



SIGMA

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**PROMOTING ETHICAL VALUES AND ACCOUNTABILITY
IN THE PUBLIC SERVICES**

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Introduction

Globalization, financial and fiscal crisis, technological advances, the will to overcome old structures together with the spreading democratization are the main challenges since about more than a dozen of years.

As a result, the public service (PS) faces new tasks, new service profiles and techniques and is under pressure to transform itself to respond to these changes.

Equally the awareness is growing that an enhanced PS delivery is the hallmark of responsive governance and that the quality of PS is related to ethical values and accountability of public institutions that deliver those services.

First, I dare define the different terms I am speaking about.

Public Services

For this reason and speech, each kind and instance of administration and judiciary (judges and prosecution) are included.

Ethics in PS

Concepts of ethics describe a typical conception of a desired behavior, thinking or doing something. As to PS, it connotes all vital principles and acceptable norms of behavior that public officials are obliged to strictly adhere to in the process of dealing with citizenry.

The keywords integrity, fairness, impartiality, responsiveness and others belong to those values of which embodiment one thinks to be important to spell out proper conduct and appropriate action.

Furthermore, it comprises professionalism, effectiveness and efficiency, neutrality, honesty, cost-consciousness and others that become somewhat like the barometers for an ethical culture in the PS.

Accountability in PS

Due to the relationship of PS to the citizenry it can be said that accountability circumscribes (and means) the obligation to demonstrate and take responsibility for performance.

When justifying and explaining its actions the PS must show transparency:

- PS should be required to disclose important information, incl. decision-making open to public scrutiny,
- Clarity of responsibility who acted, what was the decision, why (?)
- Responsiveness to needs and expectations, setting priorities,
- Whereas the performance activities should be kept in balance with the capacity (authorities and skills [and resources]) of each party to deliver.

General Aspects

Every country has its laws and sub-legal regulations for the members of the PS to follow as well as for citizens. These norms cannot describe each possible single aspect of life that may come to the fore in the future or that has occurred in the past. The member of PS – often without proper education or experience – has to cope with a lot of blanket norms, provisions as to discretionary decisions or to a certain scope of judgment evaluations.

So if a decision does not match the expectation as per requested by the applicant, the procedure and/ or decision and its legality are contested.

We see a wide-spread ubiquitous use of the terms corruption or misconduct whereas this more or less inflated reproach becomes a customary label for all problems the so-called societies in transition face.

Contrary to the discreet practice of corruption, in which a huge number of citizen participate, that is not even perceived as such, the terms “corruption” or “misconduct” play the role to define the source of all evil in public discourse. Thus, its meaning blurs and solely serves as an eroded explanation for alleged or factual social inconsistencies, inequality and unjust redistribution of national wealth.

Linked hereto it shows a remarkable decline of confidence in PS structures.

To tackle that problem outlined we need to have a multifarious approach regarding different groups affected and to have a look at:

- The law-makers and the laws including the political parties and their role esp. during and before elections;
- The administration with all regulations, instructions, by-laws etc. and the thereupon based decision;
- The judiciary with its rulings and judgment;
- And last not least the citizens and the media;

whereas all groups can be considered victims and culprits.

I assume that for each part of PS and its tasks appropriate laws have been put in force.

Of course, this should be normality, since good and well-rounded laws are a first hindrance for intentional malpractice. At the same time, such laws are indispensable for creating grounds and spirit of ethical values.

Referring to the above-mentioned difficulties or irregularities it should be clear that each law should not be fraught with unnecessary norms as to blanket provisions, possibilities for execution of discretionary power or measurement issues. If there is a not well-balanced structure especially the less experienced and educated PS member will suffer difficulties or they are unwilling and/ or incapable to deal with legal matters properly.

This means equally that beside the implementation of norms narrowly or extensively to be interpreted you need to have parallel along going education (advanced training) to avoid reproaches for mistakes or wrong-doing.

Factors that Facilitate and Support Ethical Deficit and Lack of Accountability

That is (the first time) we have to look intensively at ethical deficits and lacks of accountability. Concepts of ethics and accountability connote a kind of behavior of integrity and responsibility that members of PS must strictly adhere to in delivering their services to the populace, but too many ingredients are missing when you look at the reality.

At that time I would like to stress that the following representation describes general considerations concerning ethical deficits etc. not specifying a certain country's background even though these remarks are based on the experience I made in different countries esp. in South-east Europe. The answers to the problems touched on are given partly implicit and partly in a separate paragraph where I will try to explain how to improve the situation and whereupon one can start revising ethical value related services.

➤ Lack of professionalism

In certain regions worldwide you will face such a lack of professionalism based on different aspects as insufficient education and/ or experience.

Not unusually it starts with selective recruitments that are orientated towards anything else but education or experience. The result is poor quality of services delivered and a huge number of non-competitive and non-aspiring staff only waiting for payday. E.g. PS staffs have been assigned because of their political connections, family ties or affiliation to ethnic groups and other non job-related motives. Even if there are clear rules for an appointment these rules do not work well since there is no or no real control mechanism or chance to appeal. So, many applicants have to accept shady dealings (e.g. a part of the salary has to be given to the "patron"), but on the other side a lot of them do not have degrees (High School, Admin Colleges, Universities) as prescribed in the advertisement. Furthermore, there are no possibilities to advance, either there are too many employees or no vacancies or no career plan. These points normally are more or less combined with a bad or totally absent staff evaluation system (staff appraisal regulation with unclear or meaningless criteria) and the absence of merit based promotion.

You can imagine that such facts will produce discontent and during a disciplinary or criminal investigation you will hear that the staff member felt compelled to resort to corrupt measures in order to get even.

As a last result to that point you see a huge decline of integrity and honesty and at least serious conflicts of interest.

➤ Remuneration

Besides bad working conditions (e.g. in comparison to private companies) you have to deal with the salary issue, since the salary often is not really competitive with that offered by private institutions for the same qualification.

A poor, partly miserable salary, sometimes even paid in irregular periods, is one of the most crucial elements that assists or encourages the loss of integrity or the commitment to serve PS.

As a result again you will face serious conflicts of interest, steadily growing of corruption and similar kinds of misconduct or wrong-doing like fraud, misappropriation etc. and at least well-educated and experienced staff will leave the PS to join the private market's business.

➤ Malpractice

The common policy, to focus on finance and economy related matters and not to take seriously the issues regarding the exigent changes of PS leads to (a salary related) further problem based on disciplinary misbehavior and criminal actions.

Missing rewards or incentives or the above-mentioned salaries generate distinct kinds of malpractice up to real crimes.

Strict rules are violated or circumvented by different means and actions, partly with far-reaching consequences when you look at procurement issues or – as to the judiciary – distribution of land (e.g. former socially owned real estates). If you consider the damages created by fraudulent tender, one should ask whether a better remuneration will be the better solution, assessing that fraudulent offer will include the surplus for the bidding company and the “personal gain” of the procurement officer who feels underpaid by his management or the respective law. Bribes, kickbacks, fraud, misappropriation are the common ways to increase the family income or to get advantage e.g. payment in kind.

The result is the same as mentioned before: conflict of interest but now together with a more or less self-inflicted damage of national wealth in favor of some high profit-oriented companies and reckless staff that exploit the scarce control mechanism.

➤ Politics and PS

Another serious impediment for PS ethics can be seen in the gradual deterioration of ethical values by means of political influence on even daily decisions of the PS. The keyword is loyalty to a party or a certain politician's will supersede the commitment according to the PS position.

It does not matter whether you have a one-party system or a multi-party system the result, the improper influence on administrative or judicial decision is quite similar. At the same time such an undue influence undermines the correctness of decisions as well as the professionalism as such and will create a sphere of distrust and mediocrity and a fear of disregard when it comes to salary increase or other kind of advance.

As a result, one can state that terms like working morale, accountability, objectivity or consistency and others are only words and not filled in with life by doing so.

➤ Weak control institutions

Once a watchdog institution has been established one should think malpractice or another kind of misconduct/ wrong-doing cannot happen. Far from it! Examples I learned during a long time experience in South-east Europe show that even inspectorate offices do not comply with simple standards like trustworthy co-operation albeit the control is of different modus operandi. They did not have even the education and experience of the controlled staff. Anti-corruption agencies listen to often to the sources of rumors or to the parliamentarian bodies or suffer shortage of money and cannot work according to their duties imposed by laws etc. The general prosecution

offices are partly not as independent as stated even in the constitution, suffer lack of money as well and are exposed to political pressure up to the dismissal of the General Prosecutor.

First of all that political pressure and the more or less discreet kind of patronage account for the failure of upholding ethical norms and accountability in that mentioned watchdog entities and have been led to abuse of authority or illegal enrichment to other crimes like fraud or embezzlement or simple misconduct when obeying the query for consent in administrative or judicial matters or for leniency in criminal matters.

Furthermore these weak points are being intensified when looking at the workload and the working conditions, the insufficient number of judges and prosecutors, the quite insufficient and inefficient support structures in courts and prosecution and the lack of well-trained staff. The above-mentioned salary issue supervenes again.

This is true for control institutions as well as for PS to be controlled.

➤ Various Issues

Bribery of public officials is often used by international companies from export countries as fair and legitimate methods for export promotion and to “facilitate” long-lasting bureaucratic procedures. Such actions have encouraged unethical behavior and abetted even crimes (of course, often it is a matter of reciprocity). Even though most countries world wide accept resolutions to fight corruption it still works because governments or prosecution services in industrialized countries ignore the bribery or play its role down. But the same happens in countries in transition for different reasons like lack of experience, negligence, nepotism or other kind of tacit approval/ acceptance.

To summarise:

There are numerous aspects and facts that lead to unethical behavior and lack of accountability. Some of these issues are home-made by law-makers, managers and lower ranked staff; others had been pushed ahead from outside or (re-) cultivated by groups consorted together. The result is misconduct, corruption and other crime on the one side and on the other distrust and discontent with the PS and in many cases a huge damage to regional or national wealth and property.

What results do we seek?

The answer is:

A PS that earns and deserves the respect and trust not only of superiors but of the citizenry as well, as an reliable institution that through its dedication to the public interest, its strong ethical culture and proven professionalism serves as an disseminator for democratic ideas.

How to achieve such a goal?

The goal is to create or to improve ethical standards for PS.

Another subject heading is “Ethical standards should be reflected in the legal framework” (OECD Recommendation).

That means, first of all, a self-critical and extensive analysis has to indicate the weak points, the lacks and gaps, in order to describe the needs in legislation to alleviate the understanding and the correct handling of laws reduced of clumsy norms and too much leeway. The laws (directly or indirectly) should state the fundamental values of PS and provide the framework for guidance, investigation, disciplinary action and prosecution (see OECD Recommendation). These laws should as well sufficiently cover technical developments and social trends.

Together with the condemnation of corruption, incidents of maladministration, misconduct and other forms of unethical acts it is to recommend that specific training and communications efforts would be a starting basis for improving the standards in PS.

Another most important point is fair and transparent human resources policies and practices to enforce the idea of merit based promotion. One has to overcome two connected issues:

A long lasting period of dictatorship eroded a fair and democratic PS and demoralized its members. Most probably similar to Eastern Germany a lot of civil officers, judges and prosecutors had been assigned without sufficient knowledge. Even if they had passed economic, finance or law examinations, their decision making or investigation were limited to political parameter or if not quite different to the exigencies of nowadays legal requirements. Since there seemingly was no need to employ an increasing number of PS staffs some of those countries in transition still suffer from the lack of young academics in their PS institutions. This unsound age structure together with the immense workload in brand new legal matters should be rectified by engagement of young well-educated personnel to correct the minor acceptance of administration or judiciary.

Furthermore, I want to mention another significant point that ostensibly supports the fight against corruption and will enhance the ethical behavior of PS staffs and its reputation:

the establishment of corruption units inside the different sectors of PS or as more or less unaffiliated entities. It does not matter whether these units consist of experienced prosecutors or not – of course, they should – if they have competence and jurisdiction to combat corruption or to really support the competent prosecution. The example I know shows that such units have nearly no function and depend on the will of the Parliament or ministries to get clear tasks. For me sometimes it looks like a cover-up for the inactivity of certain politic-based institutions. So, give these units an interdisciplinary team, power, real independence and provide it with a sufficient budget to effectively fight corruption and connected misconduct. It will pay off!

Please, let me summarize:

Looking at the issues of ethic deficits and lack of accountability and how to meet its repercussions we see a lot of quite different aspects:

One of the most important issues I did not mention until now is the local tradition and a kind of behavior that is narrowly connected to tradition and practiced for a long time. Such structures have to be overcome or (slightly) integrated in the new democratic system.

Inflation of corruption/ misconduct allegations, merit based promotion, salaries in particular and in relation to the average, trust/ mistrust in the administration/ courts/ prosecution,

independence contra dependencies, credibility, education, experience, efficiency, fairness, impartiality, understanding/ misunderstanding, appreciation, responsibility, acceptance and a lot more keywords are used to circumscribe the reasons why the PS is influenced by corrupt or in any misconduct engaged people and itself act corrupt.

Efforts to remedy the issue of above-mentioned deficits and to promote ethical behavior and accountability in PS for me it seems worth to co-ordinate different actions aiming at a corruption-free administration and judiciary:

- To increase the salary of members of the PS (*it should be competitive and reflect an understanding of a fair wages*)
- To enhance the quality of the work (*done by seminars and conferences and at the level of Administration or Law Schools and by employment of young and well educated staff*)
- To supervise better the work and the work distribution (*of course, the supervisor should be experienced, educated and trained to do that job carefully and objectively*)
- To check the quality of supervisor's work and their ethical behavior (*by leadership and example – do they demonstrate and promote ethical conduct?*), reliability and impartiality, control methods
- To reduce the workload if necessary (*objectives, accomplishments and constraints and performance expectations should be linked and kept in just balance*)
- To ask for continuous advanced training as to specific matters like corruption or corruption-related issues
 - (*again the issue of procurement comes to the fore*)
 - (*not only to learn their craft, but to become expert in some chosen speciality, to maintain highest level of knowledge and skills*)
- To issue clear and strict rules/ instructions how to deal with all work-related matters (*similar: code of conduct that should describe a generally accepted attitude and performance for the different PS sectors*)
- To actively approach the media to get their support when fighting corruption and other serious crimes or misconduct related to PS
- To immediately suspend/ discharge anybody who is suspected of having committed a crime or serious disciplinary offenses (*That means to exercise and to execute disciplinary measures strictly and without exception to show the will of justice*)
- To introduce provisions that criminal/ corrupt members of the judiciary cannot become (free-lance) lawyers within a certain time after their discharge and/ or punishment
- To improve the over-all situation as to responsibility, transparency, integrity and fairness against each person seeking legal aid and at least
- To improve the management of the PS without influence of politics and obscure economic manner.

These remarks made as a practitioner fighting corruption and giving lessons to prevent such or similar misconduct in PS may have been or can be extended, but to speak about this topic in

such a short time is possible only when you try to highlight some points you believe to be very important.

Finally, I would like to draw your attention to the OECD Recommendation from May 1998 and the UN International Code of Conduct for Public Officials, 1996.

Thank you for your attention.