

Flawed Legislation Is a Source of Corruption

Analytical commentary

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September 2018

Legislation and regulations - the foundation of the citizen - civil servant relationship

Corruption flourishes when state bureaucracy is not restricted, however it can be significantly limited if the laws are streamlined and specific. Legislation and norms are the key-framework that define the operational processes of state authorities; they determine the organisation and efficiency of public services provided to the private sector, define the interaction rapports between authorities and the private sector, the mechanisms, rights and obligations under this interaction. The regulatory framework specifies the mechanisms that are available to the civil servant in order to provide services to the private sector, including to citizens.

Apart from mechanisms and prerogatives, it is crucial that the obligations of civil servants are very well defined, otherwise they might ignore the requests of the citizens and other representatives of the private sector. Without a clear mechanism of consequences for civil servants not honoring their obligations, without direct consequences for the civil servants that violate procedures and obligations, the state institutions and the civil servants will keep being resistant to a diligent and efficient fulfillment of their duties. In the absence of clear punishment mechanisms that could be initiated by citizens in multiple and simple ways, the civil servant will tend to exploit their dominant position and gain economic benefits. Any deficiency in these relationships is a consequence of the flawed regulatory framework. The flawed regulatory framework is a fertile environment for corruption.

Transparency of data and procedures is one of the key factors for ensuring a sound, corruption risk-free relationship between public authorities and citizens. Lack of clear data, lack of civil servants' willingness to provide data and answer precisely to citizens' requests, making rather general references to the legislation or complexity, is the first sign of a fertile environment for corruption. Restricted access, limited audience hours in public institutions represent another artificial barrier imposed on citizens.

Simplicity of laws and procedures for the private sector is fundamental for a corruption-free environment. Thorny and awkward procedures and complex requirements form an excellent environment for the ill-intentioned civil servants. The inexperienced citizen is confused by these procedures and becomes an easy prey for the civil servant that offers his/her services to 'solve the issue'. Many people have faced the practice of slowing things down, thus forcing the private sector to contribute to a faster 'solving' of their request.

For example, many abstracts and confirmations can be issued immediately from the electronic documentation system. Both the legal framework and the technical features allow this. Nonetheless, civil servants are extremely reluctant to issue the certificate or confirmation immediately, requiring the citizen to come back on another day. Still, most of the

time, in exchange for a 'sign of attention', the civil servant is ready to provide the requested document immediately. In order to save time and effort, the citizen is forced to make use of these unofficial services. Thus, the unreasonably large scoping boundaries allowed by the legal framework to the civil servant provides 'bargaining' opportunities to the latter, without any evidence of flagrant violation of job duties and of obligations towards the private sector.

The flaws and gaps of the regulatory framework make abuse possible and are a fertile environment for corruption.

For this reason, it is necessary to continuously assess the public services, to revise and update continuously the regulatory framework as these deficiencies are identified. It is necessary to keep simplifying the procedures, forms and reports and provide multiple options for the private sector in obtaining services from the public sector. It happens frequently that some authorisations include requirements that are abnormal in relation to the pursued objective and most often these requirements turn to be the object of 'negotiation' between the civil servant and the private entity. These artifacts in legislation and regulations must be eliminated. Such a case is encountered when obtaining an entrepreneurship patent for cleaning services. There is no sound reason why the issuance of the patent for cleaning services, according to the Law No 93 of 15 July 1998 on the Entrepreneurship Patent, requires the notification of the local public authority (which is a permit per se, but it is called 'notification'), similarly to the patent for commercial activities. While for commercial activities this 'notification-permit' makes sense, in order to define the public space where the commercial activity is going to take place (street, park, etc.), then for cleaning activity this step makes no sense at all.

The Government must nurture among civil servants the respect for citizens and the need to be aware that the citizens they serve provide for civil servants' jobs and salaries. The Government does not have a clear policy, a set of rules and principles to be promoted constantly among civil servants. Citizen-centredness must become a fundamental principle promoted by the Government in all state institutions. Moreover, this principle should not be a duty for just the front-office staff. The person primarily responsible for citizen-centredness must be the manager of the institution, who must ensure the ongoing analysis of the processes in the institution, their optimisation, the ultimate goal of which is the faster, more transparent and qualitative service of the citizens and other representatives of the private sector.

The environment becomes fertile for corruption when:

1. Regulations provide for overly complex procedures for the private entities that interact with civil servants.
2. Civil servants have a broad margin of discretion.
3. Civil servants have the right to a subjective evaluation.
4. Requirements are disproportionate compared to the objective pursued by the private entity.
5. There is a lack of clear requirements for authorities to ensure information transparency when communicating with private entities.
6. Civil servants that violate procedures or professional ethics are not punished or the punishment is immaterial.
7. Laws that create preferential situations, unequal conditions on the same markets are breeding corruption.

Key Recommendations

The Government must continuously carry out the following actions:

1. Assess the legal provisions to streamline interaction between the private sector and state authorities. The key objective is to simplify the process for the private sector in the first place and for the civil servants – in the second. Simplifying the process for the civil servants should never disadvantage the citizens.
2. Pass a legal provision prohibiting civil servants and state authorities to request information from the private sector if such data are already available in state institutions. The Government's Strategic Plan should include a point whereby

all state authorities shall modify their operating procedures within one year so that they comply with the aforementioned provision.

3. Adopt a rule according to which all public authorities shall issue any confirmation or certificate immediately and free-of-charge when they already have such information in their registers. The Government's Strategic Plan should include an action whereby all state authorities shall modify their operating procedures within three months so that they comply with the aforementioned provision. Over the last 30 years the private sector has been applying the 'one-minute file retrieval' principle (extracting a file/a piece of information within one minute), which is deemed to be best practice in organising administrative processes. Successful nations take over the top-performance practices and turn them into national goals. 'One-minute file retrieval' must become a fundamental objective related to the operation of public institutions and a performance indicator for their managers.

4. Oblige the public authorities to place the Suggestions and Complaints Register in an unrestricted, visible place, accessible to every visitor and oblige the head of the institution to include in the activity report the analysis of the issue and optimisation of the procedure, so that such deficiencies would not happen in the future. The Government must develop an automated register on its website, where citizens could lodge complaints regarding any public authority, including the possibility to do that anonymously. The authority must be required to provide a public answer, pointing out the optimisation of the procedures. If the applicant leaves an e-mail address, the system should send automatically a confirmation and a number assigned to the complaint, including the receipt timestamp.

5. Continuously check procedures and regulations, to make sure that when private entities approach a state institution, they would have the certainty that the civil servant would treat them in the only way applicable for that specific case. The civil servant MUST NOT have interaction options regarding one and the same case.

6. Ensure that errors committed by public authorities are instantly remedied by them at the request of the private entity. The effort on the side of the private entity must be minimal. Postponing the correction of the error, requests for additional documents, requests for the procedure to start all over again must end up with the dismissal of the civil servant responsible for this.

7. Set mechanisms and procedures by means of which a civil servant will be dismissed if a citizen or private entity submits evidence of a specific case when they were treated in discordance with the procedure, with a delay or when the rights of the citizen were violated. The dismissal must be irrevocable and with no right to reinstatement.

8. Prohibit any amendments to draft legal acts without their prior public consultation. Last-minute amendment of a draft legal act with no public consultation is a direct undermining of citizens' fundamental right as supreme power in the country, is a limitation of citizens' expression of a civic opinion and it is also a practice that ensures that deficient laws are passed, which serve as fertile ground for corruption.

Citizens' Role

The citizens have the civic right and obligation to influence the regulation mechanisms in any area of their interest. To make the promotion of civic interests more effective, the citizens should:

1. Associate into civil non-governmental organisations with common interests and formulate their civic positions on regulation of certain areas and then submit them publicly and directly to the state authorities; demand information and analysis of the suggestions that they submitted.
2. Ask the MPs they elected to start legal amendments.
3. Monitor new draft legal acts in areas of their interest and intervene with adjustment proposals and opinions regarding the draft legal acts that are under public consultation.

