



The right to good administration

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The rights, duties and responsibilities of public officials

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Introduction

The political and economic changes of recent years have engendered new challenges for public administrations, in particular those requiring that they adapt to the increasing globalisation of the economy and the rest of public affairs, ensure economic growth but also social development and welfare, and modernise administrative structures by mastering the new information and communication technologies and bringing the administration closer to citizens, while at the same time providing them with high quality services.

Governments have to rely on a responsible, effective, efficient and open public administration at a time when there is no consensus as to what the State should be doing or on management methods, and civil society is emerging with unprecedented strength.

In this changing context public officials carry out their duties and are subject to pressures resulting from increased monitoring and greater expectations on the part of citizens and politicians, since the basis of the legitimacy of public action seems to be changing. It is because of this that we are now seeing the emergence or re-emergence of certain concepts better able to survive and be operational in the new situation, in particular that of good administration (hereinafter GA).

The concept of GA is a conceptual and practical challenge for public administrations and their officials. This report seeks to shed some light on the way GA affects the rights, duties and responsibilities of public officials. In this connection and in order to open the debate, three subjects will be put forward for examination: the concept of the infrastructure of GA; the need to consider GA as a public policy with both internal and external dimensions; and, lastly, the fact that the status of public officials is seen in the light of GA while, at the same time, it is becoming an essential tool for its own implementation.

I. – GA as a public policy

Strictly speaking, considering GA as a public policy stems from the concept of GA.

One formulation of GA, although based on the institutions and bodies of the European Union, appears in Article 41 of the Charter of Fundamental Rights of the European Union. Under the terms of this article it is the impartial, fair handling of a person's affairs within a reasonable time by public institutions and bodies. This concept, conceived as a right, includes:

- the right of every person to be heard, before any individual measure which would affect him or her adversely is taken;
- the right of every person to have access to his or her file, while respecting the legitimate interests of confidentiality and of professional and business secrecy;
- the obligation of the administration to give reasons for its decisions.

To the right to compensation for harm caused by institutions or their officials in the performance of their duties, and still with respect to EU institutions, should be added the right to address the institutions in one of the languages of the treaties and to receive a reply in the same language.

According to this concept, it can be noted, firstly, that GA is composed of a set of rights with normative effect, at the same time having a still more important role, namely creating a sort of philosophy of management enabling on-going debate on, and possible reformulation of, public objectives, their management (in terms of procedure and means) and the position of citizens. People's expectations and preferences are becoming more and more important for public bodies, just as their participation is permitted, even required, from a procedural point of view. This gives rise to two ideas about the application of GA: the first is that it is a permanent process of integrating adaptation and change, and the second that this process should include communication and participation both internally and externally.

In this context, and without condemning other approaches, GA provides a functional view of public institutions and bodies, which leads to another necessary debate: the conditions for its application to the various sectors of activity managed in ways akin to those of the market.

There is also a further aspect that increases the complexity of the issue: GA consists of a horizontal, multi-directional public policy since it concerns:

1. All administrative services and bodies, although in different ways according to the specific characteristics of each.
2. All fields of activity (sovereignty, social welfare, economy, justice, intervention in public administrations, etc).
3. The phases affecting the analysis of public policies (for example, formulation, implementation, evaluation, etc)
4. Persons (general discussion focuses on "external" persons, but it should not be forgotten that GA has an internal aspect, since its application should be envisaged with respect to people working in public administrations).
5. The legitimacy of public action, whether institutional or simply economic or connected with yields, which deserves special attention.
6. All the factors that can be identified in administrative analyses: organisation charts, economic and material resources, management methods and the ways of producing and distributing information and communications, and human resources. It goes without saying that very special attention will have to be given to this last – human resources.

II. – GA and the rights, duties and responsibilities of public officials

II.1. The civil service and its status: a few values and principles to be considered

These principles and values flow both from the criteria that should govern relations between administrations and citizens and from GA and the status of public officials.

II.1.1. The principles governing administration/citizen relations

These principles may be taken as being those listed in the European White Paper on Governance, namely:

- a) Openness
- b) Participation
- c) Responsibility
- d) Efficiency
- e) Coherence

To these principles should be added those of GA.

II.1.2. The principles flowing from GA

GA as defined in the Charter of Fundamental Rights is based on a set of general principles (legality, non-discrimination and equal treatment, proportionality and coherence), which should be supplemented by a number of guidelines for administrative good conduct⁹⁴ (objectivity and impartiality, as well as providing interested parties with information on administrative procedures within the time set for the specific procedure).

From the operational point of view, these principles can be organised as follows:

- a) Those concerning the rights of the parties concerned by the procedures and information, such as the hearing of all the parties directly concerned by the procedures, the duty to give reasons for decisions and, sometimes, the duty to indicate appeal procedures.
- b) Those that lay a duty to respond appropriately and as quickly as possible to requests from the public, with respect, for example, to requests for copies of legislation, receipt of correspondence and replies to it, telephone calls, emails, etc.
- c) Those that lay a duty to protect personal data and confidential information.

⁹⁴ It is useful here to take into consideration the information provided in the Code of Good Administrative Behaviour drawn up by the European Commission in 2000.

- d) Those concerning the possibility of complaining to the relevant administrative authority or the mediator/ombudsman in the event of failure to respect the rights to GA.

II.1.3. The principles and values flowing from the status of public officials

First of all, an operational concept of public official is needed. The Council of Europe has set out a reasonable definition on several occasions⁹⁵. In the Appendix to Recommendation R (2000) 6, the term “public officials” is defined as “any members of staff, whether statutory or contractual, employed by State authorities or departments whose salary is paid out of the State budget, excluding elected representatives and certain categories of staff in so far as they come under special regulations”. Thus, despite the broad definition, it does not cover the performance of tasks or provision of services by private companies paid out of public funds, so these are not covered. I will take this concept as my starting-point in the following paragraphs.

It should be noted that the reform of public management undertaken in almost all countries has involved a transfer of responsibilities with respect to decision-making and resources to various management bodies, public or private⁹⁶. Although this situation has enabled ministries to adopt the practices most appropriate to their needs, by strengthening the responsibility of managers and improving the results of resource management, there is also a fear that a coherent vision of the civil service, public-spiritedness and the traditional values of the public service will gradually disappear, particularly those based on professional socialisation.

It is because of this and the wish to maintain coherence in the ethics of the civil service that attempts are being made to establish a set of principles generally applicable to public services as a whole that can then be developed fairly independently to meet the particular needs of each part of public organisation. In fact, many countries are trying to define overall values in order to promote them in the public services. These values are on the whole very homogeneous, and their definition, sometimes in the form of codes, is designed explicitly to indicate the behaviour expected of public officials. According to OECD surveys (2000), countries are re-emphasising so-called “traditional” values and at the same time giving them a modern content and adding “new” values closer to the requirements of a public sector ever more focused on results. According to these surveys, the essential values on which the public service is based are as follows (based on how frequently they were mentioned by the countries surveyed):

- Impartiality
- Legality
- Integrity
- Transparency

⁹⁵ For example, Recommendation R (2000) 6 of the Committee of Ministers to member states on the status of public officials in Europe, and Recommendation R (2000) 10 of the Committee of Ministers to member states on Codes of Conduct for Public Officials.

⁹⁶ Usually the transfer of responsibilities is from central management bodies to operational ministries and agencies within ministries, from central government to local authorities, and from the public sector to private sector sub-contractors. (OECD, 1996)

- Efficiency
- Equality
- Responsibility
- Justice

It is interesting to note that these findings are very consistent with those of other OECD studies⁹⁷ and the latest recommendations on public officials made by the Council of Europe⁹⁸ and the reforms undertaken by the European Union⁹⁹. It is clear that the public administration has to act within the Rule of Law, be neutral and loyal to democratic institutions and citizens, and that its officials should have a number of characteristics such as, for example, the required qualifications (personal qualities as well as education and training), a dynamic vision of participation and attentiveness to the duties and obligations incumbent on them as public servants¹⁰⁰, as set out in the following paragraph.

II.2. – Rights, duties and responsibilities in the light of GA

The various Council of Europe recommendations on public officials will be used as a reference framework for rights, duties and responsibilities, particularly Recommendations R (2000) 6 and R (2000) 10, and on the basis of this framework a number of aspects will be noted for consideration in the light of GA in the general context of the reform of public services at present under way.

First of all, it should be noted that GA should not only be applied to relations between public officials and citizens (the external dimension), but also to relations between public officials and the various public administrations in order to regulate aspects concerning their status (the internal dimension). This is all the more important since a large proportion of the conflicts and problems public officials encounter (as they perceive them) result from questions connected with the internal management of their status and particularly from rights as to remuneration and promotion. This aspect is barely covered by the reforms with which I am familiar and yet is one of great practical importance. Moreover, this seems still clearer when one remembers that

⁹⁷ OECD (1996, 59-60) describes the key-values for various countries and one finds, for example, that Australia gives precedence to receptiveness, attention to results, personnel management based on merit, probity and integrity of behaviour and a strong feeling of responsibility, while the Netherlands stresses impartiality, competence and professionalism, reliability, loyalty and transparency. Portugal's essential values are public service, legality, neutrality, responsibility, competence and integrity, while the United Kingdom enumerates seven principles for public life: selflessness, integrity, objectivity, accountability, openness, honesty and leadership.

⁹⁸ Articles 4 to 11 of Recommendation (2000) 10 set out the general duties incumbent on public officials (respect for the law, hierarchical superiors and professional ethics, loyalty, honesty, impartiality, conscientiousness, fairness and justice; working in a politically neutral way, only in the public interest and being courteous towards all those with whom they come into contact, etc.)

⁹⁹ For example, in the proposed Council Regulation amending the Staff Regulations of officials of the European Communities (see COMMISSION 2002), the second preambular paragraph stresses a European public service characterised in particular by the principles of competence, independence, loyalty, impartiality and permanence.

¹⁰⁰ All these characteristics are drawn from Recommendation R (2000) 6 of the Council of Europe.

public officials are also citizens acting within the administration as internal clients/citizens. However, staff regulations are usually designed to guarantee application of the principles of GA with respect to persons wishing to apply for posts in the civil service.

Furthermore, one cannot speak about the status of public officials without mentioning the reform processes under way in some countries and the European Union that are seeking, in most cases, to cover five major areas:

- a) Making promotion dependent on performance.
- b) Creating modern working conditions and ensuring equal treatment.
- c) Maintaining ethical and professional standards.
- d) Simplifying the status of public officials.¹⁰¹
- e) Improving management procedures, recruitment methods, career structure and development, and staff assessment, as well as social and training policies. These procedures and methods should correspond with the standards of a dynamic, transparent, efficient administration that wishes to serve citizens.

II.2.1 – Rights

Public officials are citizens and should as far as possible have the same individual rights as other people. The various inalienable rights of public officials include individual rights (freedom of expression), political rights (participation in political life), collective or union rights¹⁰², social rights (protection against accident and illness, etc) and certain specific rights (promotion, remuneration and training). I shall therefore try to look at some of these rights in the light of GA, if possible in the internal and external dimensions mentioned above.

- a) Access to the public service or recruitment

Recruitment based on GA principles should respect the principles of transparency, access to information, clear and efficient procedures and reasoned decisions (which necessarily lead to observing good practices, planning competitive examinations and selection procedures based on equal treatment of all candidates, speeding up recruitment procedures, abolishing certain discriminatory rules, such as age limits, etc). It should also be noted that examinations should include GA-related values since what is needed is to change the culture through effective socialisation.

- b) Promotion

This is a right developed particularly in closed or career civil services.

¹⁰¹ A remarkable example of reform is under way in the European Union under the aegis of the Commission. See COMMISSION (no date) for details.

¹⁰² Both political and union rights receive special mention in Council of Europe Recommendation No. R (2000) 6 since in some countries they are limited or even prohibited; while accepting that these rights may be restricted, it is considered that, if this is to be the case, it should be within the bounds of what is necessary for the smooth running of civil services.

Career management should give precedence to services rendered according to an evaluation or assessment system based on merit and be less dependent on length of service. In this area GA could be extended to the following: introducing more transparent and objective procedures for appointments to vacancies; introducing evaluation procedures generally based on merit¹⁰³ but also able to measure observance of GA principles in the work carried out, which would mean including it in job descriptions¹⁰⁴ and objectives; compulsory mobility for certain “sensitive” posts, etc.

c) Remuneration

Public officials should receive adequate remuneration, the precise salary being linked primarily to the tasks entrusted to them. From the point of view of GA, there should be compliance with principles similar to those defined with respect to promotion, without neglecting non-discrimination. The task evaluation system should be drawn up by establishing a number of indicators, also GA-related, to be applied to the particular post. It is important to be aware that inadequate salaries may increase the risks of corruption or involvement in other, incompatible, activities.

d) Training

Training is a right, but also a duty, closely associated with various human resource management activities concerning principally access and promotion. It is obvious that training should be managed in accordance with GA principles and, in order to go further, these same principles should be the subject of specific activities forming an integral part of programmes. The importance of training as a tool for transmitting cultural change is clear. Similarly, care should be taken that there is no discrimination between public officials as regards access to training during their careers.

e) Protection of public officials

As the above-mentioned Recommendation R (2000) 6 provides, “A legal remedy before a court or other independent institution should be available to public officials for the protection of their rights in relation to their employer”.

II.2.2. – Duties

In most European countries public officials have certain specific duties, in particular respect for the rule of law, impartiality, discretion, integrity, loyalty and neutrality. These duties are essential to the public service (cf point II.1 of this report). Obedience to hierarchical superiors should also be emphasised, something that is a problem in some countries if the instructions received are manifestly illegal.

¹⁰³ The evaluation system should assess the official’s performance, aptitudes and conduct.

¹⁰⁴ All job descriptions should include the profile (duties and responsibilities to be assumed), environment (the factors and circumstances connected with the post influencing working conditions) and job requirements (education, training, knowledge, experience and abilities regarded as essential for the job).

Other duties may also be cited, such as the duty to comply with rules on incompatibility which, as is well known, are linked with the neutrality of the service, the level of officials' remuneration, the question of corruption and the confusion between officials' private interests and public interests. All this may affect GA, and there are therefore provisions in staff regulations which should be simplified or clarified. For example, conflicts of interest should be avoided (working public officials should not deal with any matter in which they have a direct or indirect personal interest, in particular a family or financial interest), and not only for currently serving public officials but also for former civil servants a transitional period should be set during which they may not exercise another activity which may give rise to a conflict of interest. It is therefore necessary to clarify what is meant by "external activities", "political duties" and "commercial interests" and to consider that incompatibility criteria may be more strict or flexible according to the socio-economic and cultural context in each country.

Similarly, in many corpora of staff regulations certain limits are placed on transparency and freedom of expression. Under differing formulations, a duty is laid on public officials not to make any comment that might compromise the dignity of their posts and to be discreet about facts and information of which they have become aware in the course of their work.

To conclude, I should mention the novelty and importance of certain measures against harassment-related behaviour, absences from work, and those that stress factors closely related to GA such as respect for the public and concern for citizens in the provision of services.¹⁰⁵

II.2.3.- Responsibilities

The consequences of imperfect performance of the tasks entrusted to public officials and failure to respect their duties may lead to disciplinary proceedings resulting in the imposition of sanctions which may include written warnings, reprimands, temporary suspension of step advancement, demotion, dismissal, etc. The importance of disciplinary proceedings is such that the procedure to be followed by the authorities, in which GA principles may have a prime position, should be clearly set out. Among the most frequently reproduced GA criteria with respect to disciplinary proceedings are: public officials should in principle be informed of investigations concerning them; reasons should be given for the proceedings; the official's right to be heard should be guaranteed; the proceedings should be adversarial; the official should have a right of access to documents and information, etc.

Lastly, in many administrations there is also a concern to protect public officials who have reported irregularities they have identified in the course of their work (fraud, corruption, etc) from the harmful consequences to which this might lead.¹⁰⁶

¹⁰⁵ All these duties incumbent on public officials are accompanied by codes of conduct or professional ethics reminding those concerned of all their professional and ethical duties.

¹⁰⁶ See in this connection the report "An administration at the service of half a billion Europeans" drawn up by the COMMISSION (undated)

II.3. Ways of improving GA outcomes with respect to public officials. The infrastructure of GA.

This section will analyse a number of factors that influence GA, at the same time emphasising the need to consider all the recent instruments and initiatives together. In this connection I have found the outline provided by OECD in its report on Ethics in the Public Service¹⁰⁷ very useful, particularly the concept of “infrastructure”. This concept and its component elements can generally be used to explain that the capacities of different countries to respond to the challenges of GA depend to a great extent on effective management, the penetration of GA deep within the institutional and cultural fabric of the country and the competences of formulation, application and evaluation of public action associated with GA.

III - For an overall view of application: reasoning in terms of GA infrastructure

Countries and the European Union use a set of instruments and processes in their regulations in order to offer incentives to good administrative conduct, as well as to inhibit undesirable conduct. These tools used by administrations may follow the eight elements composing GA infrastructure:

Table 1: The key elements of GA infrastructure

<ol style="list-style-type: none">1. Political engagement with GA2. An effective legal framework on GA3. Effective mechanisms to encourage responsibility being taken on GA principles and values4. Codes of conduct geared to GA5. Professional socialisation mechanisms (including training) that consider GA principles and values6. Conditions in the public service favourable to GA7. Existence or establishment of an organic back-up infrastructure for the setting up of GA and co-ordination of actions8. Attentive, organised citizens to monitor public officials' actions with respect to GA
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This infrastructure allows GA to be understood and used globally and coherently, although the synergies, and even conflicts, between the different components depend on the administrative and cultural traditions of the country, the public management paradigm favoured and previous initiatives to promote GA-based behaviour.

In addition, as with ethical infrastructure, GA fulfils three functions: supervision (the legal framework providing means of investigating and punishing maladministration, mechanisms to encourage people to be responsible; citizen participation); guidance (coherent support by politicians; codes of conduct setting out GA principles and values; professional socialisation activities on GA); management (good conditions in the civil service, based on human resource policies; co-ordination by a body specifically responsible for GA).

¹⁰⁷ OECD (1996).

Although all the components of the infrastructure are almost completely interdependent and reciprocal, because of the specialisation of this report I shall concentrate on the key components nearest to our subject, ie public officials and their status.

III.1.- The legal framework

This framework consists of all the laws and regulations that set out standards of conduct for public officials in relation to GA and impose observance of certain limits (supervisory function). It provides a number of important points to GA infrastructure: it sets out the boundaries of behaviour for civil servants and provides a system of sanctions. Under various formulations, it also gives citizens access to public information and processes, at the same time improving the transparency of the work of public authorities and their public officials. It is clear that increased transparency requires greater responsibility. The legal framework should be accessible and adaptable, indicate to public officials what they should do and how to do it, and also inform the public of what the public service is supposed to do.

The legal framework is often surrounded by a set of mechanisms to encourage responsibility with concurrent objectives. In order to increase the effectiveness of internal preventive mechanisms to encourage responsibility for GA, they should be part of a clear management framework reflecting the real roles and responsibilities of public officials.

III.1.1. Means of investigation and assessment

In addition to their role of supervising management, mechanisms to encourage responsibility also serve for investigation and evaluation in relation to GA. The means include audits (internal and external, focusing above all on financial responsibility and on performance), mediators (who deal with complaints about administrative procedures, but may also contribute actively to seeing that GA-related regulations are complied with), “community visitors” and consultative committees.

III.1.2. Codes of conduct¹⁰⁸ on GA

These may take the form of a legal document or a simple administrative declaration setting out the level and quality of performance expected of the employees concerned. A code of conduct for a particular organisation may combine a whole series of elements: values to be upheld, its functions, employees’ responsibilities with respect to them, the legal obligations of public officials (such as declaring conflicts of interest, etc), procedures, warning, etc. Codes thus play a guiding role in GA infrastructure.¹⁰⁹

¹⁰⁸ As recognised in the explanatory memorandum to Recommendation R (2000) 10 of the Council of Europe, codes of conduct may be called “codes of good practice”. Generally, codes of conduct set out the principles that should guide the behaviour of public officials, while codes of good practice are often addressed to clients, setting out the standards they have a right to expect, rather than to members of the institution.

¹⁰⁹ For more information on codes of conduct see OECD (1996, pp. 38 ff) and Council of Europe Recommendation R (2000) 10.

III.1.3. Civil service conditions

These are very important for GA infrastructure since they can be more or less propitious to good administrative conduct.

They are influenced by external factors (adjustments to the public sector, degree of social maturity and citizen demands) and internal factors (human resource policies). I shall concentrate on the latter, trying to draw some conclusions.

In the first place, it must be recognised that these policies have a direct impact on the behaviour of public officials and that to a certain extent they constitute/demonstrate a major part of the organisational culture of the public service (one might think of recruitment, training, other rights, duties and responsibilities. In the public sector all these reflect a cultural vision linked to values and principles).¹¹⁰

As was emphasised above, work needs to be done to apply GA factors to human resource management activities. Firstly, by considering these activities a very appropriate area for the internal management of GA which will probably result in not insignificant cultural and socialisation effects; next, an examination of the content of the various personnel management activities is required in order to include GA factors in them, and this leads to the question of the establishment of indicators. In this way, it is quite conceivable that GA aspects might be considered when drawing up entrance examinations, in the training required and in in-service training, in defining the merits leading to promotion, etc. Most of these changes are not dependent on amending the formal regulations on public officials or personnel administration in the traditional sense¹¹¹, but on strategic, innovative human resource management allowing a new vision of officials' rights, duties and responsibilities based on knowledge, transparency and service to citizens.

¹¹⁰ See section II.1 of this report.

¹¹¹ The experience of reforming the European Union civil service shows that many changes can be made without modifying regulations (internal provisions on training policy or the system of staff evaluation and promotion), but the implementation of other provisions do require their modification. These modifications seek, for example: to ensure the unitary nature of the civil service, introduce progress and innovation in the work environment (in particular the Charter of Fundamental Rights and the culture of serving citizens), clarify rights and duties, etc.

Conclusions

Bearing in mind that this is a debate that has just started, the following conclusions may be drawn. They do not close the debate, but should help to open it up.

1.- GA is composed of a set of rights with varying legal impact but also a sort of management philosophy allowing ongoing examination of public objectives, their management and the position of citizens with respect to it.

2.- GA is a horizontal public policy in that it concerns all administrative services and bodies, all fields of public activity, citizens and public officials, all phases of analysis of public policies, the legitimacy of public action and, lastly, all the factors that can be distinguished in administrative analyses (including the importance of human resources and their management, without neglecting the need to examine legal means relating to them, particularly the regulations on rights, duties and responsibilities).

3.- GA requires an external and internal reading since it is not enough simply to apply it to relations between public officials and citizens – it also has to be applied to relations between public officials and the various public administrations in order to regulate matters concerning their status. This means that the rights, duties and responsibilities of public officials have to be managed taking GA principles into account, both in the context of procedures and assessment of knowledge and merit to gain access to public employment and, once a public official is appointed, in connection with promotion, remuneration, duties and responsibilities.

4.- A number of key elements can be identified in relation to GA which together form a sort of “GA infrastructure”¹¹² which makes it possible to systematise its planning and implementation within administrations and to create synergies. The activities associated with infrastructure fulfil three functions: monitoring, guidance and management of GA. Among GA management activities, human resource management should be emphasised and, again, the importance of the status of public officials and the values of the public service. It is here and in the values and maturity of the society that the keys to answering the following question are to be sought: Why, given that certain basic principles of GA have long existed in the administrative legislation of many countries, have they not been satisfactorily observed and legally protected? This is a theoretical challenge and an invitation to debate addressed to everyone.

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¹¹² As mentioned above, the term “infrastructure” is taken from an OECD report. See OECD (1996).

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