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Support to good governance: Project against corruption in Ukraine - UPAC

Draft Law of Ukraine
Code of Ethics for Persons Authorised to Perform State Functions

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1 COMMENTS OF JACEK CZAPUTOWICZ

In these comments the Draft Law of “Code of Ethics for Persons Authorised to Perform State Functions” will be investigated against the provisions of Council of Europe “Recommendation No. R (2000) 10” and best practices in other states. I will start with general comments on the content of the discussed Code, then provide some detailed comments concerning particular formulations, referring to particular sections and articles.

1.1 GENERAL COMMENTS

A code of ethics usually complements the existing legal regulations and punitive measures. The legal character of codes of ethics, their subject matters and minuteness of details differ from state to state. Codes of ethics of the European Union member states usually cover such issues as gifts and favours, ban on additional jobs and paid activities, reporting of financial interests, engagement in political activities, dealing with confidential information and a private use of service provisions.¹ The draft Code of ethics under discussion covers all those issues.

The specific feature of the Ukrainian draft Code of Ethics is that it applies not only to civil servants, but also to persons discharging political functions, i.e. ministers, parliamentarians and deputies of local bodies.

1.2 DETAILED COMMENTS

The Preamble states that the “Code of Ethics for Persons Authorised to Perform State Functions” is to be part of the legislation which aims at preventing and suppressing corruption. The introduction further states that the Code sets forth general requirements guiding the conduct of persons discharging public functions. Based on these requirements the public can assess the integrity, impartiality and efficiency of their activities.

¹ Banielle Bossaert, Christoph Demmke, *Main Challenges in the Field of Ethics and Integrity in the EU Member States*, European Institute of Public Administration, 2005, p. 127-128. Codes of ethics in some states also cover rules of acceptance of luncheons and dinners, use of company credit cards and concerning expenses during business travel. These issues are not covered, which however is not the weakness of the Code under discussion.

The Council of Europe “Recommendation No. R (2000) 10” advises that a code of conduct for public officials should (1) specify the standards of integrity and conduct to be observed by public officials, (2) help them meet those standards and (3) inform the public of the conduct which is expected of public officials.² The draft Code under discussion is in accordance with these recommendations. If introduced, it will guide public officials in their work and will contribute to the growth of their ethical sensitivity.

The code is envisaged as a framework for specific codes (rules) of conduct for certain categories of public officials. These more detailed regulations should be consistent with its requirements. Article 2.2 states that the provisions of the Code will be without prejudice to the special rules of conduct of certain categories of persons. This solution is in line with the practice in some other countries, where specific codes of conduct based on commonly accepted standards are drawn up for special categories (i.e. the United Kingdom, Sweden, Latvia, Malta). In such a way specific situations of different categories of officials may be covered.

Section I. General provisions

Article 1. Use of terms

Glossary in Article 1 explains the meaning of terms used in the Code. This glossary also plays a positive educational role. I mean the following terms: “advantage”, “public officer”, “integrity”, “ethics”, “conflict of interest”, “material gains”, “non-material gains”, “impartiality”, “personal interests”, “indirectly requesting a gift or an advantage”, “gifts”, “directly requesting a gift or an advantage”, “subjects of ethics”, “tolerance”, “public law legal persons” and “private law legal persons”.

The term “impartiality” explained as an absence of a previously formed negative opinion may also refer to the absence of a previously formed positive opinion, acting unjustifiably in favour of anybody or something.

The order of some before-mentioned terms could be reversed, for example: “gifts”, “directly requesting a gift or an advantage” and “indirectly requesting a gift or an advantage”.

² The Council of Europe, *Code of Conduct for Public Officials*, Recommendation Rec. (2000) 10, adopted by the Committee of Ministers of the Council of Europe on 11 May 2000, Article 3.

The distinction between directly and indirectly requesting a gift or an advantage is not clear. In the former case a request is made personally that the gift be given to the person making a request. In the latter case a request is made through someone else that the gift be given to a subject of ethics or to another person (a family member or a political party). The distinction is then based on two criteria: who makes a request and to whom the gift is given. However, not all situations are covered by the existing formulation. There is no mention of a gift requested through anyone else to be given to a family member or political party. To illustrate the problem possible situations can be presented in a table.

Table 1. Directly and indirectly requesting a gift or an advantage

Who requests? Who profits?	Subject	Other person
Subject	directly requesting a gift or an advantage	indirectly requesting a gift or an advantage
Other person	indirectly requesting a gift or an advantage	Not covered

A possible solution to this problem would be to distinguish these situations according to one criterion. Another possibility would be to explain the term “requesting a gift or an advantage” and to show different situations depending on who requests and who profits.

The question arises whether all “subjects of ethics” are necessarily nationals of Ukraine. Being not familiar with the Ukrainian law and the current situation concerning the issue we can envisage in the future, that some positions defined as “subjects of ethic”, like assistants-consultants of elected officials, auditors, experts or arbitrators may be occupied by non-nationals of Ukraine. In the case of EU member states nationality is usually a prerequisite for occupying these kinds of positions. The formulation: “a person” instead of : “a national of Ukraine” would be enough to cover potential non-nationals of Ukraine by the Code and treat them also as “subjects of ethics”.

The given definition of “tolerance” is problematic. It usually means the quality of allowing other people to have their own beliefs and attitudes.

Article 2. Subjects of ethics

The scope of application of the Code of Ethics is very broad. The Code applies to persons occupying the highest state positions, i.e. the President, the Prime Minister, members of the Cabinet, parliamentary deputies, deputies of local bodies, as well as public officers defined as persons maintaining public law relations with the state and holding state service positions. The Code applies to officials of the Military Forces, judges, prosecutors, Customs Service, Tax Service, Border Guard, Security Service, interior agencies, and officials of local authorities, managers of state owned enterprises as well as other persons who are not public officers but who perform the functions of the State.

It may be difficult to work out a consistent Code of Ethics, which covers so different categories of persons. Differences in the content of activity between, for example, a Minister, a Parliamentarian, a public officer, a judge or a manager of a state-owned enterprise are so substantial that it may not be practical to cover them by one Code. The Council of Europe “Recommendation No. R (2000) 10” applies to public officials, i.e. to persons employed by a public authority or by those private organisations which perform public service. It states *expressis verbis* that the Code does not apply to elected representatives, members of government and holders of judicial office.

Members of parliaments and members of government are usually covered by separate regulations. Persons occupying those positions, even if they may face many similar ethical problems, are governed by different logic and, therefore, different rules. There is clear difference between legislative, judiciary and executive branches of the state, which also results in different requirements. For example, the standard of political neutrality is crucial for public officers and judges, but not for members of parliament and members of government. In most states it is important to maintain clear separation between the political sphere and the civil service sphere. Covering such different positions by one Code of Ethics may eventually contribute to blurring this important differentiation.

A good example is the British system, where the Ministerial Code establishes the principles and practices expected of Ministers, and the Civil Service Code embraces standards of behaviour expected of civil servants. The Ministerial Code sets such principles as collective responsibility of Ministers, the obligation to give truthful information to the Parliament,

openness with Parliament and with the public, elimination of real or apparent conflict between public duties and private interest, refusal of gifts or hospitality which might appear to compromise the judgement, separation of roles as a Minister and as a constituency member, not using government resources for party purposes and upholding the political impartiality of public service³.

The British Civil Service Code sets four core values for civil servants appointed on the basis of fair and open competition. These are: integrity, honesty, objectivity and impartiality. Integrity means putting the obligations of public service above personal interests, honesty – being truthful and open, objectivity – making advice and decisions on rigorous analysis of the evidence, and impartiality – acting on the merits and serving equally well Governments of different political persuasions. The Code, which is based on these four values, develops detailed standards of behaviour expected from civil servants.⁴

Similarly, in Poland separate codes exist for persons occupying political positions and civil servants positions. The Polish Civil Service Code of Ethics is based on four principles, which are reliability, professionalism, impartiality and political neutrality⁵.

Article 3.2 states that subjects of ethics will become familiar with the Code prior to their appointment. This is in accordance with Article 2.1 of the Council of Europe “Recommendation No. (2000) 10”, which advises to inform public officials about the provisions of the Code. Nevertheless, it would be profitable to add that the Code forms part of terms of employment for public officials, as it is recommended in Article 2.2 of the Council of Europe “Recommendation No. (2000) 10”.

Article 3.3. and 3.4 presenting an analysis of how the subject of ethics adheres to provisions of the Code seem to be fine for public officials, but difficult to apply to some others subjects of ethics, like the President, the Prime Minister, Ministers and members of parliament.

³ *Ministerial Code*, with Forward by the Prime Minister Gordon Brown, p. 1-2.

⁴ *The Civil Service Code*, June 2006.

⁵ *The Civil Service Code of Ethics*, The Order 114, of the Prime Minister, of 11th October 2002.

Section II. General requirements for ethics

In this section general requirements for ethics are enumerated and defined, i.e. priority of human and citizens' rights, equity, building the general public's confidence in the power, impartiality, tolerance, legality, efficiency in official activities, transparency in official activities and confidentiality. The choice of requirements is reasonable. It is usually an arbitrary decision which principles are chosen as basic ones. There are obviously different possibilities, and it might be helpful to look at principles and their definitions applied in Codes of Ethics of other states.⁶

Section III. Ethics of public officers, officials of local government

In addition to the general requirements of ethics listed in Section II, additional basic principles for public officers and officials of local self-government are laid down in Article 14. They do not apply to other subjects of ethics covered by the Code (Article 13.2). Contrary to the general requirements of Section II, the meaning of principles enumerated in Article 14 is not explained. There are nineteen basic principles, some of which, i.e. impartiality, legality, tolerance and transparency, are also listed as general requirements in Section II. They are probably binding to other subject of ethics, as well, not only to public officers and officials of local self-government.

Other principles listed in Article 14 appear for the first time. It is not clear on what bases the distinction between the general principles binding to all subjects of ethics and principles binding to public officers and officials of local self-government is made and why the latter should refer only to the chosen group of subjects of ethics.

⁶ For example the famous Nolan's seven principles of Public life are: "**Selflessness**: holders of public office should act solely in terms of the public interest. They should not do so in order to gain financial or other benefits for themselves, their family or their friends. **Integrity**: holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might seek to influence them in the performance of their official duties. **Objectivity**: in carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit. **Accountability**: holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office. **Openness**: holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands. **Honesty**: holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest. **Leadership**: holders of public office should promote and support these principles by leadership and example." Banielle Bossaert, Christoph Demmke, Main Challenges in the Field of Ethics and Integrity in the EU Member States, European Institute of Public Administration, 2005, p. 35-36.

To illustrate the problem better we can divide the ethical requirements of the discussed Code to ones which appeared only in section II, to ones which appeared in both and section II and in Article 14, and to ones which appeared only in Article 14.

Table 2. General requirements and principles of public officers' ethics.

General requirements (Section II)	General requirements which are the same as principles of public officers' ethics (Section II & Article 14)	Principles of officers' ethics different than general requirements (Article 14)
Priority of human and citizen's rights	Impartiality	Rule of Law
Equity	Legality	Constitutionality
Building the public's confidence in the power	Tolerance	Professionalism
Efficiency of official activities	Transparency	Patriotism
Confidentiality		Political neutrality
		Loyalty
		Publicity
		Corporativeness
		Stability
		Objectivity
		<i>Glasnost</i>
		Openness
		Responsibility
		Equal access to service

The number of principles of officers' ethics might be reduced. It seems, for example, that openness includes *glasnost*. The term "corporativeness" is considered in many states as a negative feature of public service.

The provisions of Article 15 provide that a public officer should not frustrate the lawful policies of public authorities. These provisions are in line with the Article 4 of the Council of Europe “Recommendation No. (2000) 10”.

Article 15.1 states, that a public officer shall perform its functions with respect for principles of honesty, justice, responsibility, openness and transparency. It is non clear however, why these five principles are chosen, of which three - responsibility, openness and transparency - are taken from the list of Article 14 and two - honesty and justice - appear for the first time.

Article 18 rightly states that a public officer should follow the instructions and decisions given by his/her superior. If, according to the public officer, the instruction is contrary to laws he/she must inform in writing the superior. If the superior insists on the execution of the instruction the public officer informs in writing the higher-rank manager. It could be added that the provisions of the article apply also to cases where instructions are in contradiction with public interests.

From the reading of the Article 18.2 it is not clear whether the public officer executes or not the instruction before informing the higher-rank manager. This is however explained in Article 26, which concerns measures after receiving illegal decisions or instructions. The provisions of that article clearly describe the proceedings in such situations. It would be useful to have these provisions in one place.

Article 19 states that public officers cannot found political parties and cannot participate in election campaigns. The question arises whether a public officer is allowed to belong to a political party. This problem is resolved in Article 35. It is in accordance with practices in other states.

It may be useful to state precisely what the above-mentioned ban on participation in election campaigns means. Does it concern the right to stand in general elections? in local elections? supporting openly other candidates? showing openly sympathy to a political party? Banning public officers' participation in strikes and civil disobedience actions of Article 19.2 is in line with Article 4.2. of the Council of Europe “Recommendation No. (2000) 10”.

Article 20 deals with preventing conflicts of interests and disallowing corruption. It is in accordance with Article 8 of the Council of Europe “Recommendation No. (2000) 10”. It seems that the provisions of this article could be included in Section V specifically with preventing conflict of interests.

In the literature to-date there are numerous opinions that concentrating on managing conflicts of interests is more justifiable. According to OECD experts, prohibiting some forms of private interest is only an element of an overall strategy in managing conflict of interests.⁷ The implementation phase is very important. One way of increasing the effectiveness of the Code is to include observance of its provisions in annual appraisals.

Section IV. Restrictions with regard to official positions

Prohibitions of Article 22 to take advantage of official positions in order to meet personal interests and to exert an influence in order to receive an advantage are in accordance with Article 8.2 of the Council of Europe “Recommendation No. (2000) 10”.

Article 23.2 states that a subject of ethics should not disclose confidential information. This is in line with Article 11 of the Council of Europe “Recommendation No. (2000) 10”.

⁷ “A too-strict approach to controlling the exercise of private interests may conflict with other rights, or be unworkable or counter-productive in practice by deterring experienced and competent potential candidates from seeking public office. A modern approach to conflict-of-interests policy seeks to strike balance by:

- Identifying risks to the integrity of public organisations and public officials.
- Prohibiting specific unacceptable forms of private interests.
- Making public organisations and individual officials aware of the circumstances in which conflicts can arise.
- Ensuring that effective procedures are developed for the identification, disclosure, management, and promotion of the appropriate resolution of conflict-of-interest situations”.

Managing Conflict of Interests in the Public Service, OECD Guidance and Country Experience, OECD Paris 2003, p. 15.

Section V. Preventing conflicts of interests

Article 25 sets the obligation to avoid situations resulting in the conflict of interests, and not to take into account personal interests while exercising official duties. Article 27 requires that a subject of ethics inform in writing on all circumstances which may affect his/her impartiality or give an impression of such an influence. These circumstances should be eliminated. If it is impossible, the person should not be appointed or should quit the position. Article 28 describes the behaviour of the subject of ethics in the case of conflicts of interests or impressions of it. These provisions are in accordance with Articles 13 & 14 of the Council of Europe “Recommendation No. (2000) 10”. They do not allow turning conflicts of interests into corruption situations.

Section VI. Restrictions with regard to receiving a gift or an advantage

Regulations of this section rightly provide that a public officer may not accept any gifts, which exceeds the value set by laws (i.e. one per cent of the minimal subsistence). This is in line with Article 18 of the Council of Europe “Recommendation No. (2000) 10” and with the practice in most of the EU member states, where possibility to accept a gifts is seriously limited.⁸

The regulations state that gifts received during performing official functions are considered as a state or municipal property and should be transferred to the relevant authorities.

Article 34 sets the procedure with regard to receiving an offer to get an advantage. The procedure concerning finding a gift takes into account regulations of Article 19 of the Council of Europe “Recommendation No. (2000) 10”. It could be stated more clearly that a subject of ethics refuses any offer of a gift or an advantage.

Section VII. Political and social activities

No observation.

⁸ Banielle Bossaert, Christoph Demmke, *Main Challenges in the Field of Ethics and Integrity...*, p. 9-10.

Section VIII. Liability for violation of the present law

Provisions of Article 37 concerning restrictions with regard to employment after terminating state functions are in line with Article 26 of the Council of Europe “Recommendation No. (2000) 10”.

1.3 CONCLUSIONS

The draft “Code of Ethics for Persons Authorised to Perform State Functions” meets the Council of Europe standards set in “Recommendation No. (2000) 10”. It seems however, that the Code is very ambitious in the sense that it aims at covering many different categories of subjects. There is a risk that the Code will be too general or that it will introduce some regulations that may not be suitable for some categories of “subjects of ethic”.

In comparison with the previous version of the draft “Code of Respectable Conduct of Persons Empowered to Perform Functions of the State” substantial improvements to the text have been introduced. The Glossary in Article 1 is helpful in explaining terms used in the Code. Other changes clarified some ambiguities allowing too wide an interpretation of some provisions.

In the previous version it was clearly stated that the Code aimed at establishing binding requirements for conduct of civil servants (Articles 1.2) and that it was supposed to create the basis for other subjects of ethics (Article 1.3). The new draft tries to cover all persons authorised to discharge state functions, occupying both political and civil service positions. The group of political positions covered by the Code was enlarged, as a new category of people’s deputies of Ukraine and deputies of local radas of all levels was added. This made the problem of the scope of the Code more visible.

It is not clear why some requirements for public officers and officials of local government provided in Section III should only bind this group of subjects of ethics. Principles of ethics enumerated in this section should be explained and made consistent with the rest of the Code.

The draft Code shows that it is very difficult to set up in one document standards of behaviour of persons performing political and civil service functions. The Council of Europe “Recommendation No. (2000) 10” only deals with public servants. It is recognised that standards of behaviour for politicians should be regulated separately. Such is a common practice in most of the states belonging to the European Union and OECD.

2 COMMENTS OF MATTI NIEMIVUO

2.1 INTRODUCTION

1. The Ukrainian Code of Ethics is one of the many ways to fight corruption. The aim of this draft Law is fully acceptable and it certainly complements the legal framework of Ukraine (Constitution, legislation on civil service, administrative procedure act, penal code etc.). There are, however, some questions and problems in this draft Law which should be discussed before it is ready for adoption.

2. There are two basic questions to be answered. Firstly, is there really need for a legal regulation in this field. And secondly, if there is such a need, what kind of legal document would be the most suitable. A starting point is, however, that every State makes its own national arrangements on the basis of its legal and administrative traditions.

3. The recent comparative study (Comparative Study on the Public-Service Ethics of the EU Member States, Ministry of Finance, Finland, Research and studies 1/2007, p. 29) shows that there are official or legal documents on ethics in all EU countries or such documents are under preparation. However, these documents vary very much from each other. Some countries have only short (1-3 pages) Values Declarations; on the other hand, some countries have longer Code of Ethics, Code of Conducts, Guide for Good Administrative Behaviour or Handbook on Civil Servant's Ethics.

4. Examples of other countries' documents could give ideas in promoting Ethics. For example, the Standards in Public Life (1995) in Great Britain contain seven basic principles as follows:

Selflessness. Holders of public office should take decisions solely in terms of public interest. They should not do so in order to gain financial or other benefits for themselves, their family or their friends.

Integrity. Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might influence them in the performance of their official duties.

Objectivity. In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.

Accountability. Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.

Openness. Holders of public office should be as open as possible about all the decisions and restrict information only when the wider public interest clearly demands.

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

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

5. Many international organisations have been active in developing standards in ethics. The *Organisation for Economic Co-operation and Development, OECD* introduced in 1996 the new concept of *ethic infrastructure*, which was used to promote independence and to prevent corruption. In 1998, the OECD gave a recommendation in ethics, which included 12 points as follows:

1. Ethical standards for public service should be clear
2. Ethical standards should be reflected in the legal framework
3. Ethical guidance should be available to public servants
4. Public servants should know their rights and obligations when exposing wrongdoings
5. Political commitment to ethics should reinforce the ethical conduct of public servants
6. The decision-making process should be transparent and open to scrutiny
7. There should be clear guidelines for interaction between the public and private sectors
8. Managers should demonstrate and promote ethical conduct
9. Management policies, procedures and practices should promote ethical conduct
10. Public service conditions and management of human resources should promote ethical conduct
11. Adequate accountability mechanism should be in place within the public service
12. Appropriate procedures and sanctions should exist to deal with misconduct.

Also the *European Union* has promoted ethics in developing its own organisation. The starting points in this work have been as follows: principle of good governance, independence, responsibility, accountability, efficiency and transparency (White Paper on reforming the Commission, 2000). Other important documents for the EU are Code of Good

Administrative Behaviour (12 pages) and large and detailed Staff Regulations (163 pages). Very important document is so called “Main features of an Ethics Framework for the Public sector” (22 November 2004), which can be seen as a non-legally binding European Code of Ethics and used as a checklist or a general guideline in the developing of national code of ethics. This Ethics Framework identifies eight core values as follows:

1. Rule of law
2. Impartiality/objectivity
3. Transparency/openness
4. Accountability
5. Professionalism
6. Duty of care
7. Reliability/confidence, trust
8. Courtesy/service principle.

The *Council of Europe* has also been very active in this field. In 1994, the conference of the European Ministers of Justice declared that corruption is a serious threat to democracy, the implementation of the law and human rights. Since that conference a lot of work has been done. In this context I only mention many recommendations of the Council of Europe concerning the good administration and a Handbook “Administration and you” (1996). Especially important is Model code of conduct for public officials (Recommendation No. R (2000) 10). This model code is quite a detailed document. Totally it contents 28 articles as follows:

- Interpretation and application (art. 1-2)
- Object of the code (art. 3)
- General principles (art. 4-11)
- Reporting (art. 12)
- Conflict of interest (art.13)
- Declaration of interests (art.14)
- Incompatible outside interests (art. 15)
- Political or public activity (art. 16)
- Protection of public official’s privacy (art. 17)
- Gifts (art. 18)
- Reaction to improper offers (art. 19)
- Susceptibility to influence by others (art. 20)
- Misuse of official position (art. 21)

- Information held by public authorities (art. 22)
- Public and official resources (art. 23)
- Integrity checking (art. 24)
- Supervisory accountability (art. 25)
- Leaving the public service (art. 26)
- Dealing with former officials (art. 27)
- Observance of this code and sanctions (art. 28).

Lastly it should be mentioned the publication of the Council of Europe called “Model initiatives package on public ethics at local level”, which was prepared by the Steering Committee on Local and Regional Democracy (CDLR) and adopted at the International Conference on “Ethical Standards in the Public Sector” (31 March – 1 April 2004). It is not a legal instrument, but it contains good practices which could be “taken into account when states are considering the implementation of policies aimed giving assurance that appropriate ethical behaviour is being followed at local level, in response to the need to maintain public confidence in local government” (p. 6).

6. There is also a lot of other relevant international material concerning ethics produced by the United Nations and the World Bank. I would like to just mention the following ones:

- United Nations, Department of Economic and Social Affairs: Professionalism and Ethics in the Public Service: Issues and Practices in Selected Regions (2000) and Promoting Ethics in the Public Service (2000)
- Stuart C. Gilman: Ethic Codes and Codes of Conduct as Tools for Promoting an Ethical and Professional Public Service: Comparative Successes and Lessons. Prepared for the PREM, the World Bank (2005)
- Rick Stapenhurst and Riccardo Pelizzo: Legislative Ethics and Codes of Conduct. The World Bank Institution (2004).

In addition, there is an overview on Parliamentary Codes of Conduct in Europe prepared by European Centre for Parliamentary Research and Documentation (2001).

7. Finland is, according to Transparency International, one of the least corrupt States in the world. What kind of Code of Ethics there is in Finland? There is not such a Code, only a Government’s Decision in Principle on State personnel policy line and a Handbook for the state administration called “Values in the daily job – civil servant’s ethics”. In this Handbook

eight values are mentioned as follows: (1) effectiveness, (2) transparency, (3) quality and expertise, (4) trust, (5) service principle, (6) impartiality and independence, (7) equality, and (8) responsibility. This Handbook is used in personnel training. The actions and conduct of Finnish civil servants are primarily governed by the following legislation:

- Constitution of Finland
- State Civil Servants' Act
- Administrative Procedure Act
- Act on Openness of Government Activities
- Act on Public Procurements
- Penal Code.

The constitutional provisions regulate the actions and conduct of the President of Republic and the Members of Parliament. Judges are independent and their judicial status is regulated by the Constitution and the State Civil Servants' Act. The main provisions on civil servants in local government are in the Municipal Act.

8. After this introduction I will start with some general remarks on the Ukrainian Code of Ethics. Then I will comment this Code of Ethics in detail, Section by Section. Finally, I will finish my comments by concluding remarks.

2.2 GENERAL COMMENTS

9. The contents of the draft Law of Ukraine “Code of Ethics for Persons Authorized to Perform State Functions” are rather complete and it is in line with the international standards. Of course, there are also many provisions, which are typical of the Ukrainian society.

10. The Ukrainian “Code of Ethics for Persons Authorized to Perform State Functions” will be adopted as a Law (Parliament Act). This solution might be problematic, because some of the articles are too vague. A starting point must be that the Law is not a declaration, but a legal instrument. On one hand, the Law passed by Parliament could show that it is an important legal document and thus promote ethics in the society. On the other hand, if the new Law does not have positive effects, there might be a danger that the respect for law will decline among citizens.

11. The scope of the Code of Ethics is very extensive. The Law applies to public officers and officials of local authorities. In addition, the Law is applicable to the President of Ukraine, the Prime Minister and other members of the Cabinet of Ministers, Members of Parliament etc. If the scope of application is so extensive, it is natural that Parliament, the highest State organ, adopts the Law. There are good reasons, however, to ask, if it were better to limit the scope of Code only to public officers and officials of local authorities. This solution could give more alternative to choose to the form of the Code of Ethics. For instance, it could be an appendix attached to the Laws of Ukraine “On the State Service” and “On the Service in Local Authorities”, if passing the Parliament is regarded important. Normally, the provisions of the Constitution and other legislation ensure a high level of behaviour of the President, the Prime Minister and other Ministers, and the Members of Parliament.

12. On the whole, provisions of the Code of Ethics are quite clear in order to give instructions for good operations. It gives many easy-to-remember rules and guidelines in quite a simple form.

13. The Code of Ethics consists of 39 articles and final provisions. The length is appropriate. In the English version there are totally 16 typewritten pages.

14. The structure of the Code of Ethics is quite clear. It is divided into nine Sections. In addition, every article has a title. Also the order of arrangement of the Code is in general logical.

15. The language of the Code of Ethics is in certain parts quite abstract. Because of this fact the Code might be difficult for ordinary citizens to understand. On the other hand, it is necessary to use certain legal terminology (rule of law, transparency, objectivity, etc.).

2.3 DETAILED COMMENTS

Title of the Law

16. The title of the draft Law is quite long and rather complicated. Could it be Law of Ukraine “Code of Ethics for the Public Sector”?

Section I. General provisions

17. The first Section is always very important for a Law. A small re-arrangement of the articles could be considered. It might also be good to start the Code with a new article (Purpose of Law). This article shall be very brief. For instance, it could be formulated as follows: “The purpose of this Law is to promote high quality civil service ethics in all levels of administration and increase the citizens’ confidence in public authorities.”

18. The order of articles in the first Section could be as follows:

Article 1. Purpose of Law (new)

Article 2. To whom the Law is applicable

Article 3. The way in which the present Law is applied

Article 4. Use of Terms

19. As proposed, article 1 could be the last article in this Section, article 4. It would be better, if there were only the most important terms in this article. Many of the terms could be defined in section VI. The order of the terms should be considered, too. My proposition is as follows: For the purposes on the present Law, terms referred to below shall have the following meaning:

- a) *Ethics* is...
- b) *Subject of ethics* is...
- c) *Public officer* is...
- d) *Public law legal person* is...
- e) *Private law legal person* is...
- f) *Impartiality* is...
- g) *Tolerance* is...
- h) *Integrity* is...
- i) *Advantage* is...
- j) *Personal interest* is...

20. Article 2 or to whom this Law is applicable is the most important question to be considered. I highly recommend that the scope of the law could cover only the public officers and officials of local authorities. The Constitution of the Republic of Ukraine and other

legislation give legal norms for decision-making and behaviour to those other persons mentioned in the article 2.

21. Article 3 (The way in which the present Law is applied) is unclear. The first paragraph is hardly necessary, because Law is always binding to whom it is applicable. Does the second paragraph only mean that practical information of this Law is obligatory? The strict adherence to this Law is difficult to evaluate. The proposed Procedure prescribed by the Cabinet of Ministers might be a good way.

Section II. General requirements for ethics

22. The list of general requirements for ethics (articles 4-12) is well chosen. All requirements mentioned in the list are important from both the authorities' and the citizens' point of view.

23. The general requirements are formulated in quite a concrete manner, which makes them easy to read and understand. The term "Equity" (quality of being fair and reasonable), however, might be difficult to the public.

24. The list could be more elegant, if article 6 were after article 12 (Confidentiality).

Section III. Ethics of public officers, officials of local self-government

25. The term "special laws" in article 13 is not correct, because many of these laws are in fact "general laws" (e.g. Laws "On the State Service" and "On the Service in Local Authorities").

26. If the "Code of Ethics" will be adopted as a Law, then the basic principles of officers' ethics in article 14 are absolutely too open and vague. The principles should be more precise, because they are legally binding and may cause negative sanctions to officers.

27. Rules of officers' ethics (article 15) are formulated quite a concrete way. However, the list of rules is long (ten rules). Because the paragraphs have no titles, they are not really easy-to-remember -rules. In addition, one can ask, what is difference between these rules and provisions in articles 16-20?

28. Article 16 is very clear, but one has to remember the restrictions lay down in article 24.

29. The content of article 17 (1) is almost empty.

30. Article 18(2) is clear, but in the last sentence there would be “shall” instead of “should”.

31. Political neutrality of officers is a very important value when performing official duties. On the other hand, officers should have the same rights as ordinary citizens. Because of this the restrictions in article 19 are remarkable (e.g. officers may not participate in strikes). On the other hand, legislation in Europe varies on this issue.

32. Article 20 is long and complicated. There are lacking numbers in paragraphs 3-5. Could this article be divided in two separate articles?

33. Could article 21 concerning officers’ liability be transferred to Section VIII, where are other liability provisions.

Section IV. Restrictions with regard to official position

34. The number of article 22 and its title is lacking. Could it be “Misuse of official position”?

35. Perhaps the order of the articles 23 and 24 could be changed (see articles 16 and 17).

Section V. Preventing Conflict of interest

36. Provisions in this Section are clear and concrete.

37. A minor point: in article 26(2 and 3) and 27(2) is used an expression “the present Code”. In many other connections, however, it is used a phrase “the present Law”. It might be more elegant to use always the same expression.

Section VI. Restrictions with Regard to Receiving a Gift or an Advantage

38. In this section should include the definition of a gift, if it is excluded from the article 1.

39. The provisions are clear and concrete except article 34, which needs more appropriate formulation. It must be divided in paragraphs.

Section VII. Political and social activities

40. This Section is short containing only one article. The content of article is self-evident.

Section VIII. Liability for violation of the present law

41. As it is already said, article 21 (Officers' liability) could be in this Section.

42. Article 37 does not fit very well in this Section.

Section IX. Final provisions

43. There is only one article (without the number) in this last Section. Could it be better, if there were two articles: article 40 (Entry into force) and article 41 (Transitory provision). Could it be possible, that it clearly would say the date when the law will enter into force ("This Law enters into force on the day/month/year."). Of course, it cannot be effective before its promulgation.

2.4 CONCLUSIONS

44. The draft Law "Code of Ethics for Persons Authorized to Perform State Functions" is a good basis for the Code of Ethics. It is in line with international standards. In the preparation of the draft Law is used a national margin of discretion, which is fully acceptable.

45. There are two main problems in the draft Law. Firstly, should it be adapted as a Parliamentary Law or not. Secondly, to whom should the Code of Ethics be applicable: to all persons mentioned in article 2 or only to public officers and officials of local authorities. Personally, I recommend the latter alternative.

46. Finally, in every case the new Code of Ethics will complement the Ukrainian legal framework, which only defines the minimum criteria of civil service ethics.

3 ANNEX I-DRAFT LAW

Law of Ukraine “Code of Ethics for Persons Authorized to Perform State Functions”

Law of Ukraine “Code of Ethics for Persons Authorized to Discharge State Functions” (hereinafter referred to as the “Code”) shall be a part of legislation governing prevention and suppression of corruption. The Law sets forth general requirements for the conduct of persons authorized to discharge functions of the State, including those of public authorities of the Autonomous Republic of Crimea and local authorities, as well as for the conduct of individuals assimilated to persons authorized to discharge State functions (hereinafter referred to as “subjects of ethics”). All of these persons should be guided by these requirements in the discharge of their professional duties. Based on such requirements, the public assesses the extent of integrity, impartiality, and efficiency of their activities.

Codes (rules) of conduct of certain categories of subjects of ethics should be consistent with general requirements as established in the present Code.

Section I. GENERAL PROVISIONS

Article 1. Use of Terms

For the purposes of the present Law, terms referred to below shall have the following meaning:

“advantage” – any material or non-material gain (a service, an act, etc) which a subject of ethics receives from natural or legal persons for decisions, acts, or refrain from acting for their benefit;

“public officer” – a person who maintains public law relations with the State and holds, in public authorities and other public bodies, public authorities of the Autonomous Republic of Crimea, inclusive of head-quarters thereof, a State service position for the performance of State functions he/she is charged with;

“integrity” – high level of morals, honesty;

“ethics” – behavior with full respect for morals;

“conflict of interest” – collision of official interests of a subjects of ethics with his/her private interests as a result of which his/her personal interest distorts objective and impartial performance of his/her official duties;

“material gains” – material conditions of life activities which can ensure sufficiency, material well-being and satisfy material interests;

“non-material gains” – any non-material services which consist in facilitating appointment on positions, awarding honorary titles, decorations, scientific degrees and titles, etc.;

“impartiality” – absence of a previously formed negative opinion, bias towards anybody or something;

“personal interest” – any advantage for a subject of ethics himself or herself or for his/her family members, or close relatives, or natural and legal persons with whom he/ she maintains formal or informal relations;

“indirectly requesting a gift or an advantage” – request made by a subject of ethics to a natural or legal person through anyone else that a gift or an advantage be given to the subject of ethics for himself or herself or to his/her family member, close relative or natural or legal person linked to this subject;

“gift” – any material gain which has a cash value and which a subject of ethics receives from natural or legal persons free of charge or at a price which is substantially lower than the real price of such gain. May not be considered to be a gift, material gain whose value does not exceed one per cent of the subsistence minimum established by the Law of Ukraine “On Subsistence Minimum” for those employed at the time when the subject of ethics has received such gain;

“directly requesting a gift or an advantage” - request made by a subject of ethics himself or herself to a natural or legal person that a gift or an advantage be given to the subject of ethics for himself or herself;

“subject of ethics” – national of Ukraine who, under Ukrainian law, is a public officer, an official of local self-government and who carries out official activities or performs State functions;

“tolerance” – ability to withstand adverse pressure of any factors, indulgence towards other people's opinions, views, etc.;

“public law legal person” – legal person which is set up by an executive act of the President of Ukraine, public authorities, bodies of the Autonomous Republic of Crimea, and local authorities in view of performing public functions;

“private law legal person” - legal person which is set up by virtue of titles under the Civil Code of Ukraine and which operates in the field of private law.

Article 2. Subjects of ethics

1. Provisions of the present Law apply to the following subjects of ethics:
 - a) persons authorized to perform State functions:
 - President of Ukraine,
 - Prime Minister of Ukraine, other members of the Cabinet of Ministers of Ukraine,
 - People's deputies of Ukraine and deputies of local radas of all levels,
 - Prosecutor General of Ukraine,
 - Head of the National Bank of Ukraine,
 - President of the Council of Ministers of the Autonomous Republic of Crimea,
 - Public officers,
 - Officials of the Military Forces of Ukraine and other military formations,
 - Judges of the Constitutional Court of Ukraine (insofar as this is compatible with the Law of Ukraine "On the Constitutional Court of Ukraine"),
 - Professional judges (insofar as this is compatible with the Law of Ukraine "On the Status of Judges"),
 - Members of public prosecutor's offices, Customs Service, Tax Service, Border Guard Service, Security Service, Diplomatic Service, Interior agencies,
 - Officials of local authorities;
 - б) individuals assimilated to persons authorized to discharge State functions,
 - members of Central, constituency, and local electoral commission,
 - managers of State-owned enterprises,
 - officials who are not public officers or officials of local self-government but perform functions of the State and local authorities and maintain labor relations with public law legal persons and receive their pay from the State or local budget,
 - officials who are authorized to implement corporate rights of the State in private law legal persons,
 - assistants – consultants of people's deputies of Ukraine, assistants – consultants of other elected officials who receive their pay from the State or local budget,

persons who are not public officers but perform State responsibilities and functions under law or an agreement (i.e. responsibilities and functions of defense counsels who represent the State; auditors, notaries, experts, evaluators, arbitral managers, labor arbitrators, and independent intermediaries, and of other persons as prescribed by law).

2. The provisions of the present Law shall be without prejudice to the special rules of conduct of certain categories of persons.

Article 3. The way in which the present Law is applied

1. Provisions of the present Law shall be binding on the subjects of ethics.

2. A subject of ethics shall necessarily become familiar with provisions of the present Law prior to his/her taking the oath or signing labor or any other agreement.

3. An analysis and evaluation of how a subject of ethics adheres to provisions of the present Law shall be compulsory during assessment of the official performance of subjects of ethics, appointment to a new position, for preparation of a reference or recommendation.

4. The issue related to how a subject of ethics adheres to provisions of the present Law shall be considered and decided collegiately by the body he/she maintains labor relations with. The way in which issues related to how a subject of ethics adheres to provisions of the present Law is prescribed by the Cabinet of Ministers of Ukraine.

Whenever a public officer or an official of self-government is the subject of ethics, the issue of how he/she adheres to provisions of the present Law is considered and decided with the involvement of the central public authority which is specifically in charge of the State service.

Section II. GENERAL REQUIREMENTS FOR ETHICS

Article 4. Priority of human and citizen's rights and freedoms

1. Ensuring priority of human and citizen's rights and freedoms shall be fundamental principle in activities of subjects of ethics.

2. Subjects of ethics shall be required to faithfully serve to the Ukrainian people, protect human and citizen's rights and freedoms and take into account interests of the society and State in their activity.

Article 5. Equity

Subjects of ethics shall assess circumstances considering public benefit, objectively and taking account of rights and lawful interests of all persons concerned.

Article 6. Building the public's confidence in the power

Subjects of ethics, by their actions, should promote confidence of persons in the power, their conviction in impartiality and integrity of persons authorized to perform State functions, efficiency and lawfulness of the latter's actions and decisions taken thereby, ensure positive reputation of public and local authorities.

Article 7. Impartiality

When performing his/her functions, a subject of ethics is required to make impartial decisions, disallow giving illegal privileges or preferences to any persons whatsoever, take into account exclusively social interests and concerns which relate to the cause, right, and freedom of citizens.

Article 8. Tolerance

A subject of ethics should respectfully and impartially perceive various political and ideological movements, religious confessions, strictly observe the principle of separation of State from the Church, and, when performing his/her professional duties, should not display his/her religious or political convictions or beliefs.

Article 9. Legality

A subject of ethics shall perform his/her professional duties on the basis, within powers and in the manner prescribed by the Constitution and laws of Ukraine solely.

Article 10. Efficiency of official activities

A subject of ethics should perform his/her official duties and follow decisions taken by authorities and persons under whose control he/she operates and to whom he/she is accountable and subordinated, competently, timely, effectively, and, within his/her functions, should display creativeness and initiative, disallow abuses and inefficient use of State, municipal, or private property.

Article 11. Transparency in official activities

A subject of ethics may not limit access of persons to secret or confidential information in view of concealing certain actions or details which undermine his/her official authority and can adversely affect reputation of the body where he/she works, as well as may not provide knowingly incomplete or unreliable information.

Article 12. Confidentiality

1. A subject of ethics shall use confidential information which came to his/her knowledge during performance of his/her official duties, in accordance with applicable legislation.

2. A subject of ethics may not disclose confidential information on a person which came to his/her knowledge during performance of his/her official duties, unless laws provide otherwise and only in the interests of national security, economic well-being, and protection of human and citizen's rights and freedoms.

Section III. ETHICS OF PUBLIC OFFICERS, OFFICIALS OF LOCAL SELF-GOVERNMENT

Article 13. Special requirements

1. In addition to rules of ethics as laid down in the present Law, provisions of special laws shall apply to public officers and officials of local self-government (hereinafter referred to as “officers.”)
2. Provisions of the present Section shall not apply to other subjects of ethics.

Article 14. Principles of officers’ ethics

Basic principles shall be the following:

Rule of law,

Constitutionality,

Legality,

Professionalism,

Patriotism,

Integrity,

Impartiality,

Tolerance,

Political neutrality,

Loyalty,

Publicity,

Transparency,

Corporativeness,

Stability,

Objectivity,

Glasnist,

Openness,

Responsibility,

Equal access to the State service and service in local authorities.

Article 15. Rules of officers' ethics

1. An officer shall perform his/her functions solely on the basis, within powers and in the manner prescribed by the Constitution and laws of Ukraine, international treaties of Ukraine the Verkhovna Rada of Ukraine has given its consent to be bound by, as well as the present Law, with full respect for principles of honesty, justice, responsibility, openness, and transparency.

2. An officer should faithfully perform his/her official duties, display initiative and creativeness; permanently improve organization of his/her work.

The officer has to perform his/her official duties honestly, impartially, disallow giving any preferences and displaying disposition towards certain natural and legal persons, political parties, resolutely stand against any antistate manifestations and forces which endanger public order and security of others.

4. An officer shall be required to respectfully treat citizens, managers, and colleagues, demonstrate a high culture of communication, and disallow actions and behavior which can prejudice interests of the State service.

5. An officer should show due respect for rights, duties, and lawful interests of citizens, their associations, and legal persons; he/she should not display arbitrary behavior or indifference towards their lawful actions, allow manifestations of bureaucracy, departmental spirit and group interests, unrestraint in statements or otherwise behave himself/herself in the manner that discredits a public authority, local authority or sullies reputation of public officer, official of local self-government.

6. An officer should permanently improve the extent to which his/her abilities, knowledge, and skills correspond to functions and tasks of his/her office; strengthen his/her professional, intellectual, and cultural level through training programs and self-education.

7. An officer shall be required to declare his/her incomes according to procedure and within time-limits prescribed in Ukrainian laws; thoroughly fulfill his/her civil duties, including financial ones, according to procedure and within amounts prescribed by laws.

8. Officers shall ensure effective fulfillment of tasks and functions of the State and territorial community through faithful discharge of responsibilities entrusted to them.

9. Officers' behavior should be compatible with the public's expectations and should ensure confidence of the society and individuals in the State service, service in local authorities and should facilitate enjoyment of human and citizens' rights and freedoms as established by laws.

10. An officer has to care about positive image and authority of public authorities and other State bodies and State Service, local authorities in whole, to value his/her status.

Article 16. Using property, financial, and other assets

In line of his/her duty, an officer shall thriftily and efficiently dispose of property, financial, and other assets entrusted to him/her.

Article 17. Using official and other information

1. An officer should use information entrusted to him/her in accordance with applicable laws.
2. In line of duty, an officer may not hide from individuals any information which might endanger their life, health, and security, except when such information constitutes State secret, such cases being exhaustively specified by law.

Article 18. Following decisions and instructions

1. An officer shall be required to timely and accurately follow decisions and instructions of public authorities, local authorities, instructions and orders of managers, to act within his/her powers.
2. Having received instructions which are contrary to applicable laws, an officer shall be required to assess their lawfulness and eventual harm on his/her own, and immediately, in written, inform thereon the manager who has given the instruction, and, if the latter insists on following the instruction, the officer should in written inform the higher manager thereon.

Article 19. Political activities

Officers may not found political parties, coalitions, participate in strikes and actions of civil disobedience. Public officers and officials of local self-government are prohibited from participating in election campaigns.

Article 20. Preventing conflict of interest and disallowing acts of corruption

1. An officer shall be required to strictly follow limitations and prohibitions established by laws governing the fight against corruption, debar acts of corruption.
2. An officer should not be engaged in any activities which can result in a conflict of interest.

If a conflict of interest occurs during the entry on the State service or the service in local authorities, the officer should clear out this situation prior to be admitted in the service or appointed to a position.

The officer shall be required to take all possible measures to prevent the conflict of interest.

If a conflict of interest occurs or may occur, the officer should inform his/her manager thereon.

6. Under laws, an officer may not:

Receive, in connection with performance of State functions, material gains, non-material gains, including accept or receive objects (services) through purchasing them at a price (tariff) which is substantially lower than the actual (real) price;

Obtain credits or loans, purchase securities, real estate, or any other assets using privileges or preferences other than those provided for by law therefor;

Engage in entrepreneurial activities, directly or through intermediaries or nominees, represent third parties in cases of the public authority where the public officer works;

Be personally (except when a public officer performs functions relating to the management of State-owned stocks (shares) and represent the State in the board (supervisory board) or auditing commission of a company through an agent or nominee) member of the governing board or any other executive body of an enterprise, financial institution, company, etc, organization, union, association, cooperative which conducts business operations;

Hold more than one office (except scientific, teaching, creative activities, and medical practices as prescribed by the Cabinet of Ministers of Ukraine).

Article 21. Officers' liability

1. Derogation by officers from provisions of the present Section shall be a ground for bringing them to administrative, disciplinary, civil, and criminal liability prescribed by law.

2. Officers who direct other officers or control their performance shall be required, under applicable laws and within their powers, to take measures to ensure observance of the present Law and take appropriate measures to bring to disciplinary liability.

Section IV. RESTRICTIONS WITH REGARD TO OFFICIAL POSITION

1. A subject of ethics may not take advantage of his/her official position to meet his/her personal interests or interests of natural and legal persons linked to him/her.

2. A subject of ethics may not exert an influence, by his/her acts, on natural or legal persons for him/her to receive an advantage, a gift, and other material or non-material gains for making a decision, acting, or refraining from acting.

3. A subject of ethics in the exercise of his/her official duties should act in accordance with applicable laws and taking account of the interests of the society and the State.

Article 23. Using information related to the operation of public authorities, local authorities

1. A subject of ethics shall be required to strictly observe laws concerning the use of information on the operation of public authorities, local authorities, such information being obtained in the exercise of his/her official duties.

2. A subject of ethics should not disclose confidential information which came to his/her knowledge in the exercise of his/her official duties, such disclosure being also prohibited after he/she has terminated performing his/her official duties, or use this information to meet

his/her personal interests or interests of natural and legal persons linked to him/her unless laws provide otherwise.

Article 24. Restrictions on the disposal of official property

A subject of ethics shall be required to perform his/her professional duties so that property, funds, and any other assets as entrusted to him/her are used for the purposes they are intended for. Disposal of official assets for private purposes without valid permission and appropriate payment entails liability provided for by laws of Ukraine.

Section V. PREVENTING CONFLICT OF INTEREST

Article 25. Obligation to prevent conflict of interest

1. A subject of ethics, when acting in the exercise of his/her official duties, shall be required to avoid situations which result in the conflict of interest.
2. A subject of ethics, when acting in the exercise of his/her official duties or when making a decision, may not take into account his/her own interests.

Article 26. Refraining from following illegal decisions or instructions

1. A subject of ethics shall on his/her own assess lawfulness of a decision or instruction and the damage which would have been caused to public interests if such decision or instruction had been followed. Whenever the subject of ethics receives unlawful, on his/her opinion, decision or instruction to be followed, he/she should immediately, in written, inform thereon his/her immediate superior or the body which considers issues related to compatibility of the conduct with provisions of the present Code.
2. If a subject of ethics receives written confirmation that the abovementioned decisions or instructions should be really executed, he/she is required to implement them and, at the same time, inform thereon in written the body which considers issues related to compatibility of the conduct with provisions of the present Code. The subject is not liable for the execution of such decisions or instructions if he/she has informed thereon.
3. If a subject of ethics believes that execution of unlawful decisions or instructions may result in a real risk of jeopardizing interests of the society and the State, he/she is required to inform law enforcement authorities thereon.

Article 27. Ways to prevent conflict of interest

1. A subject of ethics, at the time of appointment to his/her position, shall be required to inform in written the management or the central public authority for the State service on circumstances which may adversely influence his/her impartiality or give the impression of the presence of such influence. Such circumstances consist in any private interests of the subject, his/her close relatives, or any other legal and natural persons linked to him/her who may be influenced by official activities of the subject of ethics.
2. Whenever the management or the central public authority for the State service come to the conclusion that the abovementioned circumstances may exert an influence on decisions,

acts, or refrain from acting of the subject of ethics, the latter should take measures to eliminate such circumstances and, if it proves to be impossible, refuse the appointment to the position or performance of official duties.

If such circumstances occur after the appointment to the position, the subject of ethics shall have the duty to immediately inform thereon the management or the central public authority for the State service and to find the way for eliminating such circumstances on his/her own and, if it proves to be impossible, quit the position or performance of official duties.

Article 28. Behavior of a subject of ethics in case of conflict of interest

1. In case of conflict of interest or if there are reasonable grounds to believe that such conflict is really possible or if there is an impression that such conflict does exist, a subject of ethics has to be guided by rules governing settlement of conflicts of interest which are laid down in regulatory acts defining his/her professional duties and procedure for the provision of relevant State services or activities related to the performance of State functions.

2. If such rules do not exist or it is impossible to apply them, the subject of ethics, after having identified such conflict, shall have to immediately:

Inform in written the body which considers issues related to compatibility of the conduct with provisions of the present Code on the existence of such conflict, circumstances underlying it and advantages he/she or persons linked to him/her can eventually receive as a result of such conflict;

Refuse participating or withdraw from participation in the procedure concerned and, if it proves to be impossible, get rid of private interests giving rise to the conflict of interests or quit his/her position as prescribed by law.

Section VI. RESTRICTIONS WITH REGARD TO RECEIVING A GIFT OR AN ADVANTAGE

Article 29. Prohibition to receive gifts

A subject of ethics may not receive material gains whose value exceeds the cost of gift allowed by laws and which represent an advantage for decisions, acts or refrain from acting by the subject of ethics for the benefit of others.

Article 30. Obligations with regard to receipt of gifts during official functions

Any gifts given to a subject of ethics during official functions as gifts to public authorities, institutions, or organizations may not be considered to be his/her private property and should be transferred to the said authorities within five days from the day on which they have been received.

Official gifts shall be State-owned or municipal property.

Article 31. Right to remuneration

A subject of ethics shall have the right to receive remuneration only for the performance of his/her official duty under applicable labor laws or the agreement with the body the subject of ethics maintains labor relations with.

Article 32. Prohibition to receive an advantage

A subject of ethics may not receive any advantage, directly or indirectly, from legal or natural persons for making decisions, acting, or refraining from acting for their benefit directly by this subject of ethics or by any other officials or bodies upon his/her assistance.

Article 33. Prohibition to request a gift or an advantage

A subject of ethics may not, directly or indirectly, request from natural or legal persons an advantage or a gift for him or her to perform his/her official duties, make decisions, act or refrain from acting for their benefit.

Article 34. The way in which a subject of ethics should behave himself/herself in case of finding a gift or an advantage

If a subject of ethics has found in his/her official premise a gift or an advantage or if such gift or an advantage has been delivered otherwise, he/she shall be required to:

Identify the person on whose behalf or instruction the advantage has been given and motives therefor;

Preserve the advantage and not to use it for his/her own or official needs;

Find witnesses who can attest circumstances under which the advantage has been received;

Immediately stop proceedings in the case the advantage is associated with, and, if it proves to be impossible, suspend execution of the decision taken;

Immediately submit a written report (and, if necessary, an application to law enforcement authorities) and transfer the advantage to the body which considers issues related to compatibility of the conduct with provisions of the present Code or to the body the subject of ethics has concluded a labor or any other agreement with full respect of all established requirements;

Continue performing his/her duties in the manner not to create an impression that the advantage has influenced his/her decision-making, acting, or refraining from acting and, if it proves to be impossible, to withdraw from participation in proceedings in the case in which persons who have given the advantage are involved.

3. A subject of ethics shall immediately inform the body which considers issues related to compatibility of the conduct with provisions of the present Code or the appropriate law enforcement authorities on the offers to give an advantage.

4. A subject of ethics, by his/her acts, should display aspiration for refraining from receiving and giving any gifts, including those which are not undue according to the present Code.

Section VII. POLITICAL AND SOCIAL ACTIVITIES

Article 35. Joining citizens' associations

A subject of ethics, according to his/her beliefs and interests, may be member of a political party or a civil society organization, except restrictions set forth by laws of Ukraine in respect of joining political parties by subjects of ethics as referred to in Article 2, paragraph 1, subparagraph a), of the present Law.

Section VIII. LIABILITY FOR VIOLATION OF THE PRESENT LAW

Article 36. Preventing violations of the present Law

The central public authority for the State service, management of public authorities, institutions, or organizations shall be required to take measures aimed at preventing manifestations of poor ethics on the part of persons subordinated to them, through arranging and providing training with regard to explanation of the present Law, ensuring permanent control of the compliance with the present Law by subjects of ethics.

Article 37. Restrictions with regard to behavior of a person after he/she has terminated performing State functions

Throughout two years after a subject of ethics has quitted his/her position or terminated performing State functions, he/she should refrain from giving his/her consent to represent natural or legal persons in cases proceeded by the body where he/she worked.

Article 38. Management's liability for failure to take measures against manifestations of poor ethics

If the management of the body a subject of ethics maintains labor relations with, detect or obtain information that the subject of ethics concerned disregards provisions of the present Law, it shall be required, within its competence, to take measures to stop such conduct.

Whenever detected acts contain corruption elements, the management of such body should immediately inform thereon any of public authorities in charge of fight against corruption.

Article 39. Liability for violation of the present Law

1. A disciplinary liability shall be established in accordance with Laws of Ukraine "On the State Service" and "On the Service in Local Authorities" for violation of the present Law.

2. The issue of bringing a subject of ethics to justice by way of administrative or criminal proceedings in connection with violation of the present Law shall be established by law.

Section IX. FINAL PROVISIONS

The present Law shall become effective upon its promulgation.

2. The Cabinet of Ministers of Ukraine shall be required to establish Procedure for consideration of issues related to how subjects of ethics adhere to the present Law within three months after the present Law has become effective.