
The yarn ball of deontic phenomena in public sphere

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Abstract

Many deontic requirements are inherent in the public sector. Some of them are of a positive nature – and are legal expectations, others are of a negative nature – and are legal prohibitions. However, they are all social and normative phenomena, and the following will be considered here – integrity, legitimacy, partiality, conflict of interests, corruption.

Because the standards for them are high, they are difficult to meet both in definition and in practice. Therefore, they can be likened to a ball of yarn, for which an attempt will be made in this text to unravel.

Key words: integrity, legitimacy, partiality, conflict of interests, corruption.

Introduction

There is a constant public debate about all general and specific legal and moral requirements for public persons. Some of them sounds so abstract, that the feeling is society is they are impossible from practical point of view. But if they are defined precisely in legislation and meaningful and discussed in society, they are a definite milestone for the right path to prosperity for all – governed and governed individuals.

These requirements are applicable to government officials – politicians and civil servants. In essence, they manifest themselves in the realm of the obligatory, and that is why they are deontological phenomena in themselves.

Because sometimes they draw grounds from each other, sometimes they are parallel phenomena, and sometimes they complement or deny each other, they are a ball of yarn in terms of content, if the figurative scientific language should be used in this thesis.

The following phenomena will be unravelling here – integrity, legitimacy, legality, partiality, conflict of interests, corruption, with the modest expectation that they will be better presented, understood and put into practice.

Results and Discussion

Integrity

The most widespread understanding of Integrity is as an “Honesty”. But there are so many dimensions of this sophisticated idea of perfection. For sure, there are Fairness, Oneness, Entity, Unity, Inseparability, Wholeness, Totality, and Continuity and so on. For example, a definition (among the thousands this one will be only pillar) is the following: “The concept of integrity... embraces all aspects of an international civil servant’s behavior, including such qualities as honesty, truthfulness, impartiality and incorruptibility” (Standards of Conduct).

It must be highlighted right at the beginning, that “culture of integrity establishes public trust in its public servants and eliminates the perception of corruption”. (Jacobson, M., Slavova, M., 2006, p. 79).

One very clear explanation can be discovered here: “Citizens expect public servants to serve the public interest with impartiality, legality, integrity and transparency on a daily basis” (Ethics Codes and Codes of Conduct in OECD Countries). In these hard times the expectations of the citizens, who are voters and taxpayers also, are from the crucial importance.

Similarly, “In public administration, integrity refers to “honesty” or “trustworthiness” in the discharge of official duties, serving as an antithesis to “corruption” or “the abuse of office” (Armstrong, Elia).

There is proposal in normative context in this connection and one of them looks in this way: “The public official is expected to be honest, impartial and efficient and to perform his or her duties to the best of his or her ability with skills, fairness and understanding, having regard only for the public interest and the relevant circumstances of the case” (Recommendation № R (2000)).

As Dworkin says: “Integrity would not be needed as a distinct political virtue in a utopian state. Coherence would be guaranteed because officials would always do what was perfectly just and fair”. (Dworkin, R., 2002, p. 176).

Legitimacy versus Legality

To get to the core of these phenomena is necessary to take into account the loss of legitimacy of public authorities in the modern world. Even the authorities have perfect legality, described very precisely in the legislation, they are losing the trust of the people. That is why some authors mentioned “the democratic legitimacy problems facing the EU” (Fossum, John Erik, 2016).

The ordinary people on rare occasions have an idea that legality and legitimacy are two completely different natures. But in the past times just the legitimacy had engendered the legality. Nowadays, the written legislation fixes it. That is to say, the authorities have a comfort to think (extremely wrongful) that it is simply enough to describe their competences in the legislation.

In retrospective way, the people had given the power to the persons or organization in which they entrust. Precisely this is the ground of legitimacy. To be “legitimate” meant to have the confidence of the others. That is why the legitimate persons or organizations had been the best among the others. To them the society had shifted the high expectation of the best-for-the-all-decisions. The most important area of that is the field of justice, understands as “to each what is deserved”. This concept is also known as “merit idea”. To be “legitimate” in the ancient times wasn’t complicate, because the scale of the society wasn’t large. Everyone had knowledge for everyone.

Furthermore, nobody had an idea that it is possible to do something without knowledge and skills. To have a power had been based to the brute strength, to charismatic virtues or to the trust to the others. In all of these three cases almost nobody had been contested the legitimacy. Figuratively expressed, the legitimacy had been stable.

Later, the societies had been changed, hence the social sensation of legitimacy also had been modified. The cohesion, in the meaning of small scale of society, had been lost. The reputation of each person had become knowledge only to the limited circle of close persons.

This is the reason in many cases, not by all means the best people to have the power. On the contrary, people without managerial and ethical qualities often possess the political and institutional power. Some of instruments to hold this power (undeservedly and dishonestly) are the same as their manner of use of it. Exactly these are partiality, conflict of interests and corruption.

Partiality

The etymology of “partiality” comes from “part”. The last word is also the base of term “party”. There is no need to understand the leading idea of all these words – to separate. In this sense, to divide the society in some section on basis of some political ideas and conceptions leads to creation of political “party”. It is no difficult to understand, that the first aim of the party is prosperity of their members. Of course, the party always preaches that works only for the well-being of the whole of society. The full unsoundness of this is very visible on the end of political mandate – the members of the party by presumption have increased their prosperity, but the same is not proportionally true for the rest of society (even some not-members also have succeeded).

There is no possibility to gain the election position without proposal by the political party plus the trust of electoral votes.

This evident or concealed support is motivated only by relation partiality for “our” opposite “they”. When “we” earn the power, all of its goods will be our possession, so “we” will be able to distribute them on the strategic (state) level. There is no illusion that the best part of these good will be allocate to “us”.

If the position is nominated one, the idea is more that clear – only “our” people will be nominated, because “we” trust them. Because of the presumption, that the nominated positions are the high-level managerial positions in the public administration (ministers, chiefs of agencies, member of commissions, directors, etc.) the main aims here are two. The first one is to have “our” people, who manage the administration (and will be able to appoint others “our” people). The second one is to have “our” people, who will implement “our” policy (for distribution of goods mainly to “us”) through the instruments of Law and Administration (operative level). The last one is extremely dangerous, when the Judges (as nominated officials in most of the legal systems) accept to play this role, even the proclaimed in the legislation their “independence”.

More that evident is how civil servants (public officials) are appointed. Even with the broadly proclaimed competitions for open vacancies in the administration, there is no doubt in the wide public opinion, that it is necessary, at least it is usefully to be “our” person. When the candidate has got a manifest of hidden support from the political party currently on power, she/he almost always succeeds the competition. The party reaches here two goals. First, the party returns the favor to the supporters during election process with giving away administrative post. Second, the party secures “our” people for distribution of goods in each separate administrative case.

Of course, in some cases of election and nomination, and in many cases of appointment after competition, real capable people succeed without any support of political party. The paradox here is in that even capable people in the first two cases are in search of support of the party, because the support is more than important from the qualities. In the case of appointed civil servant, the paradox is lying at the root of need to have capable people on very working administrative level, who are able to set in motion the everyday cases, so here “our” people are not compulsory needed (in other words – on this level the scale of distribution to “us” is insignificantly low, but people for daily administrative work are needed).

For sure, the legal construction of Partiality is applicable mainly in the Procedural Law. This is visible as a criterion for the objective judge in the Penal and Civil processes. But in the Administrative Process this requirement is connected both with the administrative body and the administrative judge, because they are the institutions, which take decisions.

From linguistic point of view, it must be mentioned that “the exact wordings vary: “impartiality” and “fairness” is for instance sometimes replaced by the duty of the public administration to act with objectivity or to treat each legal subject equally in identical case.

Conflict of Interests

The etymology of term “conflict of interests” is visible. The political process is namely the same – conflict between interests of different part of the society (classes, castes, etc.). In reality, the struggle between interests leads the winner party on power. Historically, there is no example when the whole society wants the same policy. Only in dictatorship political system it seems that there is full consensus of aims, but this is an illusion, created with violence and propaganda.

In all cases of elected, nominated and appointed officials there is a doubt of conflict of interests, because of cross-purposes between their personal and party interest from one hand, and the general public interest from the other hand.

The Bulgarian legislator has a very clear conception of Conflict of Interest in articles 52, 53 and 54 in Counteracting Corruption and Forfeiture of Illegally Acquired Property Act where accepts that: “A conflict of interest arises where occupied high public position has a private interest that may affect the impartial and objective execution of the official powers or duties thereof. “Private interest” means any interest which results in a financial or non-financial benefit to a public office holder, or to

any persons having close links therewith, including any obligation assumed. “Benefit” means any income in money or in property, including acquisition of participating interests or shares, as well as granting, transferring or renouncing rights, receiving a privilege or honours, acquiring goods or services gratuitously or at prices below the market prices, assistance, vote, support or influence, advantage, obtaining or receiving a promise to obtain a job, a position, a gift, a reward or a promise to avoid a loss, liability, sanction or another adverse event”.

Corruption

It must be emphasize that in Bulgarian legislation exists only one national definition (and it is *autonomous one*) about Corruption and it can be found in Article 3, Para 1 in Counteracting Corruption and Forfeiture of Illegally Acquired Property Act as follows: “Corruption in the meaning of this Act is being when in result from the occupied high public position the person abuses with power, violates or do not observe his official obligations with the aim directly or indirectly extraction of non-subsequent material or immaterial benefit for himself or for other persons”.

In searching of deep etymology of “corruption” the scholars have made serious efforts. But it is no doubt that the term derives from the verbs “curve, vitiate, degrade, vulgarize, etc.”, all of them explained something which is not what should be, in negative connotation. Even imagine, that the election process is the very best honest, when the new party becomes on power, it curves the public policy to new directions. These new goals vitiate the results from the former policy of the ex-party on power. For sure, the effects from the ex-policy degrade immediately or in short period of time. Often, they are object of vulgarizing as improper and ineffective policy of former leading party.

Notwithstanding of semantic talking at cross-purposes, there are systematic policies of fight corruption. For instance, the following aim exists “to reduce all forms of corruption, at every level, in all EU countries and institutions and even outside the EU”. (A comprehensive EU anti-corruption policy).

Of course, one among universally accepted legal definitions is in Article 2 of Civil Law Convention on Corruption and says that corruption means requesting, offering, giving or accepting, directly or indirectly, a bribe or any other undue advantage or prospect thereof, which distorts the proper performance of any duty or behavior required of the recipient of the bribe, the undue advantage or the prospect thereof.

On the other side, the Criminal Law Convention on Corruption emphasizes on one essential, but only narrow projection of corruption – the bribery. Article 2 explains “active bribery of domestic public officials”, but Article 3 – “passive bribery of domestic public officials”.

In the same direction, the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions takes in its Article 1, Paragraph 1 that it must be a criminal offence when somebody “offer, promise or give any undue pecuniary or other advantage, whether directly or through intermediaries, to a foreign public official, for that official or for a third party, in order that the official act or refrain from acting in relation to the performance of official duties, in order to obtain or retain business or other improper advantage in the conduct of international business”.

The most descriptive as anti-corruption policies and practices is the United Nations Convention against Corruption. The related legal matters can be found in many others European, international and national legal acts. The problem is that as if all of them are concentrated on the executive power, i.e. – on the public officials working on file or case. This is one very limited understanding of corruption.

It must be mentioned here that “Corruption is a complex phenomenon with economic, social, political and cultural dimensions, which cannot be easily eliminated. An effective policy response cannot be reduced to a standard set of measures; there is no ‘one size fits all’ solution...can be addressed in the national context” (Report from the Commission).

Propaedeutic in Manner of Use the Power

The political parties and persons of power never point out in public, that partiality, conflict of interests and corruption are the essence of the power. Quite the contrary – they manifest legislative, administrative and disciplinary measures against them, often described as “struggle”, “combat” and “counteraction”. These military terms are not accidental – they suggest serious “resistance” to these phenomena. Moreover, when something becomes “martial”, each aspect of it becomes secret, including the real causes of it, the consequences and the actual status of it. For these reasons the well-known question of Dworkin: “Do most people around the world agree about important moral convictions” (Dworkin, R., 1998, p. 1719) is always applicable.

According to partiality of civil servants – the official power is used as a mode to “build” an own person. In this dimension, the partiality works in very infantile way – “like” or “unlike”. For example, each official can serve the citizen quickly or slowly (following strictly the same procedures and standards) only on the basis of liking or non-liking of the citizen. In such case, Partiality derives from the power to do something monopolistic, and it is everywhere in the public institutions.

As for the conflict of interests on the group of appointed civil servants, it is widespread. In the moment of acquirement of the official statute, each person is fascinated that has an access to many public goods, more than its personal (money, equipment, cars, computers, etc.).

The most brutal cases are the definitive for the conflict of interest – to favor own self or the close persons with the public resources, accessible to the official position of the person. And for sure, there is no Conflict of Interest, concerning officials, when the legal norm shows different disposition. The outcome here is the following one: “It could be claimed that in certain cases of normative conflicts, the solution must be searched in the relative *weight* of the conflicting norms regarding particular cases” (Navarro, P., J. Rodrigues, 2014, p. 193).

With reference to the corruption on the level of appointed civil servants, the most well-known understanding is to do or not to do an own official duty, depending on bribe or gift, which are intolerable. In the current times, when a parade of luxury is in every nook and corner in the media, the seduction of each public official is enormous. When there is no logical explanation how the colleagues with the same salaries (by definition – insufficient as scale in the public sector) have a highest standard of life, by intuition the person with power finds the way.

In regard to nominated officials on high-level managerial position, the picture is clearer. The Partiality here is the result from the loyalty to their patrons – the elected politicians. There is no acquittal for non-following of partial interest. The last one divides the persons and the thing of “ours” and “theirs”. The separation is clear and very severe.

Concerning the elected officials, the picture is shadier. The partiality here is “excusable” in the eyes of both supporters and non-supporters of them in the election process. Both groups assume as “something normal” that these officials must follow their political promises, i.e. – the separate interests of their supporters.

Elected officials often are subjects of conflict of interests, because of their ceremonial statute. Even the strong rules in the legislation, gifts and presents to them almost always cross the frontier of admissible ones. The ethical standard categorically interdicts to this positions gifts and presents, which can be treated as personal, not as protocol ones.

Corruption among the elected officials seems to be (unfortunately) widespread. The simplest explanation is that they must “recoup their losses” during the election campaign. This so called “reimbursement” is performed with the public resources and possibilities on hand. Simultaneously, there is a thought to the future elections, so the collection of needed amounts is also executed. Typically, the corruption on this level is hidden under formal observance of related legal provisions. To wit, the very strict juridical acts from the formal point of view often conceal the hidden corruption. The trick is in this to “present” an outside picture of lawfulness, but under it there is vicious frame of illegality. One judicial act is leading in this context: “That speakers may have influence over or access to elected officials does not mean that those officials are corrupt” (Supreme Court of the United States).

Proposal – Emphasize Persons, not System

Admittedly, not each person who possessed political or administrative power is subject to partiality, conflict of interests or corruption. There are so many honest and fair politicians and officials. Exactly on these honest and reputable persons is standing the social trust to public authorities.

It seems that the counteraction to them in this moment is not very correctly placed. The legislators, experts and politics usually stress to change the system, not the persons involve. As a rule, the idea of them is, that it is quite impossible to predict how the individual person will act in different situation and if she/he is accessible to partiality, conflict of interest, or corruption.

Instead of selecting of orderly people, the efforts are fixed towards on the Great Illusion “Change of System”. Many measures here can be detected. Nowadays among them there are: stable legislation with clear rules; categorical time limits for action; transparency for use of public resources; e-government; restricted discretion; applying of Doctrine of Less-State, permanent monitoring, control and audit, etc.

In reality, every result in human society depends from the people. Even the perfect legislation (with legal principles, institutions, procedures, etc.) means nothing, if it isn't applied correctly. Thus, the human factor in the application of the law is the very substantial one.

But, even the system (as rules) restricts the objective conditions for that, the subjective factor (the human being) always will be able to find ways to go around them. This is (on figurative expression) the play between cat and mouse. When the rules are stable, the human intellect is dynamic one, so normally it always finds cracks. Consequently, not the change of Systems, but the finding of moral people is the first approach against Partiality, Conflict of Interest, or Corruption. When this is not sufficient, the measures must be directed to the assets of these people with the Forfeiture of their Illegally Acquired Property.

The area of public authorities is currently changing. They are many new approaches for searching of persons, worthy for officials. Tests for integrity; declarations of loyalty; polygraph tests; letters of recommendation are only part from the ways to choose the upright persons for the positions of officials.

The modern times live in the Net. There is more than sufficient information for everybody. There is no logically to accept that unethical person in the Net will be honest official. With the more heaviness of the well logic this is relative to politicians.

The most important now is to apprehend two simple things: Firstly, between changing of system and recruit the orderly persons to official positions, the last one is by definition more important. Secondly, the real selections between honest and dishonest must be done on the entrance to the public authorities (even before open competition for knowledge and skills), because after that is too late.

Conclusions

The message must be clear: Stop playing of integrity with the “objective methods” (rules, systems, standards, etc.), but given the “subjective chance” to the real honest people in the public sector to realize themselves as political actors, judges, prosecutors, and civil servants.

This is the only effective way to unravel the ball of yarn from deontological requirements in the public sector, such as the phenomena of integrity, conflict of interest and corruption.

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