

## ETHICS IN PUBLIC ADMINISTRATION. CASE STUDY – ROMANIA

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### **Abstract:**

*Public services represent useful activities designated to meet a social need. The laws and regulations empower the activities of public services, without indicating the motives for public services. The impact of government in day to day life of citizens and communities is increasingly greater in terms of both public affairs management and budgetary aspect. The power to spend the community resources and to influence the lives of others means at the same time a great responsibility. That is the responsibility to act morally (with integrity) and ensure effective spending of resources. This means not to corrupt and do not let yourself be bribed, but it also means openness to dialogue with stakeholders, internal organizational climate of trust and cooperation, internal procedures to ensure ethical advise. In this sense, in the last 20 years, the public sector has developed legal rules or internal policies, procedures and organizational tools to ensure the integrity and responsible leadership. Public organizations have adopted and applied ethics codes, procedures regarding conflicts of interest, whistleblowing, declaring gifts and other measures to prevent corruption.*

**Key words:** ethics training for public officials, Code of conduct, Civil servants statute

**JEL classification:** K39, K10, K40

### **INTRODUCTION**

Integrity in the public administration is an important condition for the effective functioning of the state, for ensuring public trust in the government, and for creating conditions for sustainable social and economic development. Ethics training for public officials is one of the instruments for building integrity in state institutions and ensuring good quality public governance.

This study presents the findings of a project on ethics training for public officials implemented by the Romanian Government.

According to OECD (1) , the ethics training is a useful tool for strengthening ethics and preventing corruption in public administration if applied together with other tools as part of a comprehensive anti-corruption and pro-integrity policy. Ethics training alone cannot produce sustainable results, especially in countries with high levels of corruption. Ethics training produces observable results only in the long-term.

The main aim of ethics trainings for public officials is to prevent corruption and to provide good public service. Ethics training is provided to public officials in all countries examined by this study, both in countries with high and low levels of corruption. While both groups of countries confirmed that integrity in their public administration is a concern, the challenges they face are of different scale. It appears that countries with lower levels of corruption and with better developed public administration systems provide better ethics training for their public officials (2)

While public service users wish to circumvent the law, officials must apply the law precisely and the discretionary power of public administration should not exceed the provision of laws the public administration should chose the best alternative according to the given situation and beneficiary's requirements.

Since in his official actions the civil servant expresses himself he/she must not forget that he/she is in the service of citizens, public interest. As public officials are the bearers of government discretion, and may often be corrupt or abusive by violating of the rights and interests of citizens, it is necessary that the rules relating to professional conduct and moral public servant, the deontology, to refer both to relations with superiors, with subordinates, the entire staff and the beneficiaries of his work, with other legal entities, including other state institutions, in fact the whole society. The field literature appealed to certain ambiguities in the public administration regarding the boundaries between law and ethics, on one hand and ethics and corruption, on the other hand. Thus, some authors consider necessary to study legal issues such as conflict of interest and to avoid attracting liability under the law, while others bring in question the ethics of decisions made by public chooses that are not covered by legal provisions. Some ethical perceptions are implicit, some are explicit, some are contradictory. However, these principles are based on ethics seen as a virtue and responsibility.

### **VALUES, ETHICS AND CONDUCT IN PUBLIC ORGANISATION**

Although we can notice the lack of consensus concerning the real meaning of concepts values, ethics and conduct - often used interchangeably – we consider that some clarifications are needed here, which can be applied in the context of public service ethics: Values: principles or standards that guide independent concerning that is good and correct; Ethics: rules transposing the ideals and ethos in typical daily activities; Conduct: actions and actual behaviour of civil servants. As the ethos becomes conduct, a transfer from abstract to concrete is in place. The relations between these concepts are still complex and overlapping.

**PRINCIPLES CONCERNING ETHICS IN PUBLIC ADMINISTRATION** (Victor Alistar,2010): Ethical standards must be clear; Ethical standards should be reflected in the legislative framework; The civil servants must receive mentoring concerning the application of ethical standards; The civil servants should know their obligations and rights; The political class must affirm its support for ethical values and support implementation of ethical values; Decision making process must be transparent; A clear set of rules for interaction between public and private sector; Managers need to promote and to behave ethically; Public policies, procedures and practices must be created according to ethical values; Working conditions and the management of human resources should be according to ethical values; Appropriate accountability mechanisms must be implemented; There must be adequate procedures and mechanisms to punish inappropriate behaviour.

### **CODE OF CONDUCT FOR CIVIL SERVANTS (4)**

The rules of professional conduct provided by this code are mandatory for civil servants and persons temporarily occupying a position in civil service, public authorities and institutions.

The objectives of this code of conduct aim at ensuring higher quality public services, good governance in achieving the public interest as well as contribute to eliminating red tape and corruption in government, by (5): regulating rules of professional conduct rules necessary for appropriate social and professional relationships in order to create and to maintain at a high level the prestige of civil service and civil servants; public information on professional conduct of civil servants while to which he is entitled to expect from the civil servant exercising public positions; creating a climate of trust and mutual respect between citizens and civil servants on one hand, and between citizens and public authorities, on the other hand.

Most of the member states have defined their official ethics, i.e. official values and standards of behaviour for the civil servants. (Androniceanu Armenia,2008) We find it useful to make a distinction between a value declaration and a code of ethics. Value declarations are used to announce the core values but they usually do not provide detailed rules on how to adopt these values in practical situations. For example, value declarations generally state that transparency is a core value, but value declaration does not provide guidelines on, for instance, how open civil

servants can be towards the public on matters that are still under preparation. These kinds of guidelines or detailed standards of behaviour can be found from the code of conduct. A code of conduct can be seen as an extended value declaration that transforms the values into practice. (7)

The member states have a number of laws that implicitly or explicitly define their official public-service values and standards of conduct. A legal framework typically consists of the following laws, acts and regulations: - constitutional provisions - penal code - public service law - administrative procedure act - procurement law - laws on secrecy, free information and publicity of information - ethics and anticorruption laws and instructions - conflict of interest provisions. (8)

In Romania, the code of ethics for the civil servants has been approved by the National Agency for Civil Servants, but the effect is minimal. ( Armenia Androniceanu, 2007) The public managers and the civil servants are much more motivated to follow the legal framework and the job description than to make an effort for integrate the ethical values in their daily activities.

Romania is establishing a network of ethic counsellors that is coordinated by National Agency of Civil Servants.

### **PRINCIPLES WHICH SHOULD GOVERN THE CONDUCT OF CIVIL SERVANTS** ( Danielle Bossaert and Christoph Demmke,2004)

According to Art. 3 of the Act, the principles governing the professional conduct of civil servants are as follow: supremacy of the Constitution and law – the civil servants have a duty to respect the Constitution and laws of the country; priority of public interest - the civil servants have a duty to consider the public interest above personal interest only, in exercising of his public duties; assuring equal treatment of citizens before public authorities and institutions - the civil servants have the duty to apply the same legal status in identical or similar situations; professionalism - the civil servants should to perform duties with responsibility, competence, efficiency, honesty and conscientiousness; impartiality and independence - the civil servants should have an objective attitude, neutral to any political interest, economic, religious or otherwise, in exercising public positions; moral integrity – the civil servants are forbidden to solicit or accept, directly or indirectly, for themselves or others, any advantage or benefit in consideration of public office they hold or to abuse in any way by this position; freedom of thought and expression – the civil servants may express and substantiate their views with respect for the rule of law and morality; honesty and fairness - in exercising and carrying out public duties the civil servants must have good faith; openness and transparency - the activities of civil servants can be monitored by citizens.

### **GENERAL RULES OF PROFESSIONAL CONDUCT OF CIVIL SERVANTS** **ACCORDING TO ROMANIAN LEGISLATION** ( Virginia Vedinas, 1998):

a) Providing a quality public service. Civil servants are required to ensure a quality public service for the benefit of citizens, through active participation in decisions and their implementation in practice, in order to achieve competencies of public institutions and authorities. The civil servant should behave professionally and ensure, by law, the administrative transparency in order to gain and maintain public confidence in the integrity, impartiality and effectiveness of public authorities and institutions.

b) Loyalty to the Constitution and law. The civil servants are obliged, through their acts and deeds, to respect the Constitution, laws of the country and work for the implementation of laws, in accordance with their respective functions, in compliance with professional ethics. The civil servants must comply with laws restricting the exercise of certain rights due to the nature of public position.

c) Loyalty to the public authorities and institutions. The civil servants are obliged to defend the prestige of public authority or institution and to refrain from any action which could prejudice its image or legal interests. In this respect, civil servants are forbidden: to publicly express appreciations inconsistent with reality in relation to the work of public authority or institution that operates with its policies and strategies or with drafts of normative or individual acts; to make

unauthorised assessments about the ongoing litigation settlement in the public authority or institution in which they operate as a party; to disclose non-public information in circumstances other than those prescribed by law; to disclose the information to which they have access by their public position, if that disclosure is likely to draw undue advantage or to damage the image of the institution, or rights of civil servants and individuals or legal entities; to offer assistance and advice to individuals or entities aimed to take legal actions against the state or public institution or authority. Disclosure of information that is non-public or submitting documents containing such information, at the request of representatives of other authorities or public institutions is permitted only with the agreement of the public authority or institution. It is noted that the Code of Conduct should not be interpreted as derogation from the legal obligation of civil servants to provide public information of to those interested, according to the law.

d) Freedom of opinion. In performing official duties, the civil servants are obliged to respect the dignity of public office, linking the freedom of dialogue with public authority or institution in which they operate. In their work, public officials are obliged to respect freedom of opinion and not be influenced by personal considerations or popularity. In expressing opinions, public officials must have a conciliatory attitude and to avoid generating conflicts through the exchange of views.

e) Public activity. The relations with media shall be provided by civil servants, appointed for that purpose by the head of public authority or institution according to law. The civil servants appointed to participate in activities or public debates must respect the mandate entrusted by the chief representative of public authority or institution in which they operate.

f) Political activity. In exercising of their position, the civil servants are prohibited: to participate in fundraising for political parties activity; to provide logistical support the candidates for high public office; to collaborate outside employment relationships with natural or legal persons which make donations or sponsorship to political parties; to show, inside the authorities or public institutions, signs or objects with initials or name of political parties or their candidates.

g) Use of own image. In their public positions, the civil servants are forbidden to use their name or image in their advertising activities to promote business or for electoral purposes.

h) Acting in public relations. In relationships with staff of the public authority or institution, in relationships with individuals or legal persons, the civil servants are obliged to behave based on respect, good faith, fairness and kindness. Civil servants have an obligation not to prejudice the honour, reputation and dignity of persons in public institution or the authority by: the use of offensive expressions; disclosure of certain aspects of privacy; formulation of slanderous complaints or accusations. The civil servants should adopt an impartial and justified attitude for clear and effective problem solving of the citizens. Civil servants are obliged to respect the principle of equality of citizens before the law and government by: promoting similar or identical solutions reported to the same class of facts; eliminating all forms of discrimination based on nationality issues, religious and political beliefs, wealth, health, age, gender or other issues.

i) The conduct in international relations. Civil servants representing public authority or institution within international organizations, education institutions, conferences, seminars and other activities have an international obligation to promote a positive image of the country and public authority or institution they represent. When dealing with representatives of other states, civil servants are forbidden to express personal opinions on matters of national or international disputes. In external visits the civil servants are obliged to take an appropriate course of protocol rules and they are forbidden to infringe laws and customs of the host country.

j) The prohibition on accepting gifts, services and benefits. Civil servants should not require or accept gifts, services, favours, invitations or any other advantages, which are designed to them, to their family, parents, friends or people with whom they have business or political relations, that can affect impartiality in the exercise of public functions or can represent a reward in relation to these functions.

k) Participation in decision making. In making decisions, the civil servants are obliged to act according to legal provisions and to exercise their capacity impartially. Civil servants are

forbidden to promise a decision by the public authority or institution, by other public officials and the performance of the duties in a privileged way.

l) Objectivity in evaluation. In carrying out specific public management functions, civil servants are required to ensure equal opportunities and equal treatment with regard to career development for civil servants under their jurisdiction. Management civil servants are obliged to consider and apply objective criteria for assessment of professional competence for staff, when proposing or approving promotions, transfers, appointment or termination of office or material or moral incentives, excluding any form of favouritism or discrimination. It is prohibited to top management civil servants to advantage or to disadvantage the access or promotion in civil service on discrimination criteria based on, family, affinity or other criteria inconsistent with the principles of the Code.

m) Use of exercise of public powers. It is forbidden to civil servants, to use the public powers in others purposes than those provided by law, of that they detained. In the decision making activity of, counselling, preparation of draft legislation, assessment or participation in surveys or control actions, civil servants were not allowed to obtain personal benefits or to produce material damages for others. Civil servants are forbidden to use their official positions or relationships that have been established in a public position in order to influence the internal or external investigations or to determine a specific action. Civil servants are forbidden to impose other civil servants to join the organization or association, regardless of their nature or to suggest that, promising material benefits or professional awards.

n) Use of public resources. Civil servants are obliged to provide care for public and private property of the state and administrative-territorial units, to avoid causing any harm, acting as a good owner. Civil servants are required to use work-time, and property belonging to public authority or institution only for activities related to the civil service positions. Civil servants must propose and ensure the efficient use of public money in accordance with law. The civil servants engaged in publishing or teaching activities are prohibited to use the logistics of the authority or public institution in order to achieve them.

o) Limiting participation in procurement, concession or lease. Any civil servant may acquire a private property owned by the state or administrative-territorial units, subject to sale under the law, except: when he became aware, during or following the performance of duties of the value or quality of goods to be sold; when he participated in the exercise of official duties, at the organization of property sales; when they can influence the sales operations or information obtained from persons interested in purchasing the property.

The above rules shall apply accordingly also in the case of concession or lease of property owned by public or private or state administrative-territorial units. Civil servants are not allowed to provide information on public or private property or state administrative-territorial units, subject to sales transactions, leasing or renting, in other conditions than those provided by law. ( Matei Ani, Popa Florin, 2010)

### **LIABILITY OF PUBLIC SERVANTS**

In accordance with Law No. 7/2004 (art. 24 of Law No. 7/2004 regarding Code of Conduct), the infringement of the Code of Conduct attracts disciplinary responsibility of civil servants according to the law. Thus, the disciplinary committees have the authority to investigate violation of the Code of Conduct and to propose disciplinary sanctions under the law. Where facts meet the elements of offences, they will be submitted to competent prosecution bodies. Civil servants are responsible for the acts committed with violation of rules of professional conduct, when they have created damages to individuals or legal entities.

Disciplinary liability of civil servants is regulated in Chapter VIII of Law. 188/1999 (13), entitled "Disciplinary sanctions and accountability of civil servants."

According to the provisions contained in this chapter, violation by civil servants, with guilt of his duties attracts disciplinary liability, civil or criminal contravention, as appropriate.

Infringement with guilt by the civil servants of duties according to their position and of norms of conduct determines disciplinary actions and draws up their disciplinary liability.

The following determine disciplinary actions: systematic delay in performing the work; negligence in solving work; absences in work programme; repeated failure of the work programme; interventions to address specific demands or insistence outside the legal framework; breach of professional secrecy or confidentiality work; manifestations affecting the prestige of public authority or institution; conduct of political activities during the working hours; refusal to perform duties; breaching the statutory duties, incompatibilities, conflicts of interest and prohibitions established by law for civil servants; direct relationships with the petitioners to settle their claims.

The disciplinary sanctions are: written reprimand; 5-20% decrease wage rights for a period of up to 3 months; suspension of the right for pay grade advancement or, where appropriate, promotion for a period of 1 to 3 years; shift in an inferior public position for a period of up to one year with the appropriate reduction of income; dismissal from public office.

The individualisation of the disciplinary sanction should take into account the seriousness of the misconduct, the circumstances, the degree of guilt and consequences of misconduct, the general behaviour during the service of civil servants and the existence of other sanctions. Disciplinary sanctions shall apply within 6 months from the date of committing irregularities.

According to Art. 72 of Law no. 188/1999 as amended, in the framework of public authorities or public institutions a discipline committee has to exist. Depending on the number of civil servants in each public authority or institution, the disciplinary committee may be set for a single authority or public institution or more. In the discipline committee there is an equal number of representatives appointed by the chief authority or public institution and civil servants' union. In the case that the union is not representative or the civil servants are not organized into unions, representatives will be nominated by a majority of civil servants in that authority or public institution. Disciplinary Commission for senior civil servants is composed of 7 senior civil servants. Disciplinary Committees are competent to investigate the facts and propose disciplinary sanctions applicable to civil servants or public authorities concerned. The constitution of disciplinary committees, composition, functions, mode of referral and their working procedure shall be established by Government decision on a proposal from the National Agency of Civil Servants.

Any civil servant unsatisfied with the penalty may appeal the administrative court requesting cancellation or amendment, of the order or sanction as appropriate. To highlight the disciplinary situation of civil servant, the National Civil Servants Agency will issue an administrative record, according to the database. The administrative record is an act that includes the disciplinary sanctions imposed and not removed by law. (Nemțoi Gabriela, Ungureanu Ciprian, 2010). The administrative record is necessary in the following cases: appointment of a civil servant as a member of the competition commission for recruiting civil servants; appointment of a civil servant as chairman and member of discipline committee; occupying a public office relevant to the class or category of senior civil servants of management civil service; in any other circumstances stipulated by law. The administrative record is issued on request to: 15 civil servant concerned; head of public authority or institution in which they operate; chairman of the discipline committee; others provisions provided by law.

## CONCLUSIONS

The inclusion of ethics training in strategic documents is a positive indicator of the growing recognition of its importance, especially if these documents include implementation action plans, with specific actions, allocation of tasks to responsible institutions, timelines and budgets. However, the strategies may not be sufficient to ensure the practical implementation of the training, especially in countries where such strategies do not establish a legally binding obligation, do not have their own budgets, and where their implementation depends on the budgets of various public institutions. In these cases, it may be useful to establish ethics training as a legal requirement,

at least for some categories of public officials, such as new officials or officials working in sectors with high integrity risks.

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