

1. INTRODUCTION: ETHICS AS AN ELEMENT OF GOOD GOVERNANCE

No instruments or methodologies exist to measure the development of ethical behaviour over long periods of time, although there are reasons to believe that, by historical comparisons, civil servants have become more ethically sensitive than before in such fields as awareness of anti-discrimination, mobbing, gift-taking, political patronage, transparency and accountability. Over the last two decades the Member States have also invested considerable resources in setting ethical standards.

All Member States accept that public-service ethics is important for numerous reasons: public institutions protect our countries from external and internal threats. Governments also employ means – such as the threat of violence – that affect the fate of all of us. Public authorities and specific groups of public employees (judges, police officials, military personnel) may interfere with personal rights. Public officials provide means and goods - such as health care, employment opportunities – that are valued by most citizens. Finally, public officials at all governmental levels exercise control over money granted to the government by the Parliament elected by the citizens. It is especially in the times of budgetary constraints that the public service is accountable for the efficient, effective and ethical management of such funds.

Consequently, public officials and public institutions have many opportunities to significantly affect the wellbeing of our societies. Therefore, we want their actions to be guided by rules and policies that prevent them from acting unethically. “Because in a democracy officials and institutions are supposed to act in our name and only on our authority, we want their actions to conform to the moral principles that we share”¹.

As a consequence, for a long time opinions prevailed that civil servants were linked to the authority of the state and could not be compared to other public employees or to the private sector workforce. They were offered a public law status (at least in most states), in order to link them with the state and with the rule of law and not with the interests of individuals. The public law status originates from the French revolution aiming to establish and guarantee a democratic society based on the principles of the French Revolution (Schulze 2004, 39). In Germany the introduction of the public law status was inspired by the philoso-

1 Amy Gutmann/Dennis Thompson, *Ethics and politics*, Thompson/Wadsworth, Fourth Edition, 2006, p.x.

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pher Friedrich Hegel. In the Elements of the Philosophy of Right Hegel stated that "the civil [servant's] relationship to his office is not one of contract [...] the civil servant is not employed, like an agent, to perform a single contingent task, but makes this relationship [to his work] the main interest of his spiritual and particular existence [...] But the task which the civil servant has to perform is, in its immediate character, a value in and for itself"².

Hegel's idea of the civil servant and the state as such was conceptualized as a Leviathan which stood above the society and citizens. Its main role was to protect the society by enforcing regulations to achieve fairness and to balance the diverging egoistic interests within the society.

The most influential definition of bureaucracy comes from Max Weber³. In his well-known lecture on Politics as a Vocation delivered in 1919, he defined the role of the public officials in the following manner: "The honour of civil servant is vested in his ability to execute conscientiously the order of the superior authorities, exactly as if the order agreed with his own conviction. This holds even if the order appears wrong to him and if, despite the civil servant's remonstrances, the authority insists on the order. Without this moral discipline and self-denial, in the highest sense, the whole apparatus would fall to pieces".

According to Weber, the essence of administrative behaviour is to follow legally given orders. Following this, at a minimal level, administration was considered to be good and ethical if it achieved the implementation and enforcement of the existing laws and policy goals of the Government of the day. Moreover, ethically good or acceptable behaviour was also defined in terms of law obedience, impartiality and standardization. The purpose of rule-orientation was also to achieve fairness and equity, to implement the merit principle, to allocate rights to citizens and to protect public employees against arbitrary administrative deci-

sions. Weber suggested that civil servants should administer without fight, passion and emotion. Communication should be “dehumanised” by eliminating feelings like hate and other irrational and emotional elements. The civil servant should not do the task of a politician: fighting!⁴ Instead, one of the most important obligations of civil servants is to exercise their functions impartially and rationally.

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- 2 Gottfried Hegel, *Elements of the philosophy of right*, Cambridge University Edition, 1991, pp. 328-336 (§ 287-297).
 - 3 Max Weber, *Wirtschaft und Gesellschaft*, Volmedia, Paderborn, 1922, pp. 219-227.
 - 4 Max Weber, *Politik als Beruf*, Reclam, Stuttgart 1999, p. 32.

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The principle of the rule of law is definitely one of the core principles in European administrative law, and it is constitutionally guaranteed in every EU Member State. For instance, in Austria and in Finland the principle of the rule of law is explicitly linked to public administration. According to the Austrian constitution, "The entire public administration shall be based on law" (article 18, subsection 1). The Finnish constitution argues that "The exercise of public powers shall be based on an Act. In all public activity, the law shall be strictly observed" (section 2). In the meantime, the notion of good and ethical administration has changed. It has become broader, more complex and more complicated.

Obedience to authority is the cornerstone of the traditional bureaucracy, and this concept is still alive and doing well in many countries. From the ethical point of view, following the law or the superior's orders is usually not problematic. It still is a very relevant guideline for public officials, as it highlights the importance of the rule of law and loyalty to democratically elected government. However, the problem with the Weberian concept is that as an ethical guideline it is simply too narrow for today's multi-level governance.

Today, the level of awareness is growing that work in the public sphere is much more complex and no longer dominated by the principle of rationality as Weber predicted. In fact, today experts are of the opinion that civil servants should not be seen as cogs in the machine. In reality, work in the public sector is more individual, value-laden, emotional, pluralistic and more unpredictable than ever. For example, modern public officials have much more individual decision-making discretion than predicted by Weber. Excessive adherence to rules may be problematic as such as has been illustrated by many authors⁵. On the other hand, the rule of law and administrative law as such remain the core principles of all administrative systems in Europe

Strangely enough, discussions on the importance of (administrative) law and administrative principles did not play a major role during the heyday of New Public Management. One reason for this may be that administrative law was mostly seen as a constraint that blocks policy choices and reform policies. Too much law as such was also seen as suspicious and an underlying reason for public sector inefficiencies. Consequently, traditional administrative behaviour was held to be rigid, rule-bound, centralised and obsessed with dictating how things should be done – regulating the process, controlling the inputs – but totally ig-

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- 5 Guy Adams/Danny L. Balfour, *In the face of administrative evil: Finding basis for ethics*. In Jay M. Shafritz/Albert C. Hyde, *Classics of public administration*, Sixth Edition, 2008, p. 566; Philip Zimbardo, *The Lucifer effect: Understanding how good people turn evil*, Random House Trade Paperbacks, 2008.

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noring the end results. As a consequence, New Public Management theories were dominated by economic, political and organisational discussions.

In the meantime, the concept of New Public Management has lost a lot of its appeal as the focus on “too much” managerial thinking (and a too strong focus on rational choice theories) is also revealing many negative effects. Therefore, new concepts such as Collaborative Government, Digital Government, Neo-Weberian State or Post-Bureaucratic Government are discussed. Here, the focus is not any more on efficiency and transfer of the private sector model. Instead, it is about the efficiency, effectiveness, coordination, quality and citizen-orientation. In fact, it is all about Good Governance and Good Administration.

Today, the role and limitation of the ethics of neutrality is largely recognised. It is accepted nowadays that individual behaviour is not only determined by rules and policies. Instead, it is also largely influenced by cultural aspects, leadership, fairness perceptions and feelings such as hope, fear, aspirations, etc. Therefore, ethical laws, principles and standards do not cover all areas of human actions, nor do they always help in dealing with ethical dilemmas and personal conflicts. This also suggests that ethically good or acceptable behaviour can be defined not only by focusing on obedience to rules but encompasses also such issues like justice and fairness, leadership, ethical culture and the broader social context of behaviour.

However, given the grand tradition of the “ethics of neutrality”, the role and importance of emotions at the workplace is still widely under-researched and, sometimes, not even recognised in the public sector (Cropanzano/Stein/Nadisc 2011: xiii⁶). Changing behaviours and people is also more than difficult and cannot be accomplished by a simple introduction of new rules, standards and policies. Or, as Follett noted in *The Giving of Orders*⁷, you “cannot get people to

do things most satisfactorily by ordering them or exhorting them; but also that even reasoning with them, even convincing them intellectually, may not be enough (...) For all our past life, our early training, our later experience, all our emotions, beliefs, prejudices, every desire that we have, have formed certain habits of mind ... Therefore it will do little good merely to get intellectual agreement; unless you change the habit pattern of people, you have not really changed your people⁸.

6 Russel Cropanzano/Jorgan H. Stein/Thierry Nadisc, *Social justice and the experience of emotion*, Routledge, New York, 2011.

7 Mary Parker Follett, *The giving of orders*, in Shafritz/Hyde, op. cit., p. 65.

8 Ibid.

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Today, the concept of good administration and good governance is replacing the talk of New Public Management (NPM). Although there are just as many definitions of Good Governance as there are of NPM, the concept of Good Governance includes broader and varied political and organisational principles of management practices. Good governance is also about good leadership, organisational fairness, non-discrimination and an ever increasing set of issues which are considered unethical.

Figure 1. Characteristics of good governance⁹



Whereas efficient government is more about a balanced ratio between input, outputs and outcomes, effective government is about better solutions to problems and challenges (higher health standards, fighting unemployment, reducing environmental pollution), and about higher quality levels (better services for citizens). Good and ethical government is about being good and maintaining and

achieving societal standards (democracy, trust, respect, integrity, civility etc.). Can governance accomplish both? Is doing good the same thing as doing the things right? Can government be effective, efficient and good?

Still, especially the rhetoric of good government is full of good but also conflicting intentions. We want better governance, better leadership, representative and diverse administrations, more flexibility, less hierarchy, more job autonomy, participatory management, effective anti-discrimination rules, more perform-

- 9 United Nations Economic and Social Commission for Asia and the Pacific, What is good governance? See <http://www.unescap.org/pdd/prs/ProjectActivities/Ongoing/gg/governance.asp>, last time checked on 26.3.2012.

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ance, better accountability structures, more transparency, more openness and more citizen-orientation. Consequently, in discussions on good governance, the following factors are frequently mentioned: accountability, transparency, combating corruption and participatory governance¹⁰.

In fact, the concept of good governance and good administration is becoming broader and broader and includes different things such as the call for less administrative burdens, better quality of services, higher levels of citizen satisfaction, more transparency while enhancing efficiency and levels of public trust. Likewise, ethical government is also becoming more complex and expanded from an early focus on anti-corruption and fraud to many other fields, including conflicts of interest, ethical leadership, transparency, accountability, disclosure policies, post-employment etc.

Thus, ethics policies share a number of features with the field of anti-discrimination (and/or diversity). Whereas in the past the concept of anti-discrimination focused on equal opportunities, equal treatment and equal pay, today it encompasses a much wider field and includes the fight against discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation (Art. 10 TFEU). The case law of the EJE in the field of age discrimination includes an impressive number of important and complex judgments.

According to Salminen, we are moving from a minimalist concept to a maximalist concept of good and ethical governance¹¹. Salminen argues that the “minimalist concept involves the minimum requirements for ethically acceptable governance, whereas the maximalist concept aims at enriching our understanding of what ethically good and high quality governance involves or could involve. The minimalist concept of ethical governance states absolute prohibitions that public

authorities and civil servants are forbidden to violate in all circumstances. They include prohibitions of all forms of corruption (e.g., bribery, graft, and nepotism), extortion and coercion, deception, theft, and discrimination (....). The maximal concept of ethical governance additionally invokes positive commands, such as 'Be fair and impartial', 'Safeguard the well-being of citizens', and 'Take good care of the administrative tasks entrusted to you'. Furthermore, the maxi-

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- 10 Sam Agere, Promoting good governance. Principles, practices and perspectives. Commonwealth Secretariat, 2000.
 - 11 Ari Salminen (Ed.), Ethical governance, University of Vaasa, 2010, p. 32.

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malist concept specifies positive characteristics of a good authority or civil servant, such as diligence, kindness, patience, and humaneness¹².

This study is about the question whether the move towards a new and more complex concept of ethics and governance is effective. Is it better than the traditional concept of the “neutrality of ethics”? Is ethical behaviour improving? Are newly designed instruments effective? Or, perhaps we are expecting too much? Are we becoming too demanding? Is it possible to have too much ethics?

As we will see throughout this study, we cannot offer a ten-steps-to-success handbook. However, we will try to analyse the existing challenges as thoroughly as possible. This study presents an overview of ethics policies' effectiveness on central administrative level, the main reform trends and the main outcomes of selected national reform policies in the field of ethics. The overall aim of this work is to provide empirical evidence, facts and comparative statistical evidence in order to help experts and scholars better understand the nature of reforms and the changes that are taking place. This alone is risky business, since ethics policies are very complex and technical. Thus, any comparative study faces the risk of being far too superficial. Hence, this study relates to basic research which may be considered a good point of departure for a more specific study of the different instruments and issues, such as those related to leadership, post-employment and whistle blowing issues

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12 *Ibid.*

13 For more information about the network, see <http://www.eupan.eu/>, last time checked 26.3.2012.

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