

CHALLENGING CORRUPTION THROUGH ADMINISTRATIVE ETHICS: A CHANGE OF PARADIGM

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The issue of ethics — particularly public sector ethics — remains one of the most contentious and also unexplored areas of work in public sector management. In the context of administrative restructurings and reforms of public sector from recent years, ethics need a wider recognition as an important condition for the effective functioning of the state, for ensuring public trust in the government, and creating conditions for good governance. Even though corruption is considered to be at the moment one of the main problem affecting the functioning of the state, there is no consensus regarding the role of ethics infrastructure as a useful tool in preventing corrupt behavior in the public administration.

In our paper we provide information on the institutional constraints and the shortcoming related to the enforcement of ethical legislation in Moldova. Resulting from our analysis, although Moldovan legislation on combating corrupt behaviour in the public sector is sufficiently comprehensive, the ethical infrastructure is quite weak and insufficiently developed to drastically change ethical climate within state institutions or to encourage to a large extent civil servants' conduct. Therefore, the main conclusion of this paper is that although Republic of Moldova has made significant efforts to build and develop an ethics infrastructure, the mechanisms needed for an efficient implementation are lacking or are weakly developed. The ethical legal framework also needs to be re-evaluated in order to provide a better understanding of the role ethics can play in fighting corruption in the public sector of the state. We also emphasize on the idea that the Government needs to develop and inclusive and systematic approach for combating corruption and reforming administrative ethics.

Keywords: administrative ethics, corruption, ethics infrastructure, code of ethics.

PROVOCAREA CORUPȚIEI PRIN ETICA ADMINISTRATIVĂ: O SCHIMBARE DE PARADIGMĂ

Problema eticii — în special etica sectorului public — rămâne un subiect controversat și insuficient explorat în sfera de activitate a administrației publice. În prezentul articol este discutat rolul reglementărilor în domeniul eticii administrative pentru prevenirea și combaterea corupției, sunt examinate constrângerile instituționale și deficiențele legate de aplicarea codului de etică în serviciul public. Se accentuează necesitatea consolidării infrastructurii etice în sectorul public național ca o condiție importantă pentru construirea unei administrații publice integre, depolitizate, eficiente și necorupte.

Cuvinte cheie: etica administrativă, corupție, infrastructură etică, cod de etică.

“Ethics may be only instrumental, it may only be a means to an end, but it is a necessary means to an end. Government ethics provides the preconditions for the making of good public policy. In this sense, it is more important than any single policy, because all policies depend on it”¹

Introduction. In a world marked by rapid and numerous changes, the State faces the need to adapt its administration as closely as possible to the ever-increasing and multifaceted needs of its citizens. In this context, the role of civil servants remains central. They are responsible for the implementation of laws, they represent, by definition, the servants of their fellow citizens, the trustees of public resources and the guardians of democratic decisions. The law confers to civil servant, in the exercise of his high responsibilities, broad prerogatives allowing him in certain cases to take administrative decisions without being bound by legal rules. To avoid arbitrary use of this power, ethical values and norms are therefore an essential counterweight².

The significance of an efficient, accountable, effective and transparent civil service is recognized by both researchers and practitioners from all around the world. The need to build confidence in governments in the light of the increased concern on corruption and unethical behaviour of their civil servants is a decisive factor for major restructurings in the public sector area. The success of any public policy depends in the first place on the proper functioning of the administration. Corruption and any irregularity in the public service is an obstacle to performance and undermines the legitimacy of the rule of law.

Why the emergence of a discourse on ethics in Moldova’s public sector? In Republic of Moldova the task of establishing an effective system of civil service and its functioning has become increasingly important after the collapse of the Soviet Union and the structural and moral weakness of the government as a whole. One of the solutions was considered to be the creation of a strong moral and ethical basis for civil service as an institution of high social significance on which specific high-level requirements should be imposed.

The transition process to a market economy required the consolidation of the state administrative capacity according to the new development criteria. Continuous change within administration also required a continuous evaluation of the operating culture of the authorities and the behaviour of civil servants. However, besides formal functioning mechanisms, laws and procedures, there were ethical issues to be explored.

Almost three decades ago, the agenda was filled with structural adjustment issues and building the administration required for a democratic state. Nowadays, since the basic legislation has been passed and necessary institutions have been created, more attention can be given to ethical issues of public service and the principles of

1 D.F. Thomson. Paradoxes of government ethics. Public Administration Review, Vol 52, 1992, Cited in the OECD Paper No 14.

2 Whitton Howard. Implementing effective ethics standards in government and the civil service. 2001. <http://www.oecd.org/dataoecd/62/57/35521740.pdf>.

good governance related to it. Therefore, the creation of effective mechanisms for fighting corruption, improving the quality of public administration, developing interaction between civil society and the state requires a theoretical understanding of the process of shaping the moral qualities of civil servants and creating a modern model of moral regulation of public service.

The trust of citizens remains in any state-legal system one of the basic resources for effective social management. Underestimation of this factor by the government of the Republic of Moldova can lead to the aggravation of processes of mutual distrust and pervasive informal relations, which are the breeding ground for destructive corruption processes. In this regard, the overcoming of crisis phenomena, the formation of a modern competitive state, effectively solving the tasks of socio-economic and social development, requires solving the system task of forming mechanisms for the cultivation of ethical principles and values in the public service system.

The current concern for ethics in Moldova's public administration is determined by the huge level of corruption orchestrated in the government itself. Corruption is one of the most serious problems undermining the rule of law in Republic of Moldova. It is commonly admitted that the success of any anti-corruption process is possible only if anti-corruption strategy is systematic and comprehensive, if it is based on both punitive and preventive measures, and if its implementation is supported by a strong and continuous political will³. It is said that is difficult to measure corruption by direct methods, but all national and international studies, surveys and ratings have shown a widespread occurrence of this phenomenon in Moldova.

Corruption in Moldova has gone through several stages over the last decade, from being generally pervasive, to the "politicisation" of the fight against corruption through the elimination of political rivals and business competitors and ultimately to state capture⁴. This process of state capture has been fuelled by the sale of parliamentary votes in the legislature, the flourishing of cronyism, clientelism, and rent-seeking in the executive, the paralysis of the judiciary due to nepotism, and the recent curbing of independent media⁵. Although the direction and intensity of anti-corruption efforts in Moldova remain to be seen, combatting corruption has been among the top priorities of all governments since 2009, and shall remain significant⁶.

According to the 2018 Corruption Perceptions Index reported by Transparency International Moldova is the 117 least corrupt nation out of 175 countries. Corrup-

3 S. Rose-Ackerman, B. Palifka. *Corruption and government: Causes, consequences, and reform.* Cambridge, England: Cambridge University Press. 2016.

4 Transparency International Moldova. *National Integrity Assessment Moldova 2014.* See at: https://www.transparency.org/whatwedo/nisarticle/moldova_2014.

5 C. Gherasimov. *Moldova: The Captured State on Europe's Edge.* 2017. <https://www.chathamhouse.org/expert/comment/moldova-captured-state-europe-s-edge>

6 V. Gribincea. *Moldova: Investigating High Level Corruption — Progress or Illusion?* Chişinău, 2017. <http://crjm.org/wp-content/uploads/2017/07/2017-01-27-Gribincea-corruption-machetat.pdf>

tion Rank in Moldova averaged 97.84 from 1999 until 2018, reaching an all-time high of 123 in 2016. The efficiency of the fight against corruption in Moldova has not improved since 2014⁷.

The issue of ethics — particularly public sector ethics — remains one of the most contentious and also unexplored areas of work in public sector management in Republic of Moldova. Moldavian scholars seem more preoccupied of analyzing corruption and anticorruption policies from the perspective of legal punishment, less attention being given to prevention and even less to the importance of ethics institutionalization in fighting with the plague of corruption.

In the context of administrative restructurings and reforms of public sector from recent years, ethics need a wider recognition as an important condition for the effective functioning of the state, for ensuring public trust in the government, and creating conditions for good governance. Even though corruption is considered to be at the moment one of the biggest problem affecting Moldova's development, there is no consensus regarding the role of ethics infrastructure in preventing corrupt behavior and misconduct.

The ethical dimension of public administration. The question of ethics is one closely linked to human existence involving character traits, ethical conduct and morals of human beings. Various ethical theories try to define what is good or bad, right or wrong to do, and at the same time evaluate bad and wrong from the point of view of values and criteria which are stated by them as ethical and morally reasonable, required and proper to follow. As, in principle, ethics has to do with actions of man, it requires adjustments in one's actions, attitudes, especially in the case of public administration, its management activities, ethical climate in organizations and the administrator's ethical competences in decision-making processes.⁸

Ethical concern, to ensure high standards of behaviour within civil service, is not a new phenomenon. Davis (2009) observed that demands for ethical conduct on the part of politicians and public officials predated the modern concern for the rule of law and can be traced to Greek and Roman times.⁹ The ethical dimension of public administration has engaged the attention of scholars, donor agencies and public servants. Indeed, the preoccupation for ethics in the public sector has become a significant issue in both the developed and developing countries¹⁰.

According to the organizational theory, ethics are conceptualized as important components of organizational culture having an instrumental role in determining,

7 Freedom House. Nations in transit 2017, Moldova Country Profile. Retrieved from <https://freedomhouse.org/report/nations-transit/2017/moldova>

8 D. Ondrova. Challenges of Modern Public Administration and Ethical Decision-Making. Poland Review of Public Administration, 2017, (3).

9 H. Davis. Ethics and standards of conduct. In T. Bovaird, & E. Löffler (Eds.), *Public Management and Government*. New York: Routledge, 2009.

10 J. Ayee. *Public Service in Africa: Ethics: Proceedings of the Second Pan-African Conference of Ministers of Civil Service*. Rabat, Morocco, 13-15 December, 1998.

guiding and informing behaviour¹¹. While the practice, study and understanding of public administration has evolved considerably over recent decades, the concept of „public service ethics” remains fundamental to all aspects of government and administration. Reflecting this, Beck Jorgensen and Bozeman (2007) argue that ‘there is no more important topic in public administration and policy than public values’.¹²

Pursuing the same idea, James Bowman’s (1991) reflexions on the place of ethics in the public sector and the process of decision making results in a valuable judgement about moral choice. He states that “*Ethics is action, the way we practice our values, a guidance system to be used in making decisions*”. Bowman also cautions that it “*exists in the gap between the ‘is’ and the ‘ought,’*” and he points out that public officials “*have many difficult decisions to make. . . Ethical ones are tougher than most.*”¹³ Along this same line of reasoning, Lewis and Gilman (2005) relate the concept of ethics to public service in that ethical principles are guides to action; they operationalize values and cue behaviour befitting public service.¹⁴

As promoted by Cooper (2001)¹⁵ ethics in public administration is not a transient concept but has proven to be an approach which has shown a great deal of sustainability which is fundamental to the area of public administration. Public service ethics are also defined as broad norms that delineate how public servants — as agents of the state, and where applicable, as members of an established profession such as accounting law, etc. — should exercise judgment and discretion in carrying out their official duties.¹⁶ It encompasses a broad and widening range of principles and value which include objectivity, impartiality, fairness, sensitivity, compassion, responsiveness, accountability, equity, professionalism, integrity, efficiency, justice and courtesy.¹⁷ In another definition provided by Svara (2007), “*Administrative ethics refers to well-based standards of right and wrong that prescribes what public administrators ought to do, in terms of duty to public service, principles, virtues, and benefits to society.*”¹⁸ An ethi-

11 G. Hofstede, and G. J. Hofstede. *Cultures and organisations: software of the mind*. London: McGraw Hill. 2005.

12 T. B. Beck Jorgensen, and B. Bozeman. *Public values: an inventory’ administration and society*.” Vol. 39 (3), 2007, p.354-81.

13 J. Bowman. *Introduction: Ethical Theory and Practice in Public Management*, in *Ethical Frontiers in Public Management: Seeking New Strategies for Resolving Ethical Dilemmas*, San Francisco: Jossey-Bass, 1991.

14 C.W. Lewis and S. Gilman. *The Ethics Challenge in Public Service: A Problem Solving Guide*. San Francisco: Jossey-Bass, cop. 2005, 2nd Ed.

15 L.T. Cooper. *The emergence of administrative ethics as a field of study in the United States*. *Handbook of Administrative Ethics*, 2001, pp. 1-36.

16 UNDESA. *Professionalism and ethics in the public service: Issues and practices in selected regions*. New York, 2000.

17 OECD. *Building public trust: Ethics measures in OECD countries*. PUMA Policy Brief no. 4, 2000. Available at oecd.org/gov/ethics/Principles-on-Managing-Ethics-in-the-Public-Service.pdf.

18 J. Svara. *The ethics primer: For public administrators in government and nonprofit organizations*. Boston: Jones and Bartlett Publishers, 2007.

cal civil servant is an honest civil servant, someone who doesn't seek private gain at public expenses, someone who takes decisions based on standards of morality and pursuing the public interest.

Mission of administrative ethics. The mission of administrative ethics is deeply interconnected with the scope of administrative and political authorities of the state itself. By way of illustration, even a brief reflection on the mission of the state institutions, is already an example of the usefulness of such a clarification. To this end, what is the purpose of ethics in public services? What are they aiming for? Clearly, administrative ethics are not aiming at the global action of an individual in all the circumstances of life but, in a narrower angle, the global action of a person in a public professional setting.

What is civil service and what kind of mission is designed to fulfil? Are we talking only of a group of public sector employees who are assigned to the government administrative apparatus and who are conferred the status of civil servants to assume some specific roles within the public authority? Or they are something more than that?

The mission of administrative ethics we are talking about concerns the very nature of the behaviours wanted to be promoted or, conversely, to outlaw in the exercise of the responsibilities and functions of public servants. In such a perspective, as it is desired that the behaviour of the state civil service be at all times legal, ethical and appropriate, it is necessary to postulate, firstly, that at all times the chain of authority must not explicitly or implicitly tolerate illegal, unethical or inappropriate behaviour; secondly, that this applies not only to the concrete attitudes and behaviours of civil servants, but also to the "appearances" that they can arouse in public opinion and in organizations; third, that the management of ethics and "standards of conduct" cannot be limited to observing and controlling behaviours, but also sanctioning them (negatively) if they derogate from a legal standard.¹⁹

Administrative ethics and corruption: Two sides of the same coin? Another reason for giving more attention to the ethics in the civil service is of course the issue of corruption. Deviation from normal standards of ethics takes various forms of corruption and illegal acts in the civil service. Leaving aside the disputable issue of how to define corruption, it is clear that this is a phenomenon that concerns many citizens both in the developed and developing countries.

There is a linkage between the erosion of ethical values and the rise in corruption or its continuation at a greater scale. Corruption of any kind in the workplace undermines sound governance and ethical behaviour. "*Ethical conduct and corruption in the public sector are the two sides of the one coin,*" comments Whitton (2001)²⁰.

19 Pierre Bernier. L'éthique au sein du service public : un aspect de la gestion à moderniser. *Éthique publique*, vol. 4, n° 1, 2002, Available at: URL: <http://journals.openedition.org/ethiquepublique/2497>.

20 Howard Whitton. Implementing effective ethics standards in government and the civil service. 2001. <http://www.oecd.org/dataoecd/62/57/35521740.pdf>.

Frisch (1994) captured this succinctly: “. . . *corruption kills the development spirit — nothing is as destructive to a society as the rush to quick and easy money which makes fools of those who can work honestly and constructively*”²¹. So the public administration literature has called for improved ethics within the field and sets improving the ethical level in the civil service at the top of the reform agenda.

Corruption is one of the hardest issues states have to face in the governance process. Corrupt practices rob governments of the means to ensure a better life for their people, while many in government may feel that exposure of corruption erodes their legitimacy. Corruption is the outcome of decline in ethical and moral values in governance.²²

No one doubts the fact that corruption imposes big losses on society and political order. Corruption (i.e., the abuse of public power for private gains) undermines the legitimacy and effectiveness of government, discourages investment, reduces tax revenues, limits economic growth, and lowers the quality of infrastructure and public services²³. Nowadays researchers of corruption generally agree on that point.²⁴ They also agree that the development of ethical infrastructures in national public administration might improve the situation.

In order to control corruption, we need a higher level of political morality to inspire society and motivate government to pursue the path of integrity and accountability. What citizens want is to see public resources properly managed in a moral way by public officials. This logic is reflected as well in the OECD “Principles for Managing Ethics in Public Service” (PUMA Policy Brief 4 1998) which includes among many others, the following requirements: “*to develop core ethical standards and principles for guiding public service; to create a legal framework for communicating minimum obligatory standards; to ensure commitment by the political leaders to foster ethical climates through high standards of conduct; to establish clear rules of ethical standards to guide the behaviour of public servants in dealing with the private sector; to create an organizational environment that fosters ethical behaviour; to elaborate management policies and procedures that demonstrate commitment to ethical standards; to promote integrity in public service*”²⁵ etc.

21 D. Frisch. Effects of corruption on development. Democracy and Human Rights in West Africa. Cotonou, Benin: Africa Leadership Forum, 1994.

22 UNESCO. Media and Good Governance. 2016. <http://www.unesco.org/new/en/unesco/events/prizesand-celebrations/celebrations/international-days/world-press-freedomday/previouscelebrations/worldpressfreedomday200900000/theme-media-and-good-governance/>.

23 A. Ades and R. Di Tella. Competition and corruption. Working Paper, Oxford University, Institute of Economics and Statistics, March, 1994.

24 R. Klitgaard. Controlling corruption”. Los Angeles and Berkeley: University of California Press, 1991.

25 OECD. Building public trust: Ethics measures in OECD countries. PUMA Policy Brief no. 4, 2000. Available at <http://www.oecd.org/gov/ethics/Principles-on-Managing-Ethics-in-the-Public-Service.pdf>

We can see that the preoccupation for enhancing ethics in national public administration, in establishing ethical infrastructures and adopting ethical regulations for civil servants in order to fight with corruption has become in the last decades an international concern. The obvious linkage between the raise of corruption and the weakness of morality and ethics is not a recent observation and has been supported and proved by many scholars before.

More and more researchers highlight the fact that the issue of corruption is first of all a symptom of „moral decline” and erosion of values in public administration.²⁶ Based on this affirmation, it's reasonable for us to consider that the development of ethical standards and principles to guide civil servants might help building integrity and also act as an anti-corruption tool. The example of some developed countries who have succeeded in creating an efficient ethics infrastructure can serve as an evidence of this affirmation viability. So the question should be not wheatear ethical legislation can be used as a tool in fighting corruption (the answer being evident), but rather what kind of ethical legislative `package` a country should adopt and which are the right mechanisms to make their implementation successful?

A code of public service ethics is a statement of principles and standards about the right conduct of public servants²⁷. Codes of ethics are written to guide behaviour and encourage moral conduct. Pursuing the same line S. Gilman states that „Codes are not designed for “bad” and „dishonest” people, but for those persons who want to act in an ethical way. It is rarely possible for a bad person to willingly follow ethical rules, while most people — especially civil servants — welcome ethical guidance in difficult or confusing situations. The average person is not grossly immoral but often tempted, and sometimes uncertain of what appears to be a virtuous path.”²⁸

Ethics codes are not simply a text. Their role is to exemplify the fundamental principles and values of a public service.²⁹

Questioning the efficiency of ethical regulations as means of combating corrupt behavior. In the field of ethics, rules and codes are still, by far, the most important instruments. During the last decade many countries have introduced numerous new rules and regulations to prevent unethical behaviour and to promote good behaviour. Today, a well-written and well implemented ethics code is seen as a useful instrument that clarifies the values and standards of official behaviour. In the meantime, no administration can afford to have no code.³⁰

26 Idem.

27 Kenneth Kernaghan. Promoting Public Service Ethics: The Codification Option. McGill-Queen's University Press, 1993. Available at: <http://www.jstor.org/stable/j.ctt7zszk7.8>

28 S. Gilman. Ethics codes and codes of conduct as tools for promoting an ethical and professional public service: Comparative Successes and Lessons”, World Bank, 2005.

29 B. Rostein and N. Sorak. Ethical codes for the public administration. A comparative survey. WORKING PAPER SERIES 2017:12 QOG, University of Gothenburg, 2017.

30 C. Demmke. Effectiveness of Good Governance and Ethics in Central Administration. Study for the 57th Meeting of the Directors General responsible for Public Services in EU Member

However, even the most active advocates of codes of ethics recognize that these documents are not as far a panacea for unethical conduct of civil servants. Until now, hard debates are going and many practitioners continue to doubt the utility of codes of ethics in combating misconduct and corruption among public officials. A Schwartz and Cragg study (2000) state that the implementation and enforcement of a code of ethics is a key factor in determining its efficiency. It appears that without effective enforcement mechanisms, legal and administrative provisions on ethics and corruption may appear to be ineffective.

According to Kernaghan K. (1993)³¹, perhaps the most common complaint made by critics of public service codes is that codes of ethics, even if they contain detailed provisions, are difficult to enforce; indeed many codes contain no provision for their enforcement. Second, according to the same author, given the considerable size and complexity of government, it is difficult to draft a code that can be applied effectively and fairly across all departments and agencies. Third, codes can affect adversely the individual rights and private lives of persons whose ethical behaviour is beyond reproach. Fourth, as Kernaghan remarks, certain ethical and value issues (for example determining what measure of risk to the public is acceptable) are not easily amenable to management by ethical rules in general or ethical codes in particular. Fifth and finally, codes are ineffective in dealing with systemic corruption where ‘the organization professes an external code of ethics which is contradicted by internal practices’ and where ‘internal practices encourage, abet and hide violations of the external code’.³²

Advocates of public service codes acknowledge that codes alone are not sufficient to ensure ethical behaviour but contend that codes can effectively promote public trust and confidence in the ethical performance of public servants and make a modest contribution to decreasing unethical practice in the public sector³³.

Pursuing the same line, Menzel D., (2005) states the following “*The conventional wisdom is that codes have a positive influence in governance, especially in deterring unethical acts by ethically motivated public servants. That is, unethical officials are likely to be unethical regardless of whether a code exists, but those who want to be ethical find a code helpful in guiding their behaviour*”³⁴. The most important analysis on the effectiveness of codes has been written by Gilman (2005). According to him codes can only be successful as long as they have clear behaviour objectives. They should

States, European Institute of Public Administration, December 2011.

31 Kenneth Kernaghan. Promoting Public Service Ethics: The Codification Option.” McGill-Queen’s University Press, 1993. Available at: <http://www.jstor.org/stable/j.ctt7zszk7.8>

32 Gerald Caiden. Public service ethics: what should be done?” Ethics in the Public Service: Comparative Perspectives, Brussels: International Institute of Administrative Sciences, 1983.

33 Kenneth Kernaghan. Ethical Conduct: Guidelines for Government Employees. Toronto: Institute of Public Administration of Canada, 1975.

34 Donald C. Menzel. Research on Ethics and Integrity in Governance: A Review and Assessment, Public Integrity, 7 (2), 2005, p.147-168.

harmonize with the mission plans and objectives of the authority. Next, codes should be modest and not promise things they cannot achieve (as ending corruption).³⁵

One of the main weaknesses of codes of ethics, as we mentioned previously, is that in most cases, they are characterized by weak enforcement mechanisms. This means that, on the one hand, they are more vulnerable to non-compliance and violations, and, on the other hand, their successful implementation depends to a large extent on the existence of a strong and efficient ethics infrastructure and political commitment to ensure the public sector adherence to a code. In the same time, while it would seem logical to argue that codes without enforcement are weaker in their effect than those with enforcement, Menzel (2010) suggests that “unethical officials are likely to be unethical regardless of whether a code exists,” but he also supports the idea that those civil servants who want to be ethical will find a code useful.”³⁶

I. Garcia-Sanchez³⁷ in her study tried to answer the question whether or not Ethics Codes are effective tools in controlling corruption. With that aim, the researcher has conducted an analysis of 154 national administrations whose information on ethical codes is available on the UN’s website. The results are not very encouraging. Her findings stress the absence of significant influence of codes on corruption problems in the public context, both in developed and developing countries. Different authors have different opinions on the efficiency of ethical regulations. So, the question about the effectiveness of this instruments remains open.

It is true that the Code of Ethics itself cannot change radically the situation related with corruption in countries where this phenomenon has reached threatening dimensions. But a solid ethics infrastructure, supported by an efficient enforcement mechanism can lead to different perspectives on the efficiency of ethical legislation in combating corruption and maladministration.

The rise of ethics in Moldova’s public administration. The year 1991 is perceived as the year which marked the reorganization and overall reconceptualization of the public sector in the young Moldovan State. Having soviet administrative traditions and legacies as a background for building a new public administration, the new created European state encountered numerous obstacles in adopting and implementing a new administrative style. The subordination of the State administration to political power, the integration of the party administration into the state administration was the essence of the Soviet type of administrative.³⁸ The overall social, economic and

35 S. Gilman. Ethics codes and codes of conduct as tools for promoting an ethical and professional public service: Comparative Successes and Lessons. World Bank, 2005.

36 D.C. Menzel. Ethical Moments in Government: Cases and Controversies. Boca CRC Press, 2010.

37 I. Garcia-Sanchez. Effectiveness of Ethics Codes in the Public Sphere: Are They Useful in Controlling Corruption? International Journal of Public Administration, 34: 190-195, 2011. Retrieved from <http://www.tandfonline.com/action/showCitFormats?doi=10.1080/01900692.2010.532184>.

38 J. Blondel, F. Muller-Rommel, D. Malova et. al. Governing new European democracies. London: Palgrave Macmillan.

political crisis, lack of skills and knowledge, lack of accountability traditions, rigid hierarchy and legislation were just some of the critical issues Moldova had to face at the beginning of its road for development and democracy.

The restructuring of the public service system started with a combination of Weberian bureaucracy and New Public Management (NPM) inspired reforms. The renewal of public administration legal framework in Moldova of 90' represented a time necessity indicated by the collapse of communism system with its full political subordination of the civil service to the political structure of the Communist Party. The civil service was not defined in legal terms and a large number of officials were dismissed from public administration because of their political convinces.³⁹

The Civil Servants Law of 1996 couldn't realize to avoid the politicization of human resources management procedures and the shortcomings, which brought such politicization to the establishment of a permanent and stable professional civil service able to perform the functions of the state. Moldavian public administration reform and the human resource management as an important component of this reform were faced with new challenges of consolidation of new born democratic institutions and the strengthening of legal state. In order to achieve these goals the government approved the "*Reform Strategy of Public Administration*" (1997), which was inspired by the principles of transparency and citizen participation as well as by the government engagement toward the European standards and values⁴⁰. Then, the second attempt of the government was the Law on public function and status of civil servant (2008), which tried to correct the mistakes of previous legislation and establish the civil service system in Moldova based on a meritocratic system⁴¹.

The precautionary behaviour of legislators regarding inclusion of ethical measures in legislation before 2000 is directly connected to changes of political regimes and subsequent changes of values in society. In this context, the motivation for institutionalizing an ethics infrastructure was determined by the external pressure coming from international organizations and the profound crisis of values which characterized Moldovan public service at the beginning of a new century. The rise of an ethical discourse in the Government was also an attempt to answer the crisis of confidence that undermines the credibility of institutions.

The EU integration has been Moldova's biggest political and social aspiration and challenge for nearly two decades. The public administration reform represents one of the country's key challenges and is directly linked to the European integration

39 Agh, A., 2003, „Public Administration in Central and Eastern Europe”, Handbook of Public Administration”, Sage Publication, London, 2007.

40 L. Matei, C. Lazar. Development and Regulation of Civil Service in Central and Eastern European States — A Comparative Analysis in View of Good Governance. IIAS Conference, Helsinki, 2009. Available at SSRN: <http://ssrn.com/abstract=1440099>

41 A. Matei, F. Popa. Meritocratic Aspects Concerning Civil Servant Career. Comparative Study In Central and Eastern European Countries. National School of Political Studies and Public Administration, 2010.

of our country. The EU integration requires as a precondition the establishment of a sufficient administrative capacity and the ability to adopt and implement EU legislation. In order to meet the international standards and respect of shared international standards and norms in the field of ethics, Moldova began to undertake steps to address ethical issues by adopting legislation and establishing institutional capacities.

The theme of challenge and intervention — the challenges posed by the new and ongoing issues surrounding values and ethics and government interventions to address these challenges — is the main common thread. It is the story of a continuous increase in the scope and complexity of issues of values and ethics; it is also the story of multiple efforts for building a professional public service dedicated to the public interest.

Several values of the public service competed for primacy during this period. The concerns about integrity issues shared the spotlight with those about accountability. This awareness is partly explained by the increasing complexity of the public administration and the logical need for civil servants to have a reasonable degree of freedom of decision in administrative matters. The government's response was to adopt a large range of measures that imposed more rules on public servants in performing their duties. This reaction was determined by public concerns about bureaucratic power and, particularly, its abuse. As we discuss below, the relatively greater emphasis on values over the rules since the mid-1990s has given way to a renewed preponderance of rules as a result of government scandals at the turn of the century.

In addition, the goal was to create a responsive public service not only by making it more representative, but also by allowing greater citizen participation in the policy-making process. Finally, the government's response to the public's growing desire to access information and ensure the protection of personal information has laid the foundation for an ongoing debate on the issues of privacy, the protection of privacy and security.

Part of the government's response to the multiple corruption scandals has greatly increased the focus on the concept and management of public service values. This attention was also the result of developments in the private sector. The New Public Management (NPM) movement, which focuses on the application of business practices and values to the public sector, has become increasingly influential. This influence was accentuated by the movement of "organizational culture". Values were presented as the essence of organizational culture and the key to business prosperity. Both movements have had a significant impact on the public service by focusing more on strategic planning, accountability for results, and "professional" values.

The search for these "new" professional values has been accompanied by an increase in awareness of the importance of democratic values such as accountability and the public interest. In its 2002 report, a Committee, made up of deputy ministers, emphasized that values "represent the strongly grounded beliefs or basic preferences that guide our goals and behaviours." This notion of core values on which the rules

of ethics and other rules are based is a constant theme in Moldova's dialogue on public service values.

Concerns related to Moldova's Code of Conduct for civil servants

A well-written and well-implemented code of ethics/of conduct or declaration of values is a useful tool that clarifies the values and standards of official behaviour. In most cases, the code restates and elaborates the values and principles already embodied in legislation. This is useful since the relevant values and standards are generally scattered in numerous legal documents, which makes it difficult to locate the information and to understand the general idea of civil service (Moilanen T, Salminen A., 2006).

In 2008, the Government of Moldova adopted the Code of Conduct for civil servants. The Code sets out the core values that are the essence of Moldova's professional civil service. The adoption of the Code was a milestone in the Moldovan epic toward a values and ethics-based public service. As in any long trip, it is important to take the time to reflect on the path and lessons that can guide us in our next steps.

The Code is a normative act regulating the professional conduct of civil servants having the objectives of creating a climate of trust between citizens and public administration authorities, ensuring the quality of public service, good administration in the realization of the public interest, as well as the elimination of excessive bureaucracy and corruption in the public administration. The main purpose of the Code was to set rules of conduct for the public administration employees according to some standards and ethical requirements, and to make the public aware of the conduct that civil servants should have (Article 1 of the Code).

The law gives no clear explanations or definitions of certain terms on ethics or ethical conduct. It only establishes the main principles to which the civil servants should adhere. These principles have an imperative character and their task is to regulate in a strict way the behaviour of public sector employees. In addition to the principles mentioned above, the Code of Conduct (2008) addresses the issues of conflict of interest, external activities of employees of public administration, and benefits (gifts and favours).

According to the Code, the principles governing the professional conduct of Moldovan civil servants are the following:

- The **supremacy of the Constitution and the law**, according to which civil servants have the duty to comply with the Constitution and the laws of the country;
- **Priority of public interest**, principle according to which civil servants have the duty to place the public interest above any personal interest in the exercise of public office;
- **Ensuring equal treatment** of citizens before public authorities and institutions. According to this principle civil servants have the duty to apply the

- same legal regime in identical or similar situations;
- **Professionalism** — civil servants have the obligation to perform their duties with responsibility, competence, efficiency, fairness and conscientiousness;
 - **Moral integrity** — civil servants are forbidden to seek or to accept, directly or indirectly for themselves or for others, any advantage or benefit in view of the public office they hold or to abuse in any way of the power they have;
 - **Impartiality and independence**, principles according to which civil servants are obliged to have an objective, neutral attitude towards any political, economic or religious interest in the exercise of public office;
 - **Openness and transparency**, a principle according to which the activities of civil servants in the exercise of their functions are subject to citizens monitoring.
 - **Loyalty** — this principle implies that the public servant must be attached to the authority in which he works, meaning that he cannot denigrate, sabotage or defame the image of the public entity. The principle of loyalty relates strictly to the public authority, not to its leaders.

In Article 11, the law specifies that civil servants should not solicit or accept gifts, services, favours, invitations, or any other benefit intended for their personal use, their family, parents, friends, or persons with whom they have business relationships; or of political nature. These “attentions” can influence impartiality and objectivity in the exercise of public functions held.

The principles we mentioned constitute a high-level synthesis of ethical standards for Moldovan civil servants. As such, they are an essential component of the service culture that Moldovan public administration wishes to embrace. In the event of violation of the Code of Conduct, the civil servant is liable to disciplinary, contravention or, as the case may be, criminal liability, depending on the specific rule from which he / she derogated. The Code also gives instructions for avoiding the conflict of interest, including the resolution of these kind of conflicts before or after the employment when the official realizes that such a conflict exists within the authority. According to art. 12 of the Code, the civil servant is obliged to inform the hierarchical superior immediately, but not later than 3 days from the date of the finding, about the existing conflict of interest. The Code doesn't provide a clear definition of the situations causing conflict of interests. In this case, the interpretation of these norms might appear to be a little ambiguous and confuse.

In 2016, the Code suffered some modifications and a new article (12) containing protective measures for civil servants was introduced. The necessity of these protective measures is justified by the fight against corruption and, in this context, the need to protect civil servants who denounce acts of corruption (the presumption of good faith, confidentiality of personal data, and the possibility of being transferred to another job).

Republic of Moldova still equates its efforts of building “Public Sector Ethics” with anti-corruption efforts, limiting its engagement to a minimalist written Code of

Conduct for civil servants. This is a quite narrow and as we have already seen, inefficient way of dealing with the problem. Publishing a Code of Ethics, by itself, will achieve little. Moldovan civil service doesn't need more papers with declarative value, the success formula consists in the right implementation and enforcement of the Code along with other laws regulating civil service integrity. Without effective enforcement mechanisms, legal provisions on ethics and corruption seem to be ineffective.

*“Without enforcement, simply setting limits on behaviour and threatening sanctions is like having teeth without biting. The threat of sanctions will only act as a deterrent where they are sufficient, enforced and respected. Enforcement begins with an assessment of the incentives and disincentives to proscribed behaviour, backed up by independent and adequately resourced prosecution and investigation services. These services need to be seen as being effective to gain credibility, not only in the public service but also in the public at large”*⁴².

Conclusions. Ethical and anti-corruption reforms have become an integral part of public service reform in Republic of Moldova, thanks to government's acknowledgement that public service reforms may be weakened by corruption and other immoral practices.

The existing institutions and legislative measures are capable of stimulating only indirectly ethical behaviour. Ethical code can be considered as a good instrument for enforcing morality and integrity in the administrative system. However, the Code only is not enough. From a general point of view, the vision and clear objectives to be achieved through ethics are missing. Despite the fact that some instruments responsible for addressing ethics were adopted, their value is merely a declarative one. At the same time the promotion of ethical standards is insufficient and the guidelines for applying the ethic code are still missing.

Since 2011 Moldova accelerated the pace of adopting the anti-corruption legislation with an emphasis on promoting a new dimension of ethics within Moldovan public administration but there is still much room for improvement. Due to the frequent legislative changes, there are discrepancies and conflicts between different legislative acts and some legislation which is not precise enough. Many laws don't provide clear accountability mechanisms. These laws say what the public official should not do, but they don't provide proportional sanctions. Therefore, there is a need for reviewing the legal framework from the point of view of its coherence.

An additional problem with the legislation promoting professional and institutional integrity is the implementation. Moldova, for example is one of the few countries in the world which has a Law on polygraph testing. Even though this law exists since 2008 the subordinate regulations that would ensure its implementation are still missing.

Finally, there is a problem of discrepancy in how legal norms are understood and applied. The pressure to comply with EU conditions for visa liberalization and the

42 OECD. Ethics in public service. Paris: OECD, 1996.

association process has contributed to the process of building up the integrity legal framework, but has not so far translated into significant improvements in the public administration, which has remained highly politicized and vulnerable to corruption.

Additionally, as a tool for ensuring integrity and combating corruption, efforts have been made to introduce and establish ethical principles, together with other reforms that aimed at building an ethical, depoliticized, effective, and uncorrupted public administration. However, results of these efforts have been mixed as ethics in the Moldavian public administration has failed so far in becoming a fully effective anti-corruption tool. Irrespective of the adoption of a certain number of laws promoting administrative ethics and a higher level of professional integrity, the level of implementation and actual value of the adopted documents remains generally poor. We believe that the main factors explaining this situation are: (1) the lack of clear understanding of ethics by the national legislator; (2) the underestimation of ethics role in fighting against corruption and other forms of abuse within Public Administration; (3) limitation of efforts with the mere adoption of legal acts having mostly a „declarative” value just for” pleasing” the citizens and for showing compliance with international standards.