, all newly hired people are obliged to take part in the training or in other twelve cases they are mandatory for superiors. Often (in 20 cases), organisations define “risk groups” or develop a “chart of vulnerable areas and risk”. In these areas staff is more in danger of corruption than in others. They can or mostly have to attend such courses, too. Further, many organisations have installed the position of an anti corruption representative. These representatives also have to attend training.

Objectives of anti corruption courses are to deliver the legal framework (n = 57), to teach concrete devices how to avoid corruption (n = 53), how to handle cases of suspect (n = 49). Further objectives are to support correct behaviour of the individual (n = 50) and superiors

(n = 41) and to support an exemplary organisational culture (n = 37). Three respondents explain the main aim of the training is to help superiors to understand that prevention of corruption needs to be a central aspect in their everyday working routine, and intend to raise awareness.

The scope of the training is focused on anticorruption in eleven cases, in 42 cases it embraces the prevention and handling of corruption, and in five cases prevention is taught together with other topics, e.g. general ethics in public administration.

In six cases, employees take part in a course on prevention of corruption once. In 31 cases there are several training units. Twelve organisations offer all options. 20 organisations explain that their employees can attend these courses as often as they wish.

In all cases, costs are paid by the employers.

24 organisations work with internal experts who offer the training for their colleagues, and often staff is sent to training institutes that are also part of the public service. Just in four cases respondents state that they also cooperate with external private institutes.

The lengths of the courses vary pretty much. In 16 cases organisations say there is no standardised duration, in 14 cases a course is usually between 1 hour and 3 hours, in four cases half a day, in another 17 cases it takes a day, and in four cases the training lasts from 2 to 3 days.

Training methods are mostly presentations plus discussion (33 cases). But also it can be seminars (n = 24), case studies (13), workshops (9), or e-learning (5). In only two cases role plays are used. Generally, a mix of methods is applied.

Most organisations know that the training is evaluated, 10 explain this is not the case. 3 of them argue that it is not possible to assess such training, 2 say they have more important things to do, one answer is that staff is missing who could do the evaluation.

Three participants do not know whether the training is evaluated or not.

The others who have implemented some form of evaluation mostly ask participants about their satisfaction with the courses (35 cases). Just three organisations use some test. 6 organisations continuously monitor whether new cases of suspected corruption occur.

Our respondents were asked to describe (possible) effects of training for the prevention of corruption. These effects could serve as criteria to evaluate training. Three types of criteria are included: a possible effect on numbers of known cases of corruption (organisational facts), development in knowledge (cognitive level) and effects on behaviour (individual, superior and organisational culture). Further, an open field was offered to tell about any other effects. This open field was not used at all, however. The other effects were described as follows:

Table 11: Perceived Effects of Training

		Highly likely	Likely	Unlikely	Not-at-all likely	Was like this already before
cognition	there are no more (suspected) cases of corruption	7	11	3	5	18
	staff is now aware of legal regulations	25	20	1	0	5
	participants now know what corruption is	29	17	0	0	4
	staff now knows how corruption can be prevented	25	20	0	0	4
	staff now knows how cases of suspect can be handled	21	18	6	0	4
behaviour	the behaviour of the individual	14	17	2	0	11

	is now commendable					
	the behaviour of superiors is commendable	9	23	2	0	8
	the organisational culture is commendable	13	18	3	0	9

What could we conclude from the answers displayed in the table above?

The answers of our respondents make clear that in their point of view training is only partly able to prevent corruption. Of course more factors influence human behaviour than only knowledge.

Our respondents believe that most participants of the training course gained knowledge on the legal framework, on what corruption is and how it could be prevented. Slightly less seem to know what to do in the situation of a suspected case.

If we try to derive consequences from these results, two main points could be made:

- 1) It should be analysed how staff could be supported in situations of suspected corruption cases. Of course, this is a sensitive issue, because suspicions could shake confidence and damage organisational culture and commitment. Therefore, professional and well elaborated ways to handle such cases are needed. One attempt could be to install the position of an ombudsman, which has been done in some organisations already.
- 2) The behaviour of superiors is perceived positively in tendency, yet slightly critically if we look at the answers “highly likely” in comparison to the other two items (individual, culture). Probably, superiors could be supported better in order to carry out their duties professionally.

### Limitations of the Results

Our survey allows only to get a glimpse of the situation in Germany, because there are several limitations which need to be taken into account.

### 1) No representativeness

The response rate is so low, that it cannot bring along representative results, especially not for the federation and the states Baden-Wuerttemberg, Bavaria, Brandenburg and Saxony. It should be kept in mind that nearly 60% did not respond to our request at all. Another 10% informed us why they would not answer the questionnaire. Thus, just 30% of the contacted organisations provided information about training activities and experiences. Apart from that, the perspective of local authorities was excluded.

### 2) No concrete perspective

The questions themselves, which had been chosen for the international comparison, needed to be quite general, but with this generalisation, results cannot deliver concrete details. Our questionnaire sometimes caused problems for organisations to answer. Some thought the questions could only be answered by those who provide the training, at the same time if it was answered by providers of the training they were not able to tell anything or only little about the organisational reality, for example about effects of the courses.

Besides, all organisations on the federal and state level were included. This implies that an enormous range of tasks were included.

Under the perspective of an international comparison, it could help to pick out one profession with comparable tasks. This has been the case for the example of border control mentioned above (Frontex, 2012), although even in border control national legal, economical (e.g. income disparities) and institutional factors still need to be taken into account.

Compared to this area, public administration is a broad field with heterogeneous characteristics. This was also stressed by our respondents who often stated that it is necessary to map risk groups within an organisation and to provide special training for them.

### 3) Social desirability and the problem of taboos

Our questionnaire, which combined closed and open response categories, offered plenty of opportunities to answer in a socially desirable way. This effect can be expected particularly in research on topics, which are problematic and likely to be tabooed. It can



be assumed that this has also been the case for our survey, if we consider the high number of organisations that wished to stay anonymous even though the questions of the questionnaire do not seem to include so many awkward points. On the contrast, training in an ethically relevant topic could be perceived to be rather positive, hence a topic to communicate about. Yet, this was not often the case.

### **Conclusion: Best-practices of Training for the Prevention of Corruption?**

Our results – despite all mentioned restrictions – show that training modules for the prevention of corruption are often implemented in the German public service. Mostly, internal experts provide the training, which is financed by the employer or another source of the public sector. All described courses are sophisticated.

How could they be assessed as examples for best practice?

This question starts with the problem to define criteria, which could be applied. The second challenge would be to measure, to what extent the defined criteria are fulfilled or not.

It has become obvious, that the first aspect – definition of criteria – is bound to the *perspective of the observer*.

If providers of training are asked, they will most likely assess their courses as best-practices per se, because they are convinced to offer the best. Because of this, an assessment, which is only based on this perspective does hardly lead to a valid statement on best practice. Other perspectives need to be added – which makes research activities more complex.

Pretty often, providers ask their participants directly after the training whether they are satisfied with the courses. This can serve as an external evaluation already and it is an important way, because training needs to be specific and matched with certain needs of participants, their working conditions, their relevant legal framework, their specific contacts with others (colleagues, other organisations of the public or private sector, citizens). Hence, training can be very helpful for some, but not for others.

Yet, just asking about satisfaction leaves the question unanswered if the criteria, that lead participants to evaluate the courses in a certain way, are also the criteria that are important for the higher aim of prevention of corruption.

Participants of training could perceive training to be good if the trainer is likable and able to explain legal aspects easily or if their concrete questions are answered professionally, or if the training is long enough but not too time consuming.

Additionally, participants of the courses could be questioned later, for example half a year or a year after the training, about their knowledge (legal framework, prevention measures or what to do in suspected cases), or their view on challenges in every-day routine. Of course, it would also be possible to ask all employees, whether the behaviour of individuals, superiors – and on the whole the organisational culture could be described as commendable, or which improvement opportunities exist from their point of view.

Further perspectives can be found within the organisation that send their staff to training. A human resource department might be interested in economic terms and assess training on a benefit-cost-analysis. At the first sight this seems an interesting and objective way to evaluate training. The side of costs might be easily determined, but judging on benefits is comparably difficult.

Superiors could assess training positively if their corresponding managing efforts decrease and no or less suspected cases occur or if the number of complaints declines. It then becomes difficult to judge on training if there had not been any detected cases before. Further on, it could also be regarded as positive, if cases are detected, because people know better what corruption is and what to do if suspected cases occur.

The last perspective to be mentioned are citizens. They could be satisfied when they experience that the staff of the public service is not corruptive, e.g. if they know that they do not need to bribe for service. Sometimes, it can be expected to be difficult for citizens to estimate the behaviour of staff in the public service. Besides, anti-corruptive behaviour of public service employees does not guarantee that citizens perceive this as ethical. In exceptional situations they might expect granting of an undue advantage, which would be in their view “ethical”, but corruptive from the perspective of the professional.

These examples point to the difficulties in the attempt to define best practices.

For further research it seems to be worthy to enlarge the perspective as described before. It could also include local authorities in the analysis. There are very interesting examples for transparent and well thought-out activities concerning corruption. For example, Korschenbroich, a city with 33,000 inhabitants in North Rhine Westphalia, provides excellent

information on anti-corruption on their webpage ([www.korschenbroich.de](http://www.korschenbroich.de)). It includes a risk map, FAQ, remarks on the aim to sensitize for the topic, a code of practice, excerpts of legal text, and a publication of sideline jobs of the mayor for each year. They also inform about training activities for their staff in order to avoid corruption.

While it could be worthwhile to enlarge the perspective on the one hand, it could be advantageous to restrict it on the other hand, when it comes to the content of work. Comparable tasks could make it easier for international comparisons.

Training is an important element which enhances professional behaviour in the public service. But it is only one measure beside others. Training alone does not guarantee that unethical behaviour – in this case corruptive behaviour – is extinguished. Behaviour of the individual still is influenced by his or her motives, needs and anxieties, by the social environment – colleagues, organisational unit, professional ethos, the organisational culture, by social values and norms –, by the legal framework and possibly caused legal dissonances, and by economic and environmental factors.

For training against corruption the Frontex study (2012) has pointed to the need of a

“holistic anti-corruption approach that addresses systematic aspects of corruption through a combination of measures: clear guidelines and policies, training, operational and HR management measures, risk analysis and monitoring, internal and external oversight, prosecution and penalties“ (p. 93).

Any holistic approach that takes into account individual and environmental factors of behaviour is recommendable for training for the prevention of corruption in public administration as well. Applying a broader perspective could also mean that training for the prevention of corruption could be embedded in training of ethics. Above all, an holistic approach calls not only for sophisticated training modules (as mostly realized in the courses described above), but also for supportive working conditions and processes, and ethical behaviour should not be left a requirement addressed to staff working in the public service, but a topic relevant and deliberated by the whole society.

### III. TRAINING IN ETHICS IN POLAND

*Anna Jaroń*

*Roxana Zyman*

#### **Training of Public Administration Employees in Ethics Principles**

The following part of the report discusses the objectives, tools as well as educational background for training of public administration employees in ethics principles. The main assumption taken here is that ethical training or training in ethics principles at this level takes a specific form of vocational training. That is, it is assumed that one cannot teach or instruct others in ethical principles, but rather what one might call as training in ethical attitudes better suits the conventional understanding of training in ethics.

#### **1. Objectives of Training in Ethics Principles**

It is usually accepted that training in ethics of public administration employees has four principal objectives.

The first is getting acquainted with rules of ethics in public life. This objective can be defined as primary but too general to be regarded as self-fulfilling. The understanding of ethical principles in public life in itself does not make any guarantee that they are applied and used in real-life situations. This objective therefore merely assumes that information on ethics principles is provided by they are not necessarily internalized by the recipients of the training. This objective must therefore be complemented by instruments that encourage the public administration employees to reflect, evaluate and respond to a specific phenomenon by referring to canons of ethical behaviour.

Consequently, the introduction to ethical principles is supplemented by another goal of training in ethics, which is linked to taking responsibility for tasks and decisions. The proper completion of this objective, like of the previous one, presumes presentation of relevant topics whose implementation depends on the internalization of the presented message by the recipient. Yet again, the execution of this objective is more dependent on the positive attitude of the trainee, rather than on the merits and philosophy presented by the trainer. Internalization of the message to take responsibility for tasks and decisions taken as a principal element for ethical behaviour, is a prerequisite for the realization of the main goals of the training.

The third purpose of training in ethics of public administration employees is to increase citizens' trust in public administration. This goal is usually assessed by the recipients of public services, not by the public administration employees (so not by those who potentially participate in the training). Implementation of this objective can be assessed either by the perception of ethical standards in public administration, by assessment of behaviour and work of a single employee, or by perception of the overall performance of the institution. Usually, in the latter case, the recipients of public services assess the participation of the institution in training programs in ethics directed to public administration employees, or wider anticorruption programs, etc.

Finally, the fourth goal of teaching ethics principles to public administration employees is usually to increase the efficiency of public administration as a whole. As previous one, this goal can also be achieved through the assessment of external user of PA services. It is mainly related to internal infrastructure of institutions and to internal procedures which directly influence the work of public administration employees. Therefore, not only the overall performance would be a decisive factor but rather the transparency of procedures, accessibility of services and information, quality of the provided services, etc.

## **2. Tools for Training in Ethics Principles**

Currently there are two basic levels at which training in ethics is available to future and current public administration employees in the Polish educational system.

The first is the pre-vocational education, which is largely covered by education at secondary and high (university) level. At this point students of secondary schools may participate in courses that are usually optional and in practice rather unpopular. At the university level, teaching in ethics varies and largely depends on the particular teaching curriculum of the university/faculty. Secondly, the vocational training available either at the level of institution itself or provided for by Poland's National School of Public Administration (KSAP) forms part of a bigger picture of available training tools of ethics principles to public administration employees.

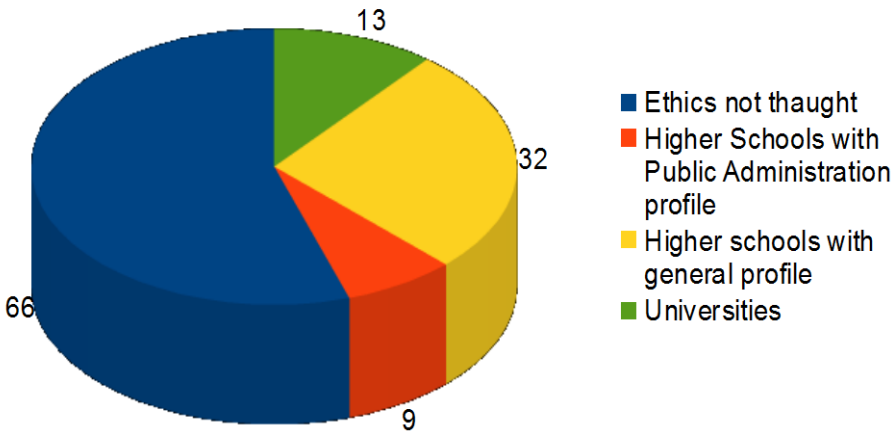
Yet another available tool for training in ethics principles is a conscious building of leadership among middle and higher-level of public administration employees. This form of possible training in ethics principles is still underdeveloped but through the vocational training acquires more and more attention. Leadership building forms an integral and important part

in ethical training. The devotion to general principles of civil service, such as a work for a public good, with due diligence and servitude, build an ethos of work, and thus contribute to the good-practice sharing, may and should be considered as an important instrument in ethical training of public administration employees.

### **2.1. University Formation in Ethics Available to Future Public Administration Employees**

The following data come from a survey conducted among major Polish universities, both public and private that provide Public Administration programs. The study looked at the curriculum in more than one hundred and twenty universities and higher schools that provide education at the university level. The main objective of the referred study was to analyze the teaching and training programs in ethics available in the faculties where public administration is taught. It should be noted at the beginning that public administration as a science mostly does not exist in the Polish academia as a separate study program. It is usually aligned in law or management faculties, thus gaining a specific context of educational curricula.

Ethics as part of a teaching program is not taught at sixty-six out of hundred and twenty universities and higher schools where public administration is taught (see Chart 1 Ethics



public administration study programmes). Out of twenty-seven universities in Poland ethics in public administration curriculum is taught only at thirteen. The data above show that training in ethics is rather ignored at higher education level. More than half of public administration programs ignore the curriculum related to ethical conduct of public administration employees, work ethos in public administration, or potential areas of risks at work for public administration employees, such as corruption, bribery, nepotism and others. For the most part, the curriculum for future graduates in public administration is based on the formal canon of subjects including law and economics, but lacks subjects connected to work ethos and ethics principles in the public sector.

The names of subjects that are used in the study programs explain the place and role of the subject in the wider curriculum. They are of course not the only indicator of the place and role of the course in ethics in the study program. Further, a content of the most commonly used syllabus will be discussed to deepen the overall picture of available ethics training at the university level. Most commonly the courses are named: ethics, public administration ethics, or clerical ethics. Usually, these are preliminary, one-semester, general courses in which basic concepts of ethics are explained. They are mainly taught as ex cathedra lectures, thus the activating methods are not present at all in the conduct of the class.

Out of the courses in ethics there are several groups that can be distinguished. First, we may distinguish a group of courses directed for public administration employees. Within this group we may find such courses as: professional ethics, ethics of public occupation and work culture, professional ethics for clerks, principles of clerical ethics. Secondly, one may observe that often ethics is taught together with philosophy and takes the form of lectures, such as philosophy with elements of ethics, or philosophy and ethics in public administration. Sometimes ethics is taught within legal subjects taking the form of: legal ethics, ethics and legal culture, ethics and logics of law. Such an attitude stems from the fact that public administration is often taught at law faculties and is undoubtedly an example for misunderstanding of how training in ethics for public administration employees should look like.

Lectures on legal ethics differ substantially from the conceptual substance of training in ethics for public administration employees. The specificity of training in ethics for public administration employees comprises such issues as responsibility, loyalty, work ethos in a public institution, which are not present in the forms of courses mentioned above. On the other hand, within the studied teaching programs there are several positive examples of training in ethics for public administration employees. In several universities and higher schools one may find such programs that respond to the specificity of training in ethics for public sector employees, as they align with the specific area of public sector employees that is being trained at the given school/university. It is for example the School of Law and Public Administration in Przemyśl, where ethics is part of the curriculum carefully designed for customs officials.

The analysis of syllabi content shows the most common structure used for ethics courses at the university level. The dominant feature of this structure is a part of the class in which students are familiarized with basic principles of ethics. These are mostly general provisions, such as constitutional provisions or those included in the Code of Administrative Procedure. Another element constituting the content of ethics courses is the role of public administration, during which in particular, the idea of the ministerial role of the public servant is exposed. Further, the dilemmas of public administration employees are usually analyzed, what in fact should constitute the main core of the course. Sometimes codes of ethics, both at national and European level are analyzed. The overall picture drawn from the



analysis of the content of ethics courses leads to the conclusion that these courses are very basic, and taught at academic, theoretical level.

The general observations lead to the following **conclusions**:

- training in ethics should be part of the general curriculum at various levels of pre-professional education;
- currently, ethics is not taught at most universities offering education in public administration and related fields;
- ethics, where part of the curriculum, is taught at general, basic level;
- training in ethics is possible, provided that it takes the form of active forms of teaching instead of ex-cathedra lecturing;
- the most effective method of training in ethics is Problem Based Learning.

## **2.2. Vocational Training in Ethics Principles**

The vocational training available either at the level of a public administration institution itself or provided by such an institution like the National School of Public Administration (KSAP) forms part of a bigger picture of available training tools of ethics principles to public administration employees.

### **Teaching Ethics Principles at the National School of Public Administration (KSAP)**

KSAP has offered a variety of training courses on ethics, covering topics such as:

- introduction to ethics and basic concepts: ethics, morality, normative ethics, the ethos of the public administration employees, the key values of public officials, ethical standards in public life, ethical dilemmas in the workplace;
- codes of ethics; Civil Service Code of Ethics; European Code of Good Administrative Behavior;
- conflict of interest - managing conflicts of interest: identification, disclosure, monitoring corruption - analysis of concepts, test and measurement, corruption in the office - ways to reduce and prevent corruption

More specific, titles of KSAP training courses on ethics in public administration (since 2007) have included:

- Professional Ethics

- Issues of Conflict of Interest and Corruption in the Public Service
- Anti-corruption and the limitations of anti-corruption offices in Poland
- Civil Service Code of Ethics
- Professional Ethics and Corruption Issues
- Dignity Assertion Workshops on the rules of behavior in situations of temptation and shame

Other KSAP courses/seminars which have touched upon Ethics have included:

- Why the Honest Pole Doesn't Trust the State?
- The Work of Leadership
- Management by Values
- Negotiating Effectively - Leading Towards Sustainable Solutions

The Eastern Partnership Academy of Public Administration at KSAP - set up following the "Joint Declaration of the Warsaw Eastern Partnership Summit" adopted by the EU heads of state (Warsaw, 30/09/2011) which pledged support for cooperation projects between EU and partner countries - have offered 10-day training sessions for civil servants from Armenia, Azerbaijan, Georgia, Moldova, Ukraine and Belarus, including one on: "Civil Service Ethics and Management by Values in Public Administration".

There have been numerous KSAP conferences and seminars on Ethics principles, for instance:

- The Francophone Conference organized at KSAP in cooperation with France's Ecole Nationale d'Administration (ENA) in December 2011 on "Ethics in Public Service" had guest speakers from France, Switzerland and Poland who spoke on maintaining integrity and honesty; forms of accountability in different types of democracy; the challenges arising out of the need to be ethical; and the virtues and desirability of first formalizing ethical standards, then seeking to instill them in public servants, and finally seeing that they are enforced;
- "Should public employees be only professional in their work or should they be more guided by the ethos of public service?" – main speaker: Prof. Marek Kosewski, 2012;
- "Managing for Performance and Trust in the Public Sector" – main speaker: Prof. Geert Bouckaert, Director, Public Management Institute, Leuven, Belgium, 2011;

- “Management of Change. How to Prepare Public Administration for the Challenges of 21st Century?” – main speaker: the Honourable Prof. Jocelyne Bourgon, University of Waterloo, Canada, 2011;
- “Public Administration in the Service of the Common Good” - main speaker: Archbishop Celestino Migliore, Apostolic Nuncio in Poland, 2010.

### **Vocational Training Courses on Anti-Corruption for Public Administration Employees**

The examples of vocational training on anti-corruption for public administration employees - to be presented below - include training courses organized by the following Polish institutions:

- (1) National School of Public Administration (KSAP) - Vocational Training for Public Administration Officials in Prevention of Corruption: “Training for Civil Servants on Anti-corruption and the Limitations of Anti-corruption Offices in Poland”.
- (2) Central Anti-Corruption Bureau (CBA) - Vocational Training for Functionnaires and Employees of Customs Service: within the framework of "Anti-corruption Programme for Polish Customs Service 2010-2013+”.
- (3) Polish Institute for Internal Control (PIKW) - Open access workshop "Misuse, Deception, Extortion and Theft in the Economic Crisis. How to Effectively Protect the Institution?"
- (4) Nowe Motywacje Sp. z o.o. - training provided for the Chancellery of the Prime Minister - "Servitude of Civil Servants in View of Legal and Ethical Obligations of Civil Servants”.
- (5) National School of Public Administration (KSAP) - Vocational Training for Public Administration Officials: "Value-based Management”.

## **Description and Evaluation of the Researched Vocational Training Courses on Anti-Corruption for Public Administration Employees Organized by Polish Institutions**

### **1) Vocational Training for Public Administration Officials in Prevention of Corruption: “Training for Civil Servants on Anti-corruption and the Limitations of Anti-corruption Offices in Poland”**

The institution providing the training: *National School of Public Administration (KSAP)*

#### **Description/ Abstract of the Vocational Training Course:**

Most recently, this training provided by KSAP on anti-corruption and the limitations of anti-corruption offices in Poland has been conducted at KSAP by Ms. Jolanta Ścigała-Górska in 2012 and 2013. The trainer is a lawyer and a political scientist, with professional experience in the Ministry of Justice and law enforcement agencies.

The duration of the training course is 16 hours. The objective of the training is the dissemination of knowledge about the rules and procedures for compliance with the limits of anti-corruption offices. The trainer introduces the concept of corruption, the concept of conflict of interest, the sources of corruption, features of corruption, areas of corruption, entities associated with anti-corruption and the Corruption Perception Index. Further issues covered by the training course are: the legal basis for restrictions of corruption in Poland; anticorruption officers; limitations of anti-corruption related to statements of assets, restrictions on freedom of establishment, statements about the business, civil contracts and employment of spouse, lustration statements, other anti-bribery prohibitions and restrictions; case study - the most common problems in the preparation of declarations of assets; the anti-corruption guidelines for public officials. The training reflects the private views of the trainer and is not identified with the position of any public body.

The recipients of the training are government officials, who have a statutory obligation to declare their property, lustration declarations and statutory restrictions on the conduct of business.

The effects of this training are increasing the effectiveness of officials' compliance with the proper preparation and submission of vetting declarations of assets and improving the work of anti-corruption offices.

## Evaluation of the Vocational Training Course:

### 1. Type of training

- a.  mandatory  
 non-mandatory
- b.  initial  
 continuous
- c.  internal  
 external
- d.  financed by own resources  
 financed by EU funds

### 2. Type of participation

- a.  by category / rank
  - managers
  - senior officers
  - junior officers
  - administrative staff
- b.  other professional group  
*if so, please specify .....*

### 3. Scope/Content

- a.  focused on anticorruption plans
- b.  specifically focused on the prevention of infringements
- c.  transversal (cross-cut) in a broader context of training on ethical behaviour.

### 4. Objectives

- a.  aimed to deliver the legal framework
- b.  aimed to promote ethical behavior and ethical culture

### 5. Training methods

- a.  presentations by the trainer
- b.  active participation of trainees (case studies, role play, problem solving, discussions)

### 6. Length and structure

- a.  short – up to 8 hours
- b.  medium – from 2 up to 5 days
- c.  long term – more than 5 days

### 7. Training impact

- a)  evaluation

*if evaluation is used, please specify the form:* there is a questionnaire filled out by each participant followed by a report prepared by the coordinator (from KSAP) based on the questionnaire, which will lead to improvements in the future training sessions.

- b)  non-evaluation

### 8. Possible to be considered a good practice

- a)  yes

if so, please specify aspects of the good practice to be shared: content, objectives, training methods.

b)  no

## **2) Vocational Training for Functionnaires and Employees of Customs Service: within the Framework of "Anti-Corruption Programme for Polish Customs Service 2010-2013+"**

The institution providing the training: *Central Anti-Corruption Bureau (CBA)*

### **Description/ Abstract of the Vocational Training Course:**

The principal aim of the training was to raise the awareness of the risks of corruption in the day-to-day work of senior manager officers in the Łódź Chamber of Customs Service. It was envisaged that the training deepens the knowledge about the phenomenon of corruption and its scale as such. Definitions of corruption were presented at the training followed by the scale of corruption in Poland and the overall consequences of corruption. Subsequently, the areas affected by corruption were presented, and legal forms of corruption were discussed. The course contents comprised also a presentation of legal consequences of corruption, including criminal sanctions. At this stage the examples of disclosed corruption cases were presented. The significant part of the training was devoted to evaluation of the preventive anti-corruption measures, including the presentation of desired attitudes and conduct of functionnaires in the situation of corruption.

Participants of the training received a "Handbook for anti-corruption officials", which is a compendium of knowledge of legal regulations concerning the fight against corruption and comprises a set of good practices in terms of conduct in a potential situation of corruption.

### **Evaluation of the Vocational Training Course:**

#### **1. Type of training**

- a.  mandatory  
non-mandatory
- b.  initial  
 continuous
- c.  internal  
 external
- d.  financed by own resources  
 financed by EU funds

## 2. Type of participation

a.  by category / rank

managers

senior officers

junior officers

administrative staff

b.  other professional group

*if so, please specify:* management senior officials in Customs Service of Customs Chamber in Łódź

## 3. Scope/Content

a.  focused on anticorruption plans

b.  specifically focused on the prevention of infringements

c.  transversal (cross-cut) in a broader context of training on ethical behaviour.

## 4. Objectives

a.  aimed to deliver the legal framework

b.  aimed to promote ethical behavior and ethical culture

## 5. Training methods

a.  presentations by the trainer

b.  active participation of trainees (case studies, role play, problem solving, discussions)

## 6. Length and structure

a.  short – up to 8 hours

b.  medium – from 2 up to 5 days

c.  long term – more than 5 days

## 7. Training impact

a)  evaluation

*if evaluation is used, please specify the form.*

b)  non-evaluation

## 8. Possible to be considered a good practice

a)  yes

b) *if so, please specify aspects of the good practice to be shared: --*

c)  no

### **3) "Misuse, Deception, Extortion and Theft in the Economic Crisis. How to Effectively Protect the Institution?"**

The institution providing the training: *Polish Institute for Internal Control (PIKW)*

#### **Description/ Abstract of the Vocational Training Course:**

The training takes a form of an interactive workshop, at which types, methods and mechanisms of damages to employers caused by employees or contractors are presented. Examples include cases of manipulation, falsification of documents, identity theft and others used both by individuals and by organized groups. The training includes elements of identification of risks and identification and prevention of this kind of abuse. Concrete, already disclosed cases are used to show what kinds of warning signals may foreshadow these situations, situations that lead to fraud and abuse as well as possibilities of their early identification are discussed.

#### **Evaluation of the Vocational Training Course:**

##### **1. Type of training**

- a.  mandatory  
 non-mandatory
- b.  initial  
 continuous
- c.  internal  
 external
- d.  financed by own resources  
 financed by EU funds

##### **2. Type of participation**

- a.  by category / rank
  - managers
  - senior officers
  - junior officers
  - administrative staff
- b.  other professional group

*if so, please specify:* available to employees responsible for ensuring security of the institution, identification and conduct of fraud, theft and similar internal investigations; only to employees delegated by the employer; no individually requested participation.



### 3. Scope/Content

- a)  focused on anticorruption plans
- b)  specifically focused on the prevention of infringements
- c)  transversal (cross-cut) in a broader context of training on ethical behaviour.

### 4. Objectives

- a)  aimed to deliver the legal framework
- b)  aimed to promote ethical behavior and ethical culture

### 5. Training methods

- a)  presentations by the trainer
- b)  active participation of trainees (case studies, role play, problem solving, discussions)

### 6. Length and structure

- a)  short – up to 8 hours
- b)  medium – from 2 up to 5 days
- c)  long term – more than 5 days

### 7. Training impact

- a)  evaluation
- b) *if evaluation is used, please specify the form:*
- c)  non-evaluation

### 8. Possible to be considered a good practice

- a)  yes
- b) *if so, please specify aspects of the good practice to be shared: content, objectives, training methods.*
- c)  no

#### 4) "Servitude of Civil Servants in View of Legal and Ethical Obligations of Civil Servants"

The institution providing the training: *Nowe Motywacje Sp. z o.o.* (provided for the *Chancellery of the Prime Minister*)

#### **Description/ Abstract of the Vocational Training Course:**

Within a year from the entry into force of the *Ordinance of the Prime Minister on the guidelines for compliance with the rules of the civil service and on the principles of the civil service code of ethics* of 29 September 2011, a number of actions aiming at popularization of the aforementioned principles have taken place, including the described training. The main popularization actions were directed to the members of the civil service corps, and were provided through the Director General of public administration offices. The described training was co-funded by the EU Social Fund, Human Capital Operational Programme,

Priority V, Measure 5.1, Sub-measure 5.1.1. It was provided for within the framework of a project "The Strategy of Human Resources Management in the Civil Service", during which 2400 civil servants had an opportunity to familiarize themselves with the provisions of the new ordinance and participate in workshops provided therein.

#### **Evaluation of the Vocational Training Course:**

##### **1. Type of training**

- a.  mandatory  
 non-mandatory
- b.  initial  
 continuous
- c.  internal  
 external
- d.  financed by own resources  
 financed by EU funds

##### **2.Type of participation**

- a. by category / rank
  - managers
  - senior officers
  - junior officers
  - administrative staff
- b.  other professional group  
*if so, please specify: members of the civil service.*

##### **3.Scope/Content**

- a)  focused on anticorruption plans
- b)  specifically focused on the prevention of infringements
- c)  transversal (cross-cut) in a broader context of training on ethical behaviour.

##### **4. Objectives**

- a)  aimed to deliver the legal framework
- b)  aimed to promote ethical behavior and ethical culture

##### **5. Training methods**

- a)  presentations by the trainer
- b)  active participation of trainees (case studies, role play, problem solving, discussions)

##### **6. Length and structure**

- a)  short – up to 8 hours
- b)  medium – from 2 up to 5 days

- c)  long term – more than 5 days

**7. Training impact**

- a)  evaluation  
*if evaluation is used, please specify the form: a questionnaire filled in by each participant*

- b)  non-evaluation

**8. Possible to be considered a good practice**

- yes

*if so, please specify aspects of the good practice to be shared: content, objectives, training methods.*

- no

**5) “Value-based Management”**

The institution providing the training: National School of Public Administration (KSAP)

**Description/ Abstract of the Vocational Training Course:**

The aim of this training is to show how modern method of leadership can motivate a team work in public administration. The participants are expected to realize how to link issues of personal dignity with work in public administration, while also how to incorporate these values in a wider organizational process. Motivational techniques that appeal to the sense of self-worth and dignity of public officials are shown as an opposition to the widely used "stick and carrot" method. The training is built around the presumption that participants will understand and try to incorporate in their daily work skills that would help them create ethos of work in public institution, which is based on the principles of the Code of Ethics for Civil Servants. The training though is more concentrated on techniques of ethos building, rather than on the study of particular ethics principles.

**Evaluation of the Vocational Training Course:**

**1. Type of training**

- a.  mandatory  
 non-mandatory
- b.  initial  
 continuous
- c.  internal  
 external
- d.  financed by own resources  
 financed by EU funds

## 2. Type of participation

- a.  by category / rank
  - managers
  - senior officers
  - junior officers
  - administrative staff
- b.  other professional group

## 3. Scope/Content

- a)  focused on anticorruption plans
- b)  specifically focused on the prevention of infringements
- c)  transversal (cross-cut) in a broader context of training on ethical behaviour

## 4. Objectives

- a.  aimed to deliver the legal framework
- b.  aimed to promote ethical behavior and ethical culture

## 5. Training methods

- a.  presentations by the trainer
- b.  active participation of trainees (case studies, role play, problem solving, discussions)

## 6. Length and structure

- a)  short – up to 8 hours
- b)  medium – from 2 up to 5 days
- c)  long term – more than 5 days

## 7. Training impact

- a)  evaluation  
*if evaluation is used, please specify the form:* a questionnaire filled out by each participant followed by a report prepared by the coordinator (from KSAP)
- b)  non-evaluation

## 8. Possible to be considered a good practice

- a)  yes  
*if so, please specify aspects of the good practice to be shared:* content, objectives, training methods.
- b)  no

## **Vocational Trainings on Anti-Corruption – Summary of Research Results and Conclusions**

The infrastructure for anti-corruption initiatives for public administration in Poland is relatively well developed. Apart from governmental high representative, there are several institutions that - except for fighting corruption in public life - provide for informative campaigns and sometimes for trainings for public servants. There is also a number of renown non-governmental organizations (such as for example the Batory Foundation) who are active in anti-corruption campaigns, especially tailored for public administration sector. Nevertheless, the amount and quality of trainings for public servants in anti-corruption is still to be questioned.

Training in ethics - and particularly on anti-corruption - is necessary and it is possible, provided that it takes the form of active teaching instead of ex-cathedra lecturing. The most effective method of training in ethics is Problem Based Learning.

Out of the researched trainings in anti-corruption for Polish public servants, and especially those concerning ethics in public life, the majority was designed as lectures rather than interactive workshops, thus neglecting the main purpose on anti-corruption trainings which is the stimulation of participants to internalize the contents of the training in ethical behavior.

The major change in recent years in the provision of trainings in ethics in Poland, has been that, in an overall assumption, the trainings were designed to promote the Code of Ethics for Civil Servants, and they were organized at the initiative of/by the Chancellery of the Prime Minister. Through the promotion of the Code itself, and by application of the workshop method, the subject of ethics in public administration not only starts to be positively associated with an ethos of public service (instead of the so far negative connotation with the fight with corruption), but also stimulates wider discussions of the role of ethical codes in the institutions of Polish public administration.

The vocational training available either at the level of a public administration institution itself or provided by such an institution like the National School of Public Administration (KSAP) forms part of a bigger picture of available training tools of ethics principles and anti-corruption to public administration employees.

We have chosen to present in more detail five examples of vocational training on anti-corruption - which vary in terms of type of training, type of participation, scope/content,

objectives, training methods, length and structure and training impact. While some of the researched training courses took the form of interactive workshop, others involved mainly presentations done by the trainer. In terms of objectives and content of the training, the courses embrace the dissemination of knowledge about:

- the concept of corruption, the concept of conflict of interest, the sources of corruption, features of corruption, areas of corruption, entities associated with anti-corruption, the legal basis for restrictions of corruption in Poland; the anti-corruption guidelines for public officials and case studies;
- legal consequences of corruption, including criminal sanctions, evaluation of the preventive anti-corruption measures, including the presentation of desired attitudes and conduct of fonctionnaires in the situation of corruption;
- cases of manipulation, falsification of documents, identity theft used both by individuals and by organized groups, elements of identification of risks and identification and prevention of this kind of abuse;
- guidelines for compliance with the rules of the civil service and on the principles of the civil service code of ethics;
- learning how modern method of leadership can motivate a team work in public administration, how to link issues of personal dignity with work in public administration and how to incorporate these values in a wider organizational process; motivational techniques that appeal to the sense of self-worth and dignity of public officials are shown as an opposition to the widely used "stick and carrot" method.

Mostly, external experts provide the training, which is financed by the employer or another source of the public sector, even sometimes from EU funds.

### III. TRAINING ON ETHICS IN PORTUGAL

*Helena Rato*

*Matilde Gago da Silva*

*Margarida Quintela Martins*

*César Madureira*

#### 1. Vocational Training on Ethics for Portuguese Public Administration

The main sources for research on this subject were INA's<sup>132</sup> annual training programs, various information on specific professional groups and DGAEP's<sup>133</sup> reports on assessment of training for Public Administration. DGAEP's reports were especially used for information provided by sectorial public bodies. Moreover, research was also undertaken regarding ethic subject in the curricula of graduate studies in Public Administration delivered by Universities by using information disclosed on web.

Regarding ethics initial training provided by INA within the framework of CEAGP (Advanced studies on public administration management) information was supplemented by an interview to the trainer, Dr. Sérgio Silva.

Training on prevention of corruption is analysed in the chapter specifically dedicated to it.

##### 1.1 Training on Ethics Provided by INA

At this point we considered continuous development training, mandatory training addressed to public managers and initial training.

###### *Continuous Training*

Regarding continuous training, three types of approaches were identified.

- Courses related to ethics but centered in the legal issues, as it is the case for training on the Code of Administrative Procedure, Public Procurement, Status of Employees in Public Functions, among others.

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<sup>132</sup> Actually, as mentioned before, INA has a new statute as a General Directorate, but maintains its training mission.

<sup>133</sup> General Directorate for Public Administration and Employment.

- Behaviour training that must be also considered to promote ethics in public administration. In this group we can mention the courses on interpersonal relationship, team building, leadership, for example.
- Courses that address specifically, in their programs, the ethical and deontological issues.

Concerning the third type, the following courses should be mentioned:

- “Public Attendance”, with an approach to the responsibility and code of conduct of the services regarding citizens.
- “Organizational Citizenship – Productivity and Satisfaction at Work” that includes issues on “ethical behaviour” and “ethical impact and social control in the workplace”.
- “Public Employee Ethics and Professional Deontology”, designed as an 18 hours training program, it covers topics such as ethic principles and values, public employees’ responsibilities, deontological and ethical professional codes, rights and duties, professional secret and incompatibilities, among others.

Worth mentioning three training areas that were implemented as result of INA’s research projects wherein ethics a major component:

- Environment - In 2008 and 2009, under a protocol signed between INA and the Portuguese Environment Agency, a study on "Public Service Ethics: separation and collection of waste in public administration"<sup>134</sup> was conducted. After its publication, training activities were carried out for employees of all Ministries in a total of 120 hours and the participation of 350 trainees. The objectives of this training were mainly to raise awareness of the importance of themes such as Sustainability, Ethics and Social Responsibility and familiarize participants with environmental concepts and motivate them to become agents of change.
- Gender Equality – In 2004 and 2005, a research project was undertaken in the context of an application to public funding from the Portuguese Foundation for

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<sup>134</sup> MADUREIRA, César; MARTINS, Margarida; RODRIGUES, Miguel; CARREIRA, Lurdes. (2008), *Serviço Público Ético – Processos de separação e recolha seletiva de resíduos na Administração Pública*, Oeiras, Edições INA.



Science and Technology. The study “Gender Equality in the Portuguese Central Public Administration” resulted in three publications <sup>135</sup> but also in stronger awareness about the gender themes.<sup>136</sup> Consequently, seminars on gender equality were introduced in the mandatory managers training, a specific course, “Gender Mainstreaming in Public Policies”, was design and delivered in 2011, and continuous training on gender equality is now part of INA’s offer.

- Human Rights and Cultural Diversity: In this case it was the organization of a course that led to research. Also in 2008, the Portuguese team involved in an EQUAL Project entitled “Migrations and Development”, proposed to INA the organization of a training course on “Citizenship and Cultural Diversity in Professional Practices”, that was then addressed to public managers and officers who worked with immigrants and cultural minorities. The course was delivered during the following years and that experience led to a research project on immigration policies and interculturality.<sup>137</sup>

#### *Mandatory Managers’ Training*

Considering the specific mandatory managers’ training, ruled by Minister of Finances’ decree n.º 146/2011, the analysis on programs enable the following conclusion:

- **CADAP - Course for Senior Management in Public Management**

The course is addressed to top and middle managers as well as to graduated public employees in public administration. This course has a length of 430 classroom hours (or 330 classroom hours and 200 e-learning hours), while the topic on Ethic in Public Service has a duration of 4 hours, that is to say 0.9% of the total volume of training.

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<sup>135</sup> RATO, Helena (coord.) (2007), *A Igualdade de Género na Administração Pública Central Portuguesa*, Oeiras, Edições INA;

RATO, Helena et all, (2004, 2005) *Promoção da Igualdade de Género no Portugal Democrático, vol I e II*, Oeiras, Edições INA

<sup>136</sup> RANDO, Belén et all, *Igualdade de género nos cargos de direção da Administração Pública central – 14 anos de políticas para a igualdade*, in “Hand Book de Administração Pública”; Edições INA (no prelo);

<sup>137</sup> RATO, Helena e GAGO, Matilde, (2011) *Les enjeux de la politique portugaise d’immigration*, International Congress IISA, Lausanne Switzerland

GAGO, Matilde (2009) *The Migration Situation in Portugal - Same data and Citizenship and Cultural Diversity - a new training area for managers and senior civil servants in Portuguese Public Administration*, project FORINTER II, Sevilha, Spain

- **FORGEP - Training for Public Management**

It is a course intended for middle managers and lasts for 150 classroom hours (or 120 classroom hours plus 60 e-learning hours) while Ethics in Public Service only lasts 4 hours, which is 2.7% of global training.<sup>138</sup>

- **CAGEP - Advanced Course for Public Management**

This course is also addressed to top managers but with only a length of 65 classroom hours or 50 classroom hours plus 25 e-learning hours and the theme on Ethics is designed for a 2 hours duration, so representing 3,7% of CAGEP's workload.

The ethic topic, in CADAP and FORGEP, has the same objectives and detailed program. A brief analyse allows to state that their duration is clearly insufficient to achieve the proposed goals and to address the different contents. As for top managers attending the CAGEP course, the program is more accurate but, even so, it appears to be unlikely adjustable to its duration.

#### *Updating Courses for Managers*

Updating courses for managers are designed for those who have already complete their 1<sup>st</sup> tour of duty in order to update skills required for accomplishing more tours of duty<sup>139</sup>. Therefore thematic areas for updating courses are designed according to the changing state of art for public management as well as recent public reforms and specifics of each position. These courses include 26 thematic areas and just one of them concerns *ethic, citizenship and inclusion policies*.

Top managers have to complete 40 hours of update training whereas middle managers have to accomplish 60 hours.

Nevertheless, in 2012, INA's<sup>140</sup> Program regarding ethics only concerned legal issues, namely *Civil, disciplinary, criminal and financial responsibility in Public Administration, Constitutional*

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<sup>138</sup> Although integrating a 14 hours module, the ethics topic is usually delivered in the 4 hours mentioned.

<sup>139</sup> Ordinance 146/2011, 7 of April.

<sup>140</sup> More precisely the General Directorate for qualifying in public functions' workers.

*Principles and legal framework of corruption in Public Administration, and The disciplinary Statute of Public Administration employees – theory and practice.*

Furthermore, it must be emphasized that the time allocated to the subject of ethics is clearly inadequate for the purposes, although it may be considered that public managers are supposed to know ethical principles for public service and so the topic of ethics is delivered mainly to refresh their knowledge and to promote debate over the issue, in the context of ongoing changes both in society and in public administration, in particular.

### *Initial Training*

Within initial training in to consider the CEAGP and initial mandatory training for all new recruited public employees.

- **Initial Mandatory Training**

Initial mandatory training for all new public employees<sup>141</sup> was regulated in 2010 and is also provided by INA. The course (*General Initial Training*) length a total of 14 hours, and issues about ethics, citizen orientation, responsibility and public values are briefly addressed.

- **CEAGP – Advanced Studies on Public Administration Management**

As it was stated on chapter 5 of Part I, CEAGP is a specialized course in management of public affairs for graduates aiming at be hired by Public Administration.

Accordingly, CEAGP's program includes an introductory training module on ethics aiming to convey a comprehensive view of Public Administration and the principles of good governance, as well as to stimulate critical sense with regard both to the learning process in CEAGP and to the future career after graduation.

As so, this introductory training module, which length is 30 hours as to the overall duration of 440 classroom hours, plus e-learning, approaches a wide range of subjects related to public service ethics, namely : the state, its functions and purposes, concept and principles

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<sup>141</sup> Resolution Minister Council 89/2010

of good governance, Portuguese public service principles, duties and rights of public employees, the rule of law and administrative law, the citizen participation in administrative activities, relationship between values, rules and results, social responsibility of public organizations, accountability, transparency and access to administrative documents, fight against corruption. All the topics listed are articulated throughout the global frame design of the introductory training module designated as *Administration and Good Governance*. As so the number of hours devoted to the specific topic *Ethics in Public Administration* is approximately 2 hours, although, in the opinion of the trainer, more time would be useful.

The trainer responsible for the *Administration and Good Governance* module, Dr. Sérgio Silva, was interviewed in order to gather information on the development of content and the pedagogical methods, as well as on the reactions of trainees. The summary of this interview is presented below.

#### **Topics Covered by CEAGP's Introductory Module on Ethics**

- Brief historical perspective on some Ethics conceptions;
- Ethics as grounds of legitimation of public policies (Different Ethical conceptions and its consequences);
- Ethics as criterion to ground / justify individual choices;
- Ethics and the Law:
- The Ethics of civil servants. Evolution noted in Portugal in the last decades;
- Catalogue of Ethics and duties of public servants;
- Ethics and the duty of obedience. The duty to disobey laws or orders when contrary to ethics principles;
- Fighting corruption and the duty to report/denounce.

## Pedagogical Methodology

The methodology used focuses on debates about the issues presented and specifically on ethical dilemmas, namely through historical examples. Furthermore, students are tasked to present papers (group work or individually) on the topics they consider more challenging, as part of their evaluation process.

It was highlighted that the corruption issue is specifically addressed, approaching the international and national contexts.

In the view of the trainer, students showed great interest and involvement in addressing these issues due to the specific motivation regarding some topics but also because of the methodology chosen and that seeks to confront students with real situations. Relations, sometimes contradictory, between Ethics and Law and Ethics and duty of obedience appear to be especially motivating.

### 1.2 Training on Ethics Provided by Training Sectorial Public Bodies

As referred before, the annual report provided by DGAEP<sup>142</sup> synthesizes the continuous training delivered by all sectorial training bodies. This report classifies ethics in the field of study “Humanities” which represented, in 2010, about 2% of the volume of training hours. So and as the use of the National Classification of Education and Training Areas (CNAEF) hardly allows a detailed analysis of the training contents it’s not possible to clarify what subjects are taught in terms of ethics.

However, empirical knowledge of training practices in public administration allows us to consider that ethics, as in INA programs, is usually addressed in one of the two following

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<sup>142</sup> Relatório de Atividades de Formação da Administração Pública, DGAEP, Lisboa, 2008.

ways: Centered in legal aspects or referred crosswise within other topics namely in the context of behaviour training.

Moreover, although some public bodies invest particularly on training ethical issues, the data provided shows that they are non-significant regarding the overall Public Administration.

We must nevertheless point out the case of all the professional groups related to health care. Regarding graduate personnel (namely doctors and nurses), not only training on ethics and deontology is a strong issue in the context of their academic curricula but also continuous training delivered by public health services, unions or professional associations, frequently approach ethic issues. This is particularly to be noted with respect to nursing personnel, whose association annually organizes a Seminar on the subject<sup>143</sup>. A brief search over the available training programs allowed also identifying several training programs specifically addressed to Ethic and Deontology that are organized by health services training bodies.<sup>144</sup>

In the meantime, the DGAEP report also includes mandatory initial training for specific professional groups provided that it falls in the sectorial bodies' responsibility. In these cases, training is classified under its major subject and, once again, is not possible to identify if ethics is included. Thereby, a different research was carried out in order to collect information about the existence of training in ethics in the context of these mandatory training.

#### *Training in Ethics for Specific Professional Groups*

Apart from managers and general careers, some special careers are also complied with mandatory initial training. That is the case of the security forces and criminal investigators, inspectors, judges and public prosecutors as well as judicial officers and court clerks.

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<sup>143</sup> <http://www.ordemenfermeiros.pt>

<sup>144</sup> Plano de Ação da ARS Centro 2010, <http://pns.dgs.pt/files/2010/02/Plano-de-Ac%C3%A7%C3%A3o-2010-Administra%C3%A7%C3%A3o-Regional-de-Sa%C3%BAde-do-Centro.pdf>

- **Security Forces**

In Portugal there are two security corps – Public Security Police (PSP) and National Republic Guard (GNR). Careers of these corps imply the frequency of specific courses, delivered by specific schools. Thereby, each corps provide a practical course, equivalent to a secondary education degree and aimed to guards and chief guards<sup>145</sup>, and a higher education course for graduate officers.

The Practical School of the PSP delivers a course for guards that lengths 1050 hours; Ethic and Deontology are part of this course with a length of 30 hours, as well as Citizenship (30 hours) and other related subjects namely attendance, communication and psycho-sociology. As for chief guards, selected among experienced guards, the mandatory course has a length of 1142 hours being the module on Ethic and Deontology of 28 hours and the one on Fundamental Rights of 15 hours.

The master degree provided by the Institute of Police Sciences and Internal Security<sup>146</sup> integrates a mandatory module on ethics (90 hours) as well as modules on the Constitutional Law (90 hours) and human and fundamental rights (116 hours).

As for GNR, its school provides the following training: Ethic and Professional Deontology (15h – for guards), Military Ethic and Command (Sergeants– 18h). As for officers, their course includes Ethics and Leadership (60h), Fundamental Rights (45h) and Humanitarian Law of Armed Conflict (45h)<sup>147</sup>. Furthermore, initial courses for guards and sergeants include a module on corruption and peculation (respectively 2 and 3 hours), whereas a specialization training covers the issue of “crimes against the fulfillment of justice and crimes committed in the course of public functions” although with only 2 hours duration.

- **Criminal Investigation**

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<sup>145</sup> Rank equivalent to Sargent.

<sup>146</sup> In charge of the graduation of police officers (bachelor and master)

<sup>147</sup>, Although being essentially an internal security corps, the National Republic Guard may also be called for armed conflict missions.

Criminal investigation is in charge of the Criminal Police Body<sup>148</sup> that is under the tutelage of the Ministry of Justice. The career of this professional (that we will designate as detective career as a simplified translation) also implies an initial mandatory course of 26 weeks length. It includes a specific module on Ethics, Police Deontology and Disciplinary Law with 30 hours duration. Future courses will include, in that module, a topic about the entity Prevention of Corruption Plan.

- **Inspectors**

Regarding inspections' careers that concern very different fields of activity, contents and regulations of mandatory courses are ruled by the respective line Minister (as a general regulation or whenever opens competitions are authorized).

Presently, our findings registered the three following courses:

**Inspectors of the Service for Borders and Foreigners (SEF)** must be approved after completing a probationary period, as to start their appointment. This period includes a mandatory course with duration of 414 hours and a module over Ethics and Professional Deontology (12 hours) as well as one about Human Rights, Racism and Xenophobia (6 hours).<sup>149</sup>

**Inspectors to be appointed to the Authority for the Work Conditions (ACT)** must attend a one year internship which comprehends a theoretic phase and where professional deontology is covered, although the length of that phase is not regulated.<sup>150</sup> As to career progression, the mandatory course is of 108 hours; professional deontology is covered, among other topics, in a 24 hours module.<sup>151</sup>

**Inspectors of the Authority for Food and Economic Safety (ASAE)** - a mandatory internship and initial course were designed in 2010. Training includes a module on Ethics and Professional Deontology. Although no information was reported regarding this module length, its aims are targeted to the comprehension of ethics, deontology and moral, the knowledge of its legal framework, the discussion and critical thinking

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<sup>148</sup> Polícia Judiciária

<sup>149</sup> Normative Dispatch 46/2004, 19th November

<sup>150</sup> Joint dispatch 371/2004, 22th June

<sup>151</sup> ibidem



over ethic values in a changing context and, finally, to acknowledge the ASAE Code of Conduct and Prevention of Corruption Plan

**Inspectors of Finance and Taxes** - the entities responsible for taxes have a sectorial training body with a long tradition on the delivery of tailor made courses, it was not possible to collect information about its activity in the last years as their training programs and evaluation reports are not available.

Nevertheless, as for the admission in inspection of finances and taxes career the regulatory dispatch <sup>152</sup> does not include any mention on ethics.

- **Justice**

In the field of justice, two situations can be identified. As judges and prosecutors are concerned, their recruitment is carried out based on a selection process ruled by law. <sup>153</sup> After admission, they must complete a mandatory course, provided by a specific training entity, the Judicial Studies Centre (CEJ). The structure, aims and contents of the course, ruled by the same law, defines a 1<sup>st</sup> period of classes at CEJ (10 months) and a 2<sup>nd</sup> period of internship in a court (also 10 months). Also the law expressly sets a number of training objectives aimed to Ethics and personal/social development, namely: the understanding of their role in ensuring and enforcing fundamental rights of citizens; the integrated perception of the justice system and its mission within the constitutional framework; the understanding of social conflict and multiculturalism, under a pluralist perspective, in line of deepening the fundamental rights; the identification of the function ethical requirements and of professional deontology; a culture of good practice in human relations, professional, institutional and with citizens in general.

On line with these objectives, the course delivered in 2012<sup>154</sup> was design in order to develop the referred competences in a crosscut perspective. Furthermore, students were due to participate in a project (at charge of judicial authorities), the elaboration of a Manual for Ethics in Court.

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<sup>152</sup> Joint dispatch 14501/2012, 9 November

<sup>153</sup> Law 2/2008

<sup>154</sup> CEJ, 2012, *Plano de Estudos – 30º Curso Normal de Formação de Magistrados*, Ed CEJ, Lisboa

On the opposite, and as judicial officers and court clerks are concerned, the mandatory courses for admission and progression in their specific career do not include any subject on Ethics<sup>155</sup>.

### 1.3 Graduate studies in Public Administration

In line with the Bologna Process, higher education in Portugal is structured in three main levels: 1<sup>st</sup> level, equivalent to a bachelor degree (3 years); 2<sup>nd</sup> level, master (2 years) and 3<sup>rd</sup> level, doctoral degree or Ph.D. Furthermore, higher education can be delivered by schools /institutes that belong to a university or by polytechnics institutes.<sup>156</sup>

The survey carried on identified 14 bachelor degrees on Public Administration and related subjects, such as Public Policies, Public Management, Regional and Local Administration and Political Sciences. Only half of them include ethics and deontology in their syllabus, usually as a semester course. As for the others, no evidence was found that ethics is approached within other disciplines.

As for the existing 9 master courses, only one provides a discipline on ethic and public service.<sup>157</sup>

Finally it should be point out that some higher education institutions were also approved to deliver the initial courses for public managers. Although this approval has been granted to five universities, at the present only two have these courses in its offer.

Among them it's worth mention the two courses of "Instituto Superior de Ciências do Trabalho e Empresas – ISCTE". In the "Training for Public Management" course (FORGEP) Ethics is encompassed in a module of 14 hours together with the topics on gender equality and inclusion policies. As for the "Course of Senior Management in Public Management" (CADAP), the first module (81 hours) entitled "Strategic Management and Organizational Change" comprises four areas, being one of them dedicated to the State and the Administration, specificity and autonomy in public administration, ethics, citizenship, inclusion and gender equality policies.

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<sup>155</sup> Status of judicial officers and clerks is ruled by Decree-law 343/99

<sup>156</sup> The distinction is relatively vague although polytechnics are not allowed to teach some areas (for example medical degrees) and have, traditionally, a region oriented activity.

<sup>157</sup> Instituto de Ciências Sociais e Políticas, Universidade de Lisboa.

## 2. Training in Prevention of Corruption

As referred in Chapter III, the Prevention of Corruption Council settled a mandatory recommendation which requires that all Portuguese public bodies are due to develop a Prevention of Corruption Plan (PCP).

As so, analysis over prevention of corruption training was undertaken aiming at evaluation if specific training has been performed in order to enforce these plans.

To that purpose, a questionnaire was design<sup>158</sup>, with three main objectives:

- Access if public bodies are aware of the mandatory recommendation;
- Access if they have drawn up a Prevention of Corruption Plan;
- Access if training was delivered as to enforce the Plan.

The questionnaire was sent to all General Secretariat (central bodies in each Ministry) asking them to share it with all the respective Ministry bodies. The table below presents the number of bodies in each ministry and absolute frequencies of respective valid responses to the questionnaire.

Ministries	Number of Organizations	N. Answers
Presidency of Council of Ministers	34	12
Ministry of the Economy and Employee	29	12
Ministry of Social Security	13	9
Ministry of Interior	9	6
Ministry of Education and Science	18	6
Ministry of Justice	18	6
Ministry of National Defense	19	4
Ministry of Foreign Affairs	11	1
Ministry of Agriculture, Sea, Environment and Spatial Planning	32	0
Ministry of Finance	16	0
Ministry of Health	17	0
<b>Total</b>	<b>216</b>	<b>56</b>

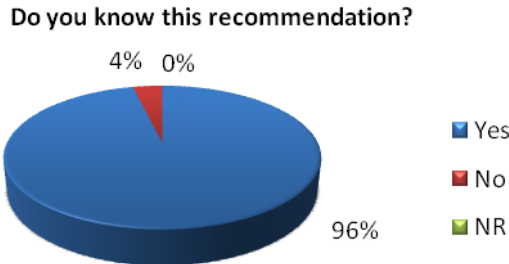
The questionnaire was also used to collect data on good practices.

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<sup>158</sup> Annex 2

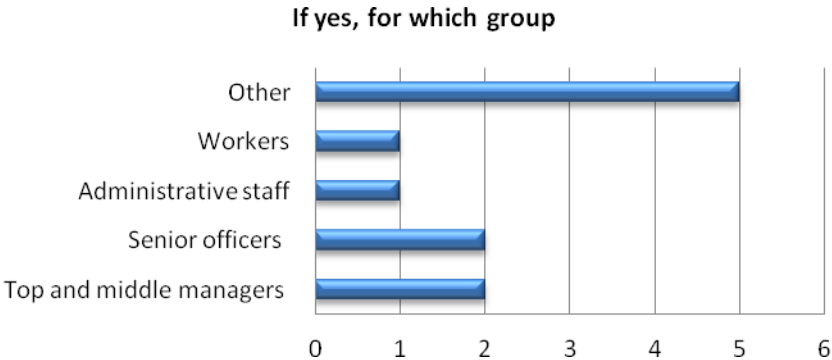
**2.1 Analysis of the Questionnaires <sup>159</sup>**

Most respondents (96%), reported that they know the recommendation regarding the preparation and enforcement of Prevention of Corruption (RPCP 1/July/2009) and that the organism has developed a specific plan on prevention, as in the graph below.



Only 16% of respondents said they gave training on this issue and 50% planning to do so further in 2013.

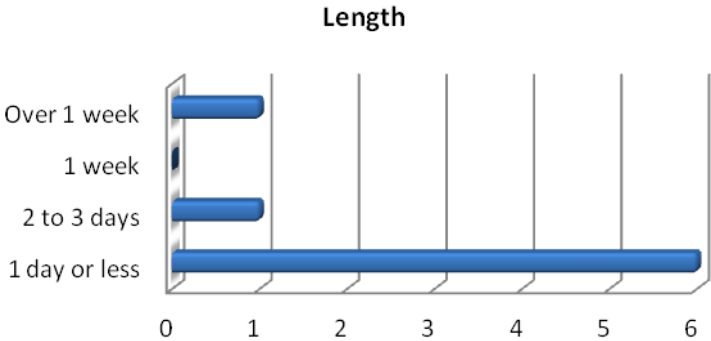
Only 9 respondents filled out the questionnaire on the part of the training, which represents in the universe a small percentage of respondents - 16%.



In this group, 78% of respondents reported that the training was aimed for specific professional groups. The professional groups indicated by respondents were: internal auditors, inspectors, technical experts, advisers and to all the military of the National Guard within the initial training and specialization.

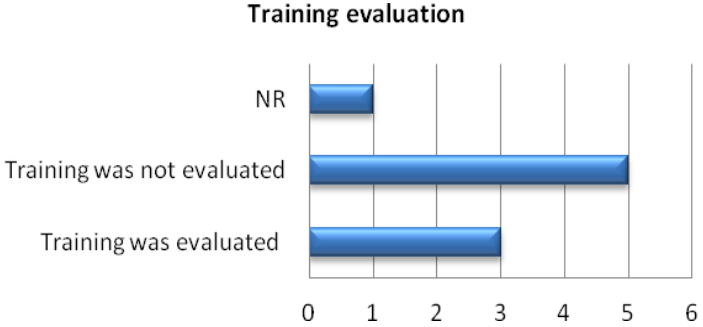
<sup>159</sup> Full report in Annex 2

In response to the question on how to approach training, 60% indicated that it was focused primarily at the prevention of corruption, but 30% reported that the training had a more transversal approach on ethics in public administration and only 10% said that it was focused on specific infringements.



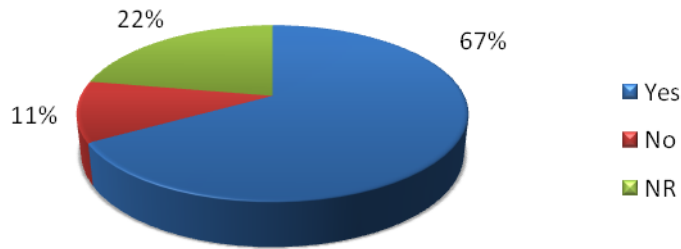
Regarding the duration of training, the majority length is of 1 day or less.

About the pedagogical methods the majority (71%) responded that the teaching method used is more focused on the exposure of subjects by the trainer.



Respondents, who indicated that the training was assessed, reported that the types used were: questionnaires of impact and effectiveness by the participants, “American Test” and the application of “Kirkpatrick Evaluation Method” that consists of an evaluation in four levels (reaction, learning, behavior and results).

Training led to the enforcement of the PCP?



Finally, some questions were asked regarding the impact of training.

The analyses of that question and its relation to scope, length, and pedagogical methods, should enable to identify possible good practices.

However, the small rate of answers regarding impact and, furthermore, an apparent inconsistency of the answers do not allow us to draw conclusions.

In fact, 6 entities reported that training led to the enforcement of the Prevention on Corruption Plans but only 4 consider that deviations or irregular procedures have been corrected.

Furthermore 4 entities stated that deviations or irregular procedures have been corrected after training but only 3 say it led to reports about PCP enforcement.

Moreover only 2 entities stated that these reports were disclosed, although 3 report the discussion of reports throughout the organization and its impact on improvement proposals.

From the analysis it can be concluded that prevention of corruptions is not yet a priority for public bodies because of the low number of responses to the request from completing the questionnaires and also because most of the bodies that declare to know the recommendation few of them delivered the training to their employees.

## 2.2 In Search of Good Practices

As for the identification of good practices, a deeper analysis of the very few entities that actually delivered training had to be undertaken.

As reported above, only 9 of the respondents stated that prevention of corruption training had been delivered.

Accordingly, a new inquiry was performed, only addressed to those public entities, asking them to provide information about: training program, duration, participants and trainers (external or internal, acting at a personal level or through some training deliver institution).

Within those, only 8 answers were received. Among them, some were related, not to the prevention of corruption plans as asked, but to ethics in general in the context of initial mandatory training. That was the case of the Authority for Food and Economic Security (ASAE), Criminal Police (PJ) and the National Republic Guard (GNR).

The information collected was therefore included in the chapter on “Training in Ethics”.

Thus, and regarding the concrete inquiry on prevention of corruption public entities plans and related training, only 5 entities could be considered.

The analysis however presents a set of constraints namely, the short number of responses, the existence of different concepts of training among the respondents and the fact that some inconsistencies have been detected between answers to the questionnaire and the information provided in the second inquiry phase.

As so the following description only provides some examples and do not allow to draw conclusions.

- **Criminal Police – Ministry of Justice**

Mission – To assist the judicial authorities in order to investigate, develop and promote preventive, detection and investigation actions within its jurisdiction or as assigned by the competent judicial authorities.

Personnel: General careers and specific career (detective career)

Prevention of Corruption Plan (PCP) – Existing; available in the internet website; appointment of a monitoring committee.

Continuous training on PCP: In the response to the questionnaire it was stated that training was delivered to the whole entity, had a length of a day or less and was focused on the PCP; no evaluation was carried out and no impact issue was identified. Further information detailed that the training program was delivery only as a power point presentation sent by email to all employees.

Nevertheless, positive aspects are due to consider: the referred presentation frames the PCP within the protection of humans rights, respect of legality and defense of democracy; It was

design in order to be used in training, whenever prevention of corruption or ethics issues are approached.

- **Records and Notary Institute – Ministry of Justice**

Mission: Deployment and monitoring policies relating to registration services and to ensure the provision of services to citizens and businesses within the civil identification and civil registration, nationality, land, commercial, property and corporate bodies, as well as to ensure the regulation, control and supervision of the notaries (solicitors) activities.

Personnel: General careers and special career (officers of registries and notaries).

Prevention of Corruption Plan (PCP): Reported as existing, although not available in the internet website or submitted in the present survey.

Continuous Training on PCP: Training was delivered to all departments and professional groups, and was focused in specific infringements, as follows:

- Document forgery – 14h – addressed to administrative staff and officers of registries and notaries;
- Money laundering – 7h - Officers of registries top categories;
- Documentation fraud and usurpation of entity – 7h

Although it was stated that training had a cross cut approach in the context of Ethics, no evidence was provided.

Training evaluation was carried out. Training led to the enforcement of the PCP and deviations or irregular procedures have been corrected but no reports about enforcement practices have been carried out.

- **Juridical Center (CEJUR) - Council of Ministers Presidency**

Mission: legal support to the Council of Ministers, the Prime Minister and other members of the Integrated Government Presidency of the Council of Ministers,

Personnel: General careers

Prevention of Corruption Plan (PCP): Existing; available in the internet website, as well as the 2011 Monitoring Report and the Deontological Code <sup>160</sup>

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<sup>160</sup> <http://www.portugal.gov.pt/pt/os-ministerios/primeiro-ministro/secretario-de-estado-da-presidencia-do-conselho-de-ministros/quero-saber-mais/sobre-a-pcm/cejur/boas-praticas.aspx>



Continuous Training on PCP: Training was delivered for the whole institution, aimed to the PCP and centered mostly in presentations by the trainer; its length only 1 hour and the program topics were: What is corruption; corruption areas; behaviors suggestive of corruption; the Corruption of Prevention Commission; the CEJUR PCP; procedures to avoid and fight corruption. Evaluation was not carried out; It was defined as an awareness raising activity.

- **General Directorate for High Education – Ministry of Education and Science**

Mission: conceiving, implementation and coordination of higher education policies within the Ministry competencies.

Personnel: Mainly general careers

Prevention of Corruption Plan (PCP): Reported as existing, although not available in the internet website or submitted in the present survey.

Continuous Training on PCP: Training was delivered only to graduate employees and, as so, only to some departments; its scope was the Prevention of Corruption, it was centered mainly on presentations by the trainer and had a 6h length. As training was delivered by the Court of Auditors; it was not possible to understand if it was aimed to the entity PCP or if it was a general course aimed to other participants. It was stated that the course had an impact on the design of the entity PCP and in the Correction of irregular procedures as well as regarding the PCP monitoring reports and its dissemination.

Other activities: Participation in two conferences: “Fight against fraud” and “Public management of corruption risks in public administration and the prevention of corruption plans”.

- **General Secretariat – Ministry of Education and Science<sup>161</sup>**

Mission: To ensure specialized technical support to members of the Ministry Cabinet and other departments and agencies incorporated in it, in the areas of legal, conflict resolution and litigation, employment schemes and labor relations, human resources financial and technological management, public procurement, european affairs and international relations, as well as the quality policy, information and communication.

Personnel: Mainly general careers

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<sup>161</sup> To the date, Ministry of High Education and Science.

Prevention of Corruption Plan (PCP): It existed; at the present no information is available as the General Secretariat has been redesigned as to incorporate two former entities: the General Secretariat of the Ministry of Science and High Education and the one of the Ministry of Education.

Continuous Training on PCP: Training was aimed to top and middle managers, graduate officials and other participants involved in the risk management process as internal auditors; Scope was both transversal (in the context of a broader approach to ethics) and centered in the PCP; It is stated that the course length 2 to 3 days and centered on the participation of trainees; Evaluation has been carried out through questionnaires on impact and effectiveness; all issues regarding impact were answered affirmatively.

From the analysis of the training program it is possible to identify that training was delivered before the construction of the PCP, and one of its aims was in fact to prepare trainees in order to participate in its elaboration. As so, a first part was addressed to the concepts, aims, processes and norms of the corruption risks management, as well as to the role of the Council of Corruption Prevention and the inter connection of prevention risks management with internal audit and control; The second module was dedicated to the accomplishment of an exercise overlooking the drawing up of a PCP.

As mentioned before, the response rate was not sufficient to draw conclusions and to justify a deeper analysis.

As so, it is not possible to state the existence, or non-existence, of good practices in prevention of corruption training.

Even so, it is worth mention a qualitative difference regarding two of the respondent entities.

Regarding the Prevention of Corruption Plan:

- The Criminal Police has a PCP with a very broad scope, addressed not only to the support activities (procurement, accounting) as it is usually the case, but with a strong focus on core activities of criminal investigation. The corruption threats are identified with detail and prevention measures are objective and measurable. The PCP constantly focuses on corruption as a threat to the rule of law, democracy and

human rights. A coordinator was appointed to monitor the implementation of the plan and to assure its evaluation.

Regarding training:

- The General Secretariat of the Ministry of Education and Science delivered training before designing the PCP; in fact, training was aimed to prepare graduate officials, managers and internal auditors, as to be able to elaborate the entity PCP as well as to monitor its enforcement. The duration of the courses (2 to 3 days) seems appropriate to the contents presented and training was in fact centered in the participation of trainees: debates during the first module, group work overlooking the drawing up of a PCP, in the second module. Furthermore it is state that the PCP was approach in inter connection with internal audit and control processes, already implemented.

## **Conclusions**

The main objective of the present project was to identify best practices in ethics training for Portuguese public administration.

To achieve such a goal it was developed a methodology that involved explicating criteria to identify good practices in training, analyzing Portuguese system of vocational training and surveying and analyzing vocational training in ethics.

Research on the last point started by evaluating the role and the importance that Portuguese bodies of sovereignty accorded to ethics in public affairs, in general, and to public administration's activities, in particular, through reviewing official documentation on the subject. The conclusion of this analysis is that ethical and deontological principles are embodied in multiple and scattered pieces of legislation although there is no ethics code that allows for vertical and horizontal mainstreaming with regard to public administration activities at all levels.

Such a situation is reflected in how training in ethics for Portuguese public administration has been addressed. In general, training for ethics is not individualized, but included in modules that concern more global issues. A clear and explicit mention of ethics appears only in courses for public managers as well as for specialized public administration bodies, namely

police, inspection and health; though the time dedicated to ethics regarding the workload of these courses is generally very short.

Concerning the prevention of corruption the situation is not better. Indeed, despite government mandatory recommendation aiming at each public service to define and to implement a plan for prevention of corruption, only 9 out of 256 public bodies reported to have performed specific training for this purpose.

In order to identify good practices in ethics training the following set of criteria was defined:<sup>162</sup>

- Training contributes to change individual behavior;
- Training provides useful learning experiences (how to think and act);
- Training has impact on organizational environment;
- Training is sustainable (learning and changes can be implemented);
- Training has the potential to be transferred and so improving social capital;
- Training is connected with the enforcement of human rights.

These criteria were used to assess training on prevention of corruption, inquiring the 9 public bodies that report to have performed specific training for this purpose. However results on this subject were inconclusive.

Seeking to further the causes of these poor results by using related literature<sup>163</sup>, it can be said that ethics for Portuguese public administration is yet a fuzzy concept mainly due to the following issues:

- Deficit of transparency in the decision-making procedure, which is very bureaucratic and so leads to individual irresponsibility;
- Complexity of the regulatory system, with proliferation of norms that are sometimes contradictory and are dispersed through a number of pieces, leading to lack of legislative quality;
- Focus on the imposition of conduct rules and in punishment and not in investing on a pro-active culture aiming to develop ethical values and so preventing corruption.

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<sup>162</sup> Annex 9

<sup>163</sup> [GANHÃO, Teresa, Public Service Ethics in Portugal, II.8. Portugal, Public Service Ethics: Na International Perspective, Editors: Ugur Omurgonulsen and M. Kemal Oktem, Ankara – Turkey, 2010.](#)

Finally, it must be stressed that the present austerity crisis and the way it's being implemented fosters an environment conducive to increase corruption as stated by the report on *Money, Politics, Power: Corruption Risks in Europe* produced by Transparency International<sup>164</sup> with financial support of the Prevention of and Fight against Crime Programme of the European Union.

In this context it should also be noted concerns expressed by public administration's experts about the effects of reforms on the public employment status in order to bring it closer to the private system rules. In the ongoing debate<sup>165</sup> the advocating for public administration specific employment regime is mainly justified as a safeguard against financial or political influences that may impair public employees' commitment to ensure the common good in compliance with ethic principles.

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<sup>164</sup> [www.transparency.org](http://www.transparency.org)

<sup>165</sup> Christoph Demmke & Timo Moilanen, The future of public employment in central public administration, EIPA, November 2012

## GENERAL CONCLUSIONS

The four-country study highlights the importance of introducing and teaching ethics principles to public administration employees by discussing public administration systems, principles of ethics and relevant legal instruments, and vocational training by analyzing the situation in the Czech Republic, Germany, Poland and Portugal.

A comparative chart on legal regulations of the ethics issue and application of ethical codes or related provisions (Annex 1) show that partner countries have different approaches. The crucial finding is that while the Czech Republic and Poland have a code of ethics for public administration officials, in Germany and Portugal this issue is regulated in several legal acts. As it is apparent from the chart, there are also major differences among countries in the extent of topics that are regulated either in codes of ethics or legal provisions.

The four-country study takes up the issue of training in the context of its importance to preventing and fighting corruption in public administration. With regard to vocational training on anti-corruption, the study looks at the experience of various institutions from all four countries reflecting the current status quo. The outputs show more common aspects than it had been envisaged. This is in spite of the fact that the social situation in Germany slightly varies from other project countries and the issue of corruption is perceived differently, which was proved by the actual German survey.

To be able to provide a complex picture, more detailed and thorough surveys would be necessary to realize. However, based on particular outcomes from conducted analyses and on the personal experience of members of researching teams, it was possible to identify following observations:

1. Courses contents should reflect various **categories of participants**. The contents should differ with specific focus on members of police, on state administration officials or on business sector cooperating on public procurements. It is necessary to reflect junior, senior and managerial positions for officials from the perspective of possible level of influence by corruptive environment. Nevertheless, training addressed to all employees of a public entity/body can be most useful in order to develop a general ethics culture, centered on the specific responsibility of the entity.
2. **Experts with pedagogical (andragogical) education** as well as mainly **experts of police, law, state administration** should participate on contents and pedagogical preparation of

courses. It is suitable to involve also the **academic sphere** for theoretical parts of courses.

3. The same applies for **lecturers** of these courses – the optimal approach is to combine a legal perspective and real investigation of case studies also presented by media.

*The contents analysis of stated courses brought the following generalizations:*

4. Training in ethics - and particularly on anti-corruption - is necessary and it is possible, provided that it takes the form of active teaching instead of ex-cathedra lecturing. The most effective method of training in ethics is **Problem Based Learning**. When the trainings on anti-corruption for public servants are designed as lectures rather than interactive workshops, they neglect the main purpose on anti-corruption trainings which is the stimulation of participants to internalize the contents of the training in ethical behaviour.
5. It is **suitable to combine the theoretical part of ethics and corruption with presentations and discussions of legal impacts of corruption on individuals and authorities as well as its social impacts (both to the public service credibility and to the life of citizens) and especially analysis of real cases.**
6. On the basis of connection of theoretical principles with cases, it is necessary to involve **discussions, group analyses and training of anticorruption behaviour** (role playing).
7. Such courses approach is feasible to be realized at least in one day, **two training days** (2x8 hours) **are ideal**. Regular refreshment sessions (follow-up) are recommended.
8. The courses objective should be the **prevention of anticorruption behaviour** especially, which can be reached by the fusion of knowledge and skills of reacting on corruption offers.
9. In order to comply with the objective of these projects and courses in sense of national strategies o anticorruption fight and ethical behaviour of officials, it is crucial to keep a **primal role of state institutions and training institutions operated by state**. It applies especially when private training organizations realize that this domain is not interesting business for them. Thus, in such cases a role of the state and its institutions shall be higher.

As mentioned before due to different situations in project countries not all findings are fully applicable to be used in particular national conditions. These observations are the aggregate of national findings so not every statement complies with the situation in every project country. However, from our perspective, the above stated concluded findings are useful to be considered during the preparation and realization of training activities at courses on prevention of corruption for public administration employees.



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