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A POLICY APPROACH

CODES OF CONDUCT: BENEFITS AND CHALLENGES

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EXECUTIVE SUMMARY

Everyone might think that public service is unwaveringly based on ethical behavior and actions. To the extent the purpose of public service is to serve the public interest and good and given that ethics is the foundation of the public good, this opinion is unsurprisingly right. Public administration is expected to lead and serve by example, upholding the highest ethical standards for its employees in order to inspire trust. Public servants have this responsibility to the public. Good governance is expected to underlie their work and their behavior is expected to be ethical. Unethical behavior means mismanagement and breach of public trust by public servants. If this happens, the public sense of representation is marred, undermining the very institutions that support democracy.

Creating a culture of ethical service is crucial to justifying this natural approach. While it is an obligation of the public administration itself, a culture of ethics cannot be created by the administration alone. It is created through ethical social behavior, through the contribution of each group or actor of society, as well as through the manifestation of ethical behavior and action to the public eyes. Public trust and confidence in the public administration/governance have been lower compared to the country's religion institutions or civil society as a whole for years.¹ In order to enable a minimum set of rules of conduct and ethical action in the public administration, international organizations suggest the adoption of internal rules of conduct, such as codes of conduct or codes of ethics as a good basis for improving integrity in public administration. These codes are an instrument of integrity at the institutional level that seek to guarantee the enforcement of the law with professionalism and strengthening of integrity in public institutions' activity, with the ultimate goal

of strengthening good governance, the rule of law, and democracy.

The codes of ethics are ethical management tools that aim to provide guidelines for determining acceptable behaviors, defining the framework of behavior and professional responsibility, promoting high practice standards, as well as providing a basis of comparison in terms of public officials' professional ethical evaluation of themselves. These codes determine the appropriate culture in an institution. They build a good name of the institution. Likewise, such codes contribute to the exercise of activity by public officials in accordance with the laws and by-laws, thus contributing to the upholding and strengthening of legitimacy in public institutions.

A code of ethics can promote an environment of trust, ethical behavior, integrity, and professionalism. Acting by the same rules helps common understanding, reduces conflicts, and tends to increase productivity. In such environment, employees are encouraged to speak their mind and contribute by feeling more fulfilled and valued, and consequently to be more productive. Institutions that promote an environment of trust, ethical behavior, integrity, and professionalism are better prepared to face challenges, because they have a very strong base, especially of human resources. Codes of ethics build a good name of public administration. In particular, this helps the administration to be attractive for professional employees and solid partners in the country and abroad.

Albania has embraced the adoption of such codes of ethics as part of the reform on good governance and the reform on the fight against corruption, specifically as part of the Crosscutting Strategy

1 See IDM surveys from 2015 onwards, IDM, Public Opinion Poll: Trust in Governance Report, at <https://idmalbania.org/public-opinion-poll-trust-in-governance-2021/> (accessed in October 2022)

Against Corruption in effect.² The adoption or change of ethical codes in public central or local administration institutions is incorporated as part of the integrity plans within the implementation of this strategy.³ Regardless of an expressed political approach, not every institution has adopted codes of ethics or has such applicable and efficient codes. An analysis of the status of central government institutions shows that most of them have such rules that are not adapted to the current situation or are superficial, or there is no code of ethics or rules on ethics/conduct. Albania's public administration needs to develop and adopt codes of conduct, given that these codes are either missing, are not updated, or are general and do not effectively help to achieve the purpose for which they are adopted.

Finally, a culture of ethics in public administration is not instilled solely through the adoption of acts, such as codes of ethics. If their adoption does not involve all officials and is not accompanied by mechanisms that ensure good awareness of these codes, strengthening the capacity of public administration employees on ethics, monitoring their enforcement, reporting on the implementation of these codes, the culture of ethics will not find the necessary ground to thrive. In this regard, the media, as a means of education and pressure, has an important role to play, bringing to the attention of the public those examples of ethical behaviors that are welcomed, or unethical and unwanted conducts that should be punished in public administration.

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- 2 Decision of the Council of Ministers, No. 241, dated 20.4.2018, "On the Approval of the Action Plan 2018-2020, in Implementation of the Crosscutting Strategy against Corruption, 2015-2020, and the Passport of Indicators, the Creation, Operation and Duties of the Coordinating Committee for the Implementation of the Crosscutting Strategy against Corruption, 2015-2020, and the Inter-Institutional Anti-Corruption Task Force", (amended by DCM No. 675, dated 16.10.2019), includes the measures Strategic Objective A.8 "Systemic use of the mechanism of identification of vulnerabilities for corruption" and Strategic Objective A.9 "Strengthening the integrity of public servants, as well as the drafting, approval and implementation of Integrity Plans in central institutions". See: <http://qbz.gov.al/eli/vendim/2018/04/20/241>
 - 3 Integrity plans are considered as anti-corruption instruments. For more information, visit: <https://idmalbania.org/anti-corruption-instruments-for-central-and-local-government-units-2020/>

1. CODES OF ETHICS, AN INTEGRAL PART OF INTEGRITY INSTRUMENTS IN PUBLIC ADMINISTRATION

1.1. WHY A PUBLIC INSTITUTION SHOULD ADOPT A CODE OF CONDUCT OR CODE OF ETHICS?

Public administration plays a vital role for the country and the public interest, creating and upholding social values, and shaping social relations as a whole. The role of public administration is such that it requires this administration to demonstrate high ethical values and principles, both during the exercise of the duty and in their daily life. Codes of conduct or ethics are as old as antiquity. They include a set of rules that reflect a vision of how public administration is viewed by society and the latter's expectations of administration. Codes of conduct or ethics are some of the most important statements of citizens' expectation. From this perspective, it should be emphasized that a code of ethics is not the final solution to this purpose; it is a desired tool to increase transparency and accountability and guarantee service delivery to the public interest.

As key documents, they can provide the framework that public servants are required to respect when performing their activities. They include expected behavior and unacceptable behavior of a public servant. Codes of conducts/ethics are a guiding instrument for those who wish to have good conduct expected by the public.

These codes are a fundamental mechanism for ensuring the professional integrity of public employees. Not only is the reflection of ethical principles a prerequisite for the decent exercise of duties, but also compliance with the public's expectations for those involved in such positions dealing with public interests.

The codes of conduct or ethics are an instrument of integrity at the institutional level for guaranteeing professionalism and strengthening integrity in the activity of public administration institutions. The development of a code of ethics for a public administration institution is a process which aims to establish the right relation between the

exercise of duty and the increase of public trust in public administration. Even though the principle of legitimacy is designated as the basis for public administration, it is necessary for the latter to respect a general aura that attires its activity in a moral sense as well.

A code of ethics aims to function as a mechanism to guide ethical principles and prevent their violations by public officials. A code of ethics is not an exhaustive act. Rather, it serves as a compass to guide actions, behaviors, and self-control of public administration employees. While a code of ethics aims to guide operations by actually limiting certain actions and behaviors of public administration employees in society, it does not seek to isolate the public officials from society. Indeed, it strives to make officials more respectable and credible in society and, therefore, more acceptable and more willing to serve the society.

A code of ethics addresses moral and ethical dilemmas faced by public officials. Having clarity in solving ethical dilemmas is of paramount importance, especially for any person who is in the service of the public interest. Acting ethically affects the increase of awareness on moral values in the society as a whole. Public officials nurture moral values in society through their decision-making, conduct, and acting by example.

Public officials are required to be professionals of the highest level in the country, with solid background in public law, public policy-making, and service to the public interest. They are required to be legitimate, independent, impartial, and appropriate in the actions they undertake, quick and clear to the public, and avoid serving personal interests, but act to the best of the public interests in their duties. They are required to avoid any influence of interest groups of any nature, except for the public interest. Such values should be shown not only during the exercise of the duty, but also in private life, reflecting that the public official has internalized moral values, not superficial ones that come to the fore only when this official is in

the exercise of his/her duty. Such values are even expected to be reflected even when the public official is no longer on duty. This is the only way a public official can foster public trust in the public institution. A code of ethics also addresses this aspect of showing the behavior of a public servant.

1.2. ADVANTAGES OF A CODE OF ETHICS/ CONDUCT

Effective codes of ethics are not simply a well-intentioned text in the public interest. They include a multitude of legal principles as well as social values. They serve as an excellent accountability reference to measure the activity of public servants, the level of public service of the public administration as a whole, and as a measure of good governance and the level of respect for democracy in the country.

Codes of ethics have a number of advantages. They increase the likelihood that people will behave in certain ways to comply with public expectations. Good codes of ethics can help public servants focus on actions that result in doing the right things for the right reasons. They serve as an essential element in the prevention of corruption in public administration. Codes of ethics do not take away one's moral autonomy, rather add to it by defining the whole set of ethical expected of public employees. Finally, codes of ethics can also function as a professional statement publicly indicating the foundation on which the administration is placed.

1.3. CODES OF ETHICS, AN INTERNATIONAL STANDARDS ON PUBLIC ADMINISTRATION

Codes of conduct/ethics are recognized in international acts against corruption. In 2003, the UN Convention against Corruption envisaged, in some of its provisions, the need to adopt a code of ethics in the public service as an essential element

in the prevention of corruption.⁴

A public institution is required to have a code of ethics also as an obligation stemming from Albania's European integration process in the European Union (EU). Subsequently, the (Progress) Reports of the European Commission assesses the preparation of aspiring countries for EU membership pointing out a requirement to increase the level of preparation of the public administration. This request includes the reform of public administration as well as approval of integrity plans and codes of conduct. The report for the year 2021 refers to the codes of ethics of judicial institutions or even the Supreme State Audit⁵, the one for 2020, just like the report for 2019 or 2018, evaluates the adoption of the code of ethics for public services or the Assembly⁶, etc. Albania has undertaken efforts to incorporate ethical principles as part of reforms aimed at good governance. Integrity instruments, such as integrity risk assessment and codes of conduct, have increasingly become the basis for improving the integrity of public administration in the country, also appraised by the 2022 EC Country Report.⁷

Likewise, the Committee of Ministers of the Council of Europe (CoE) has adopted Recommendation Rec(2000)10 "On Codes of Conduct for Public Officials", on May 11, 2000, with the aim of preventing and fighting corruption. According to this Recommendation, the public servant has the duty to serve the public faithfully, acting in a neutral manner and without obstructing the policies, decisions or lawful actions of the public authorities.⁸ Albania is required to respect the provisions and requirements of this CoE recommendation.

4 See articles 7 and 8 of the Convention at: https://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf

5 <https://neighbourhood-enlargement.ec.europa.eu/system/files/2021-10/Albania-Report-2021.pdf>

6 https://neighbourhood-enlargement.ec.europa.eu/system/files/2020-10/albania_report_2020.pdf

7 <https://neighbourhood-enlargement.ec.europa.eu/system/files/2022-10/Albania%20Report%202022.pdf>

8 <https://rm.coe.int/1680534424>

2. CHALLENGES

2.1. CODES OF CONDUCT OR ETHICS ARE NOT SELF-ENFORCING

A code of ethics is an act adopted to function as an internal act of an institution. However, like any constitution, international act, law or bylaw, Codes of Ethics are not self-enforcing. They need the creation of an enabling environment for their adequate implementation. Therefore, it is required that they be accompanied by a series of actions and institutional commitments. A continuous training system is necessary. If public officials are not clear about the rules and moral values expected of them, regardless that they are to carry ethical values by virtue, the meaning of a rule passes through a subjective assessment, which is not the same for everyone. Trainings are a necessary approach to guarantee common understanding and impose a certain conduct to any official in the public administration, whether civil or political.

Second, an institution must adopt a strategy for communicating ethical values. Communication is an approach that affects the reinforcement of self-control and self-restraint in engaging in unethical actions. It also helps increase transparency to the public about how a public institution operates.

In addition, institutions must have regular monitoring and reporting instruments. Only in this way, appropriate managerial attention is placed on the implementation of the code of ethics and the creation of an institutional ethical culture is possible.

2.2. DRAFTING A CODE THAT WORKS

A code of ethics would undoubtedly be pathetic if it were simply adopted, but not enforced. Such a case would contribute to the opposite purpose of adopting this very code. This would lead to failure to reinforce the non-valuation and inconsideration of service to the public interest as the first and final goal of public administration. A functioning code of ethics shall include the most important values that society expects to see from public administration; also, its content needs to be unambiguous. One of the important issues is to strike the right balance between having detailed rules or not and the level of detail and depth of regulation. It is important

to avoid generalizations, as they are likely to leave room for misinterpretation and therefore serve the opposite purpose from that originally intended for a code of ethics. A good code is one that is easily understood and applied by any official of the institution. Therefore, the content should be written in a way to guarantee this.

A code of ethics must be written in a thorough and inclusive process of discussion. It cannot be a copy of a text drafted and approved elsewhere. Copying such a text only results in having a formal code in the institution, but not internalized enough to be implemented in the future, as expected. Such a code would be an act that would be listed in the institution's acts and in the list of acts that are reported whenever required, but it does not affect the creation of an institutional ethical environment.

It should be emphasized that a code of ethics requires the political will of the leaders of the institution as a necessary precondition for its adoption and enforcement. Likewise, leading by example is many times more effective. Therefore, the involvement of political officials in the process of designing codes of ethics is necessary to show that the institution, as a whole, serves the public. When drafting a code of ethics, behavioral, organizational, and political objectives must be taken into consideration. They should be announced as the key guidelines in the first place. These objectives should be stated as a framework for the content of the code, but also as a reflection of expectations at a more general level, in duration, and at each political level of the country's leadership.

2.3. CODES OF ETHICS IN COUNTRY'S INSTITUTIONS

In 2019, the Ministry of Justice approved the standard template of the integrity plan for both central and local government, as an instrument to prevent and fight corruption. Based on it, since 2019, 11 line-ministries, 13 central government agencies, and 20 local self-government units have approved an integrity plan in their institutions. These plans also include the approval or revision of the code of conduct/ethics of the institution. While such integrity plans are being implemented, still it is needed that

codes of conduct be adopted both in institutions that have approved integrity plans as well as those that do not one yet need adopted one.

2.3.1. CODES OF ETHICS AND TRANSPARENCY PROGRAM

In pursuance of Articles 7.1/b and 7/3 of the Law 119/2014, "On the right to information", codes of ethics, as internal rules of institutional functioning, are required to be part of the internal acts that are made available to the public as public information without request.⁹ Such documents should be included in the institution's transparency program. A template of the transparency program is approved by Order No. 187, dated 18/12/2020 "On the Approval of the Revised Transparency Program", as amended, by the Commissioner for the Right to Information and Protection of Personal Data,¹⁰ both for central institutions and for local government units.¹¹ The inclusion of codes of conduct/ethics in the template of the Transparency Program approved within the framework of Law 119/2014, "On the Right to Information", by the Commissioner for the Right to Information and Personal Data reflects their importance.¹² This request has not been respected in all cases. Also, the research indicates that there have been no concrete measures for cases of failure to abide by this legal obligation.

2.3.2. INDEPENDENT INSTITUTIONS

Referring to the typologies of institutions, it is noted that codes of conduct/ethics, or even rules of ethics as part of internal institutional regulations, have been widely adopted in independent institutions. Out of 20 independent institutions taken in this research within the framework of this policy paper, 12 of them, i.e., 60%, have a code of

ethics in place; 3 of them have no code in place or there is simply no information about it in the transparency program; and in 5 of them, or 25%, ethics aspects are included in a general regulation of conduct. It is worth noting the codes of ethics of some institutions, such as the Code of Conduct for Members of Parliament, the Code of Conduct of the Constitutional Court as well as the Ministries' Code of Ethics, which have considered ethics and have extended to all public institutions and positions.

2.3.3. CENTRAL GOVERNMENT INSTITUTIONS

Significant but insufficient work has been done in central government institutions to adopt effective codes of ethics/conduct. Council of Ministers' Decision No. 830, dated 15.9.2013, "On Approval of Code of Ethics", amended by Decision No. 875, dated 29.09.2021, is an act to be applauded. It extends its scope to all political positions which are outside the scope of the law 9131/2013 "On ethics in public administration". This reinforces what said above, that Albania has widely extended the regulation of the issue of ethics in the entirety of public institutions and positions. However, it results that this code is in need of transforming into a de facto into a functional one. Ways of doing this must include the operationalization of the instruments provided by the code itself, as well as regular meetings on its enforcement. Such meetings must be made public.

Some central government institutions have considered the law on ethics in public administration as the institutional code of ethics. It is this law itself that requires institutions to have internal regulations detailing the rules that are included in institutional ethics. Hence, declaring the law as a regulation or code of ethics is not the right approach. Ministers of state do not have their own codes of ethics. Even when these ministers have a website, a transparency program is missing.¹³

9 Article 7 of the Law No. 119/2014, "On Right to Information".

10 Order No. 187, dated 18/12/2020 "On Approval of Transparency Program, amended", as amended. Visit: https://www.idp.al/wp-content/uploads/2020/12/Urdher_nr.187.pdf. Order No. 211, dated 10.9.2018 "On Approval of Transparency Program for local self-government units". Visit: https://www.idp.al/wp-content/uploads/2018/09/Programi_Model_i_Transparences_per_njesit_e_vetqeverisjes_vendore.pdf. See also: <https://www.pyetshtetin.al/wp-content/uploads/2022/07/Programi-i-transparences-AP-power-point.pdf>.

11 Order No. 187, dated 18/12/2020 "On Approval of Transparency Program, amended", as amended. Visit: https://www.idp.al/wp-content/uploads/2020/12/Urdher_nr.187.pdf. Order No. 211, dated 10.9.2018 "On the adoption of the Transparency Program for local government units". Visit: https://www.idp.al/wp-content/uploads/2018/09/Programi_Model_i_Transparences_per_njesit_e_vetqeverisjes_vendore.pdf. See also: <https://www.pyetshtetin.al/wp-content/uploads/2022/07/Programi-i-transparences-AP-power-point.pdf>

12 According to the model of the transparency program, under "Regulatory legal framework" following Articles 7.1/b and 7/3 of the Law on the Right to Information, this framework includes a code of conduct/ethics.

13 See also: <https://sipermarrja.gov.al/> or <https://riniafemijet.gov.al/>

Among other central government institutions, three ministries do not have codes of ethics or rules on ethics included in the institution's regulations. A ministry declares that it has approved a code of ethics, but the code text is not online. Five ministries need to revise their internal acts on ethics, given that they have:

- » only general internal regulations which partially contain provisions on ethics;
- » regulations for specific categories of officials or specific activities under their scope of work, but not on ethics in the relevant ministry;
- » ethics regulations that need to be updated;
- » recently approved regulations, which are missing detailed rules (in two ministries).

2.3.4. LOCAL GOVERNANCE INSTITUTIONS

Among local government institutions, the situation with the codes of conduct or ethics shows that there is room for improvement. Out of 61 local self-government units, 11 of them, or 18%, have no regulation on ethics, in 10 or 16% there is uncertainty as to whether or not there are rules of conduct or ethics in place, and in 13 or 21% of them there are ethical rules only for some special body of the municipality, such as the municipal council, but a general regulation on ethics is still lacking. These figures indicate the need for special attention to ethics at the local level, at least in the meaning of formalizing ethics rules in local government units.

2.3.5. CAPACITIES ON ETHICS IN PUBLIC ADMINISTRATION

The law on ethics in public administration requires employees to know and enforce the law. According to this law, the human resource department is required to inform newly-hired employees of the obligations arising from this law and which must be respected by them. This department itself is required to have the appropriate skills to advise employees when they are unsure whether or not a certain case is a violation of ethics. The Department of Public Administration (DAP) also need to have

appropriate capacity, as, according to the law it the competent body to offer advice on how to apply the law. This requires that the issue of codes of ethics/ conduct be addressed not only by adopting them, but also by approaching them in a comprehensive manner. Activities with the aim of strengthening the capacity of employees and especially of the human resource departments of public institutions, but also DAP, are necessary to be carried out on an ongoing basis. The Albanian School of Public Administration (ASPA) does not include ethics in public administration through a dedicated regular training package, except for in the induction training.¹⁴ Due to the importance of ethics in public administration, it is advisable to have annual training for all public officials, particularly human resource employees. This can be done through different methods or forms already known and used by ASPA and DAP, including through internet.

Capacity building is a result of a series of commitments, not just training. Discussion forums with civil society and academia are essential for this purpose. These are carried out sporadically and have not affected the entire sphere of public officials. A coordinated plan of activities, with the involvement of all the actors mentioned, with a focus on ethics and preventive measures of its violation would be an efficient approach.

2.3.6. CODES OF ETHICS, AN INTEGRAL PART OF ANTI-CORRUPTION STRATEGY AND REFORM ON PUBLIC ADMINISTRATION

The 2022-2030 anti-corruption draft strategy states that the prevention, punishment and awareness/ education in the fight against corruption are part of the key political goals that enable the achievement of its strategic vision.¹⁵ The approach, which matches that of the current strategy, appears to be the same for integrity plans and, hence, also for codes of ethics.¹⁶ The consistency of the approach is to be evaluated, but it should be accompanied by indicators to measure the effectiveness of codes of ethics/conduct. Otherwise, just having such codes on paper would not serve the intended purpose described in this policy paper.

14 See: <https://aspa.gov.al/>

15 See draft act in: https://www.drejtesia.gov.al/wp-content/uploads/2022/08/DRAFT-_KONCEPT-DOKUMENTI-STRATEGJIK-SNKK-2023-2030_-8.8.2022_AL-1.pdf

16 CoDM nr. 247, dated 20.3.2015 "On approving the intersectoral against corruption", 2015–2023, as amended. See at: <http://qbz.gov.al/eli/vendim/2015/04/15/319>

3. RECOMMENDATIONS

Given the role they have respectively in the fight against corruption and setting standards in public administration, it is recommended that the Ministry of Justice, the Ministry for Standards and Services by virtue of their office, and the Department of Public Administration, as a comprehensive representative for state administration institutions and its role in relation to ethics in public administration, undertake an in-depth analysis to have a clear detailed view of the state of ethics regulation in public administration institutions as a whole. This requires coordination between them. In order to address this issue methodologically, it is recommended to set up a working group including, among others, the institutions under consideration, and to determine a short deadline to assess and identify the needs for improving the regulatory framework on codes of ethics/conduct in institutions. It is advisable that this assessment is made public by publishing. This assessment requires cooperation with other external evaluative actors, including civil society. Likewise, the drafting of a sample code of ethics to serve as a reference for each institution would be a support in the course of drafting and approving effective codes of ethics/conduct.

It is recommended that every public institution undertake concrete actions to approve or reviewed integrity plans so that codes of ethics are part. In the process of enforcing integrity plan, institutions need to commit as a matter of priority to draft or revise codes of ethics/conduct.

It is recommended that transparency programs be improved as soon as possible. When in place, the full text of the codes of conduct/ethics needs to be included in the transparency programs. In cases where they are already incorporated in other acts, i.e., not specific for the institutions, it is recommended that a 'code of conduct/ethics' be placed as a link in the Transparency Program website section and become a part or be included in the provisions that deal specifically with the ethical aspects in the institution.

In relation to the implementation of Law 119/2014, "On the Right to Information", it is recommended that the Commissioner for the Right to Information and Protection of Personal Data

carry out a dedicated monitoring of updating of Transparency Programs by public authorities. Also, it is recommended that the Commissioner initiates punitive measures for non-compliance with the legal requirement to update and complete such programs.

In order to strengthen public officials' capacities on ethics in public administration, it is recommended that training on ethics in public administration is included as a mandatory annual training in the ASPA program. DAP and ASPA need to cooperate in this direction.

Similarly important, it is recommended that institutions approve a communication plan on ethics in public administration. In this direction, the media is recommended to be involved in the processes of strengthening the capacities on ethics in public administration and to engage in the audiovisual dissemination of good examples or violations of rules of ethics in public administration.

Finally, in order to create a culture of ethics, the interaction of public administration institutions, DAP, and the responsible ministries of Justice and on Standards and Services, through various peer review forums, sharing of experiences, and discussions on ethics in public administration, is recommended. Cooperation in this context with academia is as important as with civil society.