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COMPLAINTS: GUIDE TO POSSIBLE INQUIRY PROCEDURES

REPORT FOR
THE COUNCIL OF ETHICS FOR PUBLIC SERVICE

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1. PURPOSE OF GUIDE

The purpose of the Guide is to provide all potential complainants, and those against whom complaints are made, with information about the procedures to be followed by any person wishing to allege a breach of any Article of the Code and the procedures to be followed by the Council of Ethics for Public Service when receiving a complaint. It will cover issues and procedures which are not described, or described in detail by, the Code.

The procedures are devised to reflect international and national good practice in dealing with, and investigating, non-law enforcement complaints. The procedures are intended to ensure, as far as possible, that all complaints and all investigations are undertaken in accordance with fair and transparent guidelines and intended to produce a fair and transparent outcome.

The main principles that govern the Guide are that:

- all those who make complaints will be treated fairly, will be informed of the receipt, decision and outcome of their complaints, and will be provided such confidentiality as is commensurate with Council procedures and investigatory requirements, and the expectations of the complainant;
- all those against whom complaints are made will be treated fairly, will be informed if the complaint is to be investigated, of the allegation, will be afforded the right of representation, will be informed of the outcome of the investigation and the decision of any subsequent disciplinary outcome, and will be provided with the right of the appeal.
- all inquiries will be guided by the principles of an *inquisitorial approach* and not an *adversarial approach*. This means that the inquiry is to investigate the complaints in terms of ascertaining the truth and uncovering the relevant facts. (The inquiry should not look for facts unconnected with the complaint but if facts or other issues are uncovered during the inquiry, then the inquiry will address these.) Inquiries will not be adversarial. This is where the investigator seeks to demonstrate the guilt or otherwise of the person complained about, or takes on the responsibility of providing the complainant's allegation).
- the inquiry works to a civil burden of proof, not the criminal standard of proof. This means that the facts sought will be those that may be used to prove the allegations to the balance of probabilities (that is, to show that the actions or decisions are more likely to be true than not rather than beyond all reasonable doubt). Nevertheless, according to the seriousness of the complaint, the inquiry may seek to establish a wider range of facts and seek to clarify in more detail such facts, to provide a higher standard of proof.
- all inquiries will follow procedural fairness, will be timely, will work within the legal requirements governing inquiries, will afford the appropriate rights of confidentiality, representation, proportionality and reasonableness, will return all reports and decisions.

2. MAKING A COMPLAINT

Anyone may make a complaint to the Council of Ethics in Public Service if they have a reasonable belief¹ that a public official has appeared to have breached the Code. All complaints must satisfy the following requirements:

- The complaint is made by a citizen of the Republic of Turkey and a foreign natural persons dwelling in Turkey;
- the complaint is not subject of any examination or adjudication by other bodies;
- the complaint is made through the means of: a letter; an email or fax; an oral application that is officially recorded;
- the complaint concerns an official who at least holds a post of general manager rank or a rank equal to the level of a general manager in a public body;
- as far as possible, details and documents relating to the complaint and defining person, time and place should be provided (all documentation must be obtained legally);
- the name and surname, the residence and business address of the applicant are provided (for applications by foreigners residing in Turkey, the passport number and nationality shall also be provided).

Any complaint that does not include the information above will not be processed

Complainants should provide appropriate contact details and may expect to provide further information. Complainants should indicate whether or not they wish the complaint to be treated confidentially but they should be made aware that if an inquiry is undertaken, the person complained about may be able to identify the complainant². If there is no appropriate documentation or any other person involved, the complainant may also be invited to present their allegation, as the only person involved, to any disciplinary or other hearing.

Complainants should read the part of the Guide that applies to investigations to understand the process. Complainants will be:

- notified if the complaint does not fall within the remit and informed if the complaint falls within the remit of another agency;
- notified if the allegation requires further information;
- notified if the allegation does fall within the remit but is unsuitable for inquiry (for example, the lack of documentation or the triviality of the complaints);
- notified if the complaint is to be investigated and the outcome of the investigation.

An appropriate timescale will be established for all involved and notified to them. Each investigation should attempt completion within 3 months of first receipt of a complaint as defined by 2. (but this should not be assumed to be final, depending on the nature of the complaint and the progress of an investigation).

¹ Such belief must protect the complainant from legal action if the complaint is not proved; this may require protection in law. Malicious or politically-motivated complaints may also be entitled to such protection if they provide sufficient information that reasonably give grounds for an inquiry. Malicious or politically-motivated complaints with no such basis will not be afforded any protection by the Council.

² Consideration should be given to what legal and employment protection may be offered to any complainant against retaliation or criminal action.

3. INQUIRIES : PROCEDURES

3.1 *Receipt of Complaint*

All complaints will be recorded and allocated a reference number – see Annex 1. All documentation will be attached, with a copy to the complainant who will be provided with a copy of the Guide.

3.2 *Assessing a Complaint*

The Council of Ethics for Public Service has designated 2 members of staff to receive and assess a complaint. The criteria used are as follows:

- Is the complaint in writing?
- Has the complainant provided contact details?
- Has the complainant requested confidentiality?
- does the complaint relate to an Article of the Code?
- Is there documentation or information that appears to support the complaint?
- Is the person complained about, holding the position stated?

If these criteria are met then the Council has the discretion to make the decisions on the basis of the complaint as laid down in the next section.

3.3 *Decisions about the Complaint*

The member of staff may prepare a report that has the following options:

1. Request more information from the complainant (return to 3.2);
2. Decline to investigate as not within the terms of reference of the Code and suitable for investigation by another agency (letter to complainant);
3. Complaint may have grounds for inquiry, but does not fall within the terms of reference (letter to complainant), indicating agency or agencies (letter to complainant and agency);
4. Complaint falls within Code but does not identify the person involved. Request for further information (return to 3.2).
5. Complaint falls within Code – to be forwarded to Head of Investigations.
6. Complaint falls within Code but possibly too minor to justify investigation or that there is insufficient information to identify the official or the offence – to be forwarded to Head of Investigations.

The member of staff should use the standard form provided in **Annex 1** for 1.-6. above and attach any letter to the complainant or another agency to the form.

3.4 *Decision (relating to 5. and 6. above)*

The Head of Investigations receiving a report under 5. and 6. will make the following decisions:

1. That the complaint and any supporting material justifies an inquiry.
2. That the complaint and any supporting material falls within the terms of reference of the Code but confirms the proposal of the member of staff

under 3.3 (6) that the complaint is too trivial or minor for investigation, or the complainant cannot identify the specific official.

In both cases the Head of Investigations will write to the complainant informing them of the outcome. Under 3.3 (6), the Head of Investigations will also write to the official complained about³. In all cases the form in **Annex 1** will be used.

3.5 The Investigation

3.5.1 The responsibility for the Investigation

The Council of Ethics for Public Service must be responsible for all investigations. It must not delegate any inquiry unless the agency/person (i) agrees to follow, or is already trained in, Council of Ethics for Public Service procedures and (ii) works only to Council of Ethics for Public Service authority and requirements on confidentiality.

3.5.2 The Powers of the Investigators

Under the law and delegated regulations, the investigator has the power within a stated timescale to:

- call for any information from any natural person or legal entity, whether based in Turkey, Turkish-owned or foreign-owned, that the investigator deems relevant to the inquiry;
- interview any natural person or legal entity, whether based in Turkey, Turkish-owned or foreign-owned for the purposes of an inquiry.

3.5.3 The Responsibilities of the Investigator

The investigator is responsible for seeking information on the facts and circumstances of the complaint on behalf of Council of Ethics for Public Service. He or she is not the representative of the complainant (trying to prove their allegation) and nor are they a representative of the public service (trying to show the complainant why the complaint is not true). Further they are not adversarial in their work – they are **not** responsible for deciding whether the allegation is true or not. The inquiry is not a trial but the collection and evaluation of information and facts.

The report from the evaluating member of staff and Head of Investigations will indicate the complaint and the section of the Code that is alleged to be broken, with copies of the complaint and any supporting information. The responsibility of the

³ Whether or not the person complained about should be notified is a matter for discussion. On grounds of human rights and natural justice in administrative procedures, a person complained about should know that their activities are to be investigated and that they have various rights, such as right of representation, etc., if, for example, being interviewed during an inquiry by the Council. It is also useful for initial inquiries to confirm that the person was in the location, undertaking the activity, etc., to see if the complaint has some basis in fact. The only time when a person complained about should not be contacted is where the complainant requests confidentiality or provided information that suggests the person complained about may try and intimidate the complainant, or interfere with the inquiry.

investigator is to collect all possible information so that another part of the process – the adjudication process - may decide if that information shows the complaint to be correct or not. The information will come from the complainant, the person complained about and such other sources the investigator considers relevant to the inquiry.

The principles governing the responsibility of the investigator are:

- **Fairness:** both the complainant and the person complained about have the right to present their views in equal amount;
- **Proportional:** the level and length of inquiry should reflect the seriousness of the complaint. At the same time, the investigator should limit the inquiry to the specific complaint and not seek to widen the inquiry on their own initiative;
- **Reasonable:** the requests for interviews, documentation, meetings and so on must be proportionate to the seriousness of the inquiry and should not make demands beyond that (such as the number of interviews, or interviews held in evenings or at the weekend);
- **Timely:** the investigator should estimate the length of time according to the work plan (using the form in **Annex 1**) and only amend the length (with the decision noted on the plan, with reasons) with the agreement of the Head of Investigations;
- **Relevant:** the inquiry should only be concerned with the complaint and only be extended where evidence of other breaches of the Code are also forthcoming (with the decision noted on the work plan, with reasons, with the agreement of the Head of Investigations);
- **Confidentiality:** the investigator must not discuss the inquiry and its progress with any person. The investigator must ensure that all records, interviews and other material are kept under secure conditions. The investigator should ensure that material on computers is secure and any documents used during the inquiry are checked to protect sources;
- **Record keeping:** the investigator must learn to be independent, be determined in the pursuit of information and must not be influenced by senior public officials. The investigator must ensure the confidence of both parties that the inquiry will be impartial and its findings transparent. No investigation should be undertaken where the investigator knows of any actual or potential conflict of interest.

3.5.4 *The Investigation Plan*

All investigations should begin with a work plan as the starting document, building on the form used to receive complaints (see **Annex 1**). The purpose is to try as far as possible to determine the offence, what points need to be investigated to confirm or reject the validity of the allegation (fact-finding), what documents or people are required for examination or interview. It provides a means to record the inquiry progress and record any changes to the original plans (for example, in terms of the work or the length of the inquiry).

3.5.5 *Powers of the Investigator*

The powers of the investigator should be clearly stated so that the complainant, the person complained about, any person from whom information is sought and anyone interviewed is aware of those powers, and their rights in relation to those powers. All investigators must exercise the powers reasonably and proportionally depending on

the seriousness or complexity of an allegation (for example, deciding how many people to interview).

Occasionally the investigator may require expert support. This is to explain the technicalities of a specific action or decision. It is not to take the place of the investigator's role but ensure that the investigator is able to understand any technical or complex aspects of the inquiry, and any interpretations that may be made in relation to the allegation. Procedures should be established to ensure the credibility and independence of any expert support.

3.5.6 *Collecting Documents*

All requests for access to documents and information should be covered by the powers of the investigator. The requests should be made in writing, with an explanation for the request and a deadline for submission. It should be clear if a copy is acceptable. All received documents should be recorded and attached to the work plan (and should be available to the person complained about if they are to be used or referred to in the final report on the inquiry).

3.5.7 *Interviews (verbal and written)*

An investigator will normally need to interview a number of people in relation to the inquiry. All those interviewed should be written to, with an explanation of the allegation, the purpose of the interview and a proposed time. Some interviews may be concluded by telephone or by being asked for a written response to a set of questions, and others by face-to-face interviews. All interviews should be contemporaneously recorded⁴ and a copy sent to the person interviewed to ensure accuracy (especially if used in the final report on the inquiry).

All interviews should be conducted in an appropriate location. All interviews should be conducted to a pre-prepared plan. This should have a factual section (duties, places etc) and an open-ended section where the techniques of conversational management are used to allow the person interviewed to express comments. Interviewers must not lead, direct or pressure those interviewed.

3.5.8 *Representation*

Once a plan is prepared and an inquiry is underway, the person complained about must be notified of the allegation. The person may or may not be interviewed but should have the right to submit a written statement, documentation or the names of those who could be interviewed. All these should be noted in the work plan, together with a note of what use was made of them during the inquiry. If interviewed, the person should have the right of representation.

3.5.9 *Reporting*

Before the final report is prepared, the person complained about should have the right to comment on statements or documents to be used as the basis of the report.

⁴ By note or tape-recorder. Face-to-face interviews should be undertaken by 2 people, one to record and one to interview.

The report is a statement of those facts collected, collated and verified by the investigator as all those relevant to the allegation. The sources must be stated. Only once all the material has been assembled should an investigator prepare a report. An investigator must disclose all the material collated, and not those which support or reject the allegation.

An investigator must not use hearsay information. An investigator may comment on the reliability or validity of the source (for example, the document and/or the person supplying it) but only in terms of the quality, comprehensiveness and relevance of the material on which others may decide whether the complaint was accurate or not. The report should present the circumstances of the complaint and provide the evidence that will allow others whether or not a particular action, event or decision took place. Disputed actions, events or discussions should be clearly identified.

The report may conclude with the investigator's statement on the findings reached in terms of the balance of probability (that is, the complaint is correct or not, on the basis of the evidence collected). This, as stated before, is not a statement of guilt or innocence but a statement that the evidence suggests guilt or innocence. If the former, it is for a disciplinary or other process to adjudicate on the facts as presented by the investigator (and where the person complained about also has the right of representation).

The report should include a general statement on any weaknesses or failings in terms of the Code, procedures, interpretation of conduct, and, so on, that would be used by the Council of Ethics for Public Service's wider roles in general systems studies to improve ethical framework and in research into trends and issues across the public service.

3.5.10 *Adjudication*

After the Head of Investigation has approved the report, the report will go before a full hearing of the Council of Ethics for Public Service. The Council of Ethics for Public Service will adjudicate as follows:

1. No evidence to uphold the complaint;
2. Evidence to uphold the complaint but complaint or offence too trivial to require sanction;
3. Evidence to uphold the complaint.

Under 1. and 2. both complainant and the person complained about will be notified and the file closed. No record passed to the latter's Personnel file.

Under 3. the Council of Ethics for Public Service will convene a hearing where both the Head of Investigator and the person complained about will give evidence. No witnesses or legal persons will be allowed. A quorum will be established for all hearings and a decision will be made on a simple majority. The Council of Ethics for Public Service will determine on the basis of the hearing whether or not a breach of the Code has occurred, and why. It will determine a sanction under 3.5.11. The Council of Ethics for Public Service may mitigate the level of sanction according to the circumstances of the case (such as a mistake as opposed to deliberate intent).

The Council of Ethics for Public Service will add a report to the form in **Annex 1** stating reasons for the decision and the sanction. The decision of the Council of Ethics for Public Service shall be published in summary on the Council of Ethics for Public Service website.

3.5.11 Outcomes

If a complaint is upheld, then the following sanctions should be available:

Level of sanctions	Conditions	Enforcing body
<i>1. Mediation</i>	<i>Attend ethics training course; up to 2 mediation interventions</i>	<i>Line Manager</i>
<i>2. Verbal warning</i>	<i>Up to 2 warnings before written warning issued</i>	<i>Line manager</i>
<i>3. Written warning</i>	<i>Written warning added to Personnel file; after 2 written warnings, sanctions below may be applied</i>	<i>Personnel Office</i>
<i>4 Suspension</i>	<i>From one week to one month; one occasion only before 5.</i>	<i>Disciplinary Body</i>
<i>5. Downgrading</i>	<i>At least one grade; one occasion only before 6.</i>	<i>Disciplinary Body</i>
<i>6. Fine</i>	<i>Between one week and one month's salary; one occasion only before 7.</i>	<i>Disciplinary Body</i>
<i>7. Dismissal</i>		<i>Disciplinary Body</i>

3.5.12 Appeal

All those given a sanction by the Council of Ethics for Public Service have the right of appeal to an appropriate body.

The body may:

- Uphold the decision of the Council of Ethics for Public Service;
- Uphold the decision of the Council of Ethics for Public Service but lower the sanction;
- Uphold the decision of the Council of Ethics for Public Service but raise the sanction;
- Reverse the decision of the Council of Ethics for Public Service and rescind lower the sanction;
- Return to the Council of Ethics for Public Service for failure to follow all the stated procedures.

ANNEX 1: Form for Recording Complaints, Work Plan and Outcome Form

1. INTAKE INFORMATION AND DECISION

Title:	Ref:
Date Received:	Approval for Inquiry:
Start of Inquiry:	Proposed Finish of Inquiry:
Name of Official:	
Position:	
Allegation:	
Code Article:	
Investigator Name:	

2. WORK PLAN
2.1 Details of allegations/ Documents Received
2.2. Code Article/ Points to Prove
2.3 Information Required/ from whom, why

2.4	Action Plan and Dates (for interviews, receiving docs etc.)
2.5	Action Plan Progress/ Revisions (signed and dated for each decision)

3. Adjudication	
Decision:	
Sanction:	
Reasons:	
Signed:	Dated: