

## Permissive and restrictive in administration

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### **Abstract**

*This article aims to answer a series of interrogations arising amid the deviations manifested in the relationship between the public servant and the professional obligations and restrictions. The thematic development aims to cover the relationship between man and morals, which will bring conceptual clarification on the concepts of moral, deontology, moral value and norm. The central topic of the analysis will be the public servant with the intention of noting its importance in the dynamics of a community. The acts that violate public interest, the deviations from professional deontology with serious deeds for the community environment, in terms of the entire society, outline a certain behavioral national profile.*

**Keywords:** *moral, deontology, moral norms and values, public servant.*

### **The relationship between human and moral**

At social level, happiness appears as a moral issue, a hope of the individual that makes one's destiny bearable. No one wants to move towards the evil, just as everyone would like to look beautiful.

“Every art and every inquiry, as any action and any decision seem to aim at some good; therefore, it was rightly stated that the good is that towards which all aspire.” [1] This is the Aristotelic impulse that guides us in our analysis of the good, a fundamental moral value that influences “the life” of all public institutions from the Romanian landscape in European context.

That is why the proposed theme brings together administration, justice, all institutional factors that could not function in the absence of norms, values and rules. The main subject of the analysis is the person engaged in multiple relationships when living alongside others. Society represents an organizational background within which human beings seek happiness, to experience maximum satisfactions and to be in maximum safety. “Happiness, in precise proportion to the morality of rational beings, through which they are worthy of happiness, constitutes itself the sovereign good of a world where we must transpose altogether, according to the norms of pure but practical reason, and which undoubtedly is only an intelligible world, (...)”, [2] “that is moral” (*regnum gratiae*). The whole conditioning between practical reason and speculative

reason occurs because the sensitive world is the systemic unit of goals based, in turn, on the idea of the sovereign good. Kant develops the idea of moral order as a unit “based on the existence of freedom” beyond the “random” order based on external commands.

Man, through his existential status, is an ephemeral being and his manifestation is contradictory: he desires individual freedom and articulates it on the basis of collective freedom; but, in many cases, his freedom of expression restricts the range of collective freedoms. Acknowledging his position, he externalizes a series of tensions with his peers, with the inner dramas, with the restrictions imposed by social norms. Many of the moral rules and commandments which are conveyed to us represent the pattern of a normal “man” in a community/society. The moral norm is a generalization of the collective experience and falls into the category of those accepted by people. They become models according to which behavior, action, events are assessed. Unlike legal norms, moral ones give freedom of objectifying in the manifestation of inter-human behaviors and rapports. More and more formulations comprised in moral norms describe permissiveness and restrictiveness in concrete situations of life. All morality comprises a set of rules of conduct which are dynamic and establish the norms valid for regulating a historical period. “So, in fact, human justice, prosecution and punishment of the guilty are deeds of virtue; but it is a fact of necessity; that is to say it is good only because it is necessary; however it would be better for people and the State to be exempt from punishment.” [3] Therefore, punishment is only the establishment of virtue at social level or the doing of good. Citizens who are part of the government must provide the model of virtue for others, who in turn, take part in perfecting the governance. “Moderation in affections and passions, self-control and healthy prudence are not only good in many respects, but they appear to even be part of the internal value of a person; but there is still much needed to declare them good without restriction (...).” [4]

As a social being, man needs laws and norms to regulate his relations with his fellow beings. This need is settled and functions through understanding, laws and norms being accepted by those who understand their usefulness, at the same time leaving response or causing contrary reaction to those ignorant. In this respect, Aristotle

argued that in any legal step, “the collections of laws and constitutions can be useful, of course, to those able to study and judge what is good or bad in themselves, and whose case can be adapted to each; but those who go through them without the necessary training, do not have the capacity to properly judge them, only incidentally, at most, the understanding of these issues could thus be somewhat facilitated.” [5] In other words, everyone will understand permissiveness as appropriated and applied in all situations that need regulation. Therefore, a country, whatever its size, is represented by the legal-political system through which the relations with citizens are performed and which ensures a standard of living for them.

To these details we add some conceptual clarifications that help us understand the distinction between the terms that will be employed when addressing the topic. Deontology is the science of the duty, its contents comprising a series of obligations belonging to a profession, certain coordinates of behavior considered exemplary in the exercise of a profession. Deontology has a theoretical and normative character, including moral norms, principles and values by analyzing practical and theoretical issues of morality. Moral consists of a series of standards, resulting in the categories of good, bad, duty, honor, acting through public opinion. As a result, moral is the one that marks the everyday behavior of people, whereas ethics remains at theoretical level, highlighting the general elements of practical morals. From this conceptual delimitation results the fact that deontology examines the ethical norms of a profession and contains certain moral norms that are adapted to the respective profession.

The deviation from the moral norm is not sanctioned through coercion; the critical reaction is inscribed in the public space, showing the degree of maturation of public opinion. This type of sanction penetrates the structure of human beings where the juridical has no power of coercion: the experiences and feelings of the person sanctioned, with reverberation on the community in which he or she lives. Whatever the area of activity within which the person acts, the moral good operates and serves to guide human behavior in the interpersonal relationships. Moral values express preferential, rational and emotional rapports of individuals, social groups or, in some cases, the reaction of the entire society with regard to the realization of public and private actions, following the moral appreciative criteria. Moral norm allows the

deciphering of relations with moral value. Another concept necessary for the understanding of morality, the moral principles, coordinates moral norms and allows the assignment of traits to human behavior: moral, immoral or amoral. Human behaviors are objectified in human experience which, in turn, knows the following referential: the temptation of obtaining valuable satisfactions, the tendency towards natural joys and fulfillment of pleasures. Any excess determines the violation of moral norm and produces dysfunctional states for individuals, groups or communities. The result is described by the close or remote area in relation to moral norms. If the behavior contradicts the moral norms, it falls in the immoral area, when it is neutral in relation to the sphere of morality we are in the amoral area. These evaluations belong to those who support, understand and internalize moral values, considering them indicators of their own behavior. Without assuming this type of values which belong to the sphere of morality, any external penalty has no effect on the wrongdoers. They will not understand why emotional experiences are sanctioned, why their support is viewed as immoral by those who assess it. This leads to a situation where, considered not guilty or misunderstood, they keep the public stand and consider themselves victims. In this case there another aspect is involved, emphasizing the lack of moral norm at community level: the family that takes advantage of the public office appears as the “savior”, carrying the entire series of favors for which it was an accomplice. From the immorality of the wrongdoer, the guilt of the group is reached, with the complicity of those who took advantage of the public office. It is specific for consequence-ism a behavior based on the consequences resulting from the loss of public office. Good is that which produces “the happiness” of those around me. The value of the aid given is proportional to the advantage of those receiving it. The loss of privileges coming from a public office correlated to failure to comply with moral norms can not be understood, even if the deeds fall into a series of criminal matters. Blame is placed beyond one’s self and comprises a momentary misunderstanding that, to the perpetrator’s mind, will be forgotten with time. It is impossible to imagine the distance installed between persons involved in an action that exceeds the sphere of morality. Full responsibility is directed beyond the self. In fact, it is the stranger inside each one. The translation of this state would be objectified in the formula: It is not my fault! It is the moment when any opening

ceases and any attempt to take the deed upon oneself is doomed to failure. Furthermore, the action appears to be a minor fact, especially when the action is attached to emotional background.

Now intervenes something that is considered minor by the Romanian society: the deontology of the public servant, journalist, magistrate, doctor, or teacher. All these professions impacting the life of the public space, where ethics is the one governing human behavior, seem to not find their role and purpose in relation to the Romanian community. The motto is: My behavioral freedom belongs to me and the others have their own sphere of manifestation for their freedom. "Freedom is a curse and the only source of human greatness" (Sartre). My freedom has no boundaries, it is absolute. But, in the field of public office, there emerges a new manifestation of freedom, increasing the degree of freedoms also implies the responsibilities afferent to them. The public office also implies restrictions concerning what produces pleasure, any personal satisfaction being inserted in the living circumstances of fellow beings. And this is because freedom should not be mistaken for libertinism or moral chaos.

### **Aspects of ethics applied in administration**

"...The benefits that the power and administration of general interests inspires all people with the desire to perpetuate in operation; and as if they were ill and only the possession of power could bring them health, they are obstinately tending to retain authority, once they have owned it." [6] Aristotle describes a state of fact of the human condition; its actuality seems to overcome any space-time barrier.

Power corrupts and attracts in an absolute manner. It is a kind of disease that we wish to cure, in theory, but practically we make every effort to acquire it. People "proceed in different ways to achieve the goal set by each - glory and wealth. Some proceed carefully, others - heady; some violently, others - with skilled crafts; some patiently, others - contrarily; everyone can achieve their goal, following one of these different paths." [7]The different ways of covering the road to power include all sorts of means, some venial, others developing tensions and imbalance within social life.

The deontology of a profession traces the obligations and behavioral restrictions imposed in a field of activity. For the public servant, deontology is concerned with the rights for accomplishing the job duties and the conditions that allow the realization, in

good conditions, of the duties, including professional competence and the quality of the public service conduct. The focus is on the general interest, the public official being the one serving the community, being "its servant". The important aspects of the public office relate to moral obligations enshrined in the content of the professional sphere. Permissive and restrictive, which appear in the title, refer to the rules under which the profession of public servant is exercised in relation to citizens, their manifestation in the public space. The regulations are also applied in the relations between officials, intra-institutionally, thus limiting any moral abuse. The rights and obligations of civil servants in Romania are integrated in the status of the European public servant. [8]

The deontology of the public office brings together morality and law, moral norms and principles and legal norms specific to the public position. Any manifestation of abuse or corruption violates the rights and freedoms of citizens, or intra-organizationally, affects relations with superiors or subordinates, causing dysfunction in the realization of job tasks. At the same time, there appears a state of conflict with repercussions on the way in which the administrative institution is perceived in the public space, lowering the level of trust and openness of the citizen with respect to the decisions they take. The moral dimension does not aim at a fragment of community life; it aims at all decisions, the normative acts, actions, relationships that generally make society work. If some moral deviations are sanctioned by the coercive force of the state, others are part of the public reaction. They become concrete in the manifestation of the civic spirit of citizens. Therefore, abuse, corruption, unprincipled relations are reflected on the perception of the entire society. Deviations from morality entail complicity from those who hide them. One can not be considered honest as long as one accepts moral deviation. Moral value is pursued in itself, without any reward. The reward of good cancels it. The moral gesture and action can not be held amid fear or positive awards. Moral good is similar to artistic beauty - disinterested.

The public servant has a dual responsibility: in relation to the higher authority and the public interest. A public servant manifests administrative neutrality and is obliged to apply the best type of management to meet the requests/needs of citizens. Responsibility and accountability are two professional standards involved in public office. Responsibility can be subject to accountability when the action takes into account

the fulfillment of public interest. It attracts the interrelation of multifaceted ethical, philanthropic and legal issues. "Corporate social responsibility includes what the society expects from an organization in terms of economic, legal, ethical and philanthropic aspects in a given moment". [9] Ethical responsibility manifests itself in the public office, covering the needs and interests (desirability) of citizens through a series of precisely defined public services. We will not address the economic aspects, our focus being moral behavior manifested in the fulfillment of statutory duties.

The basis of the analysis was Law no. 188/1999, updated in 2014 and the analysis will be solely centered on the issues concerning Chapter V, Section 2: Duties of public servants, a section explicitly defining the obligations of service duties, compulsory when improving the activity of the public authority or institution "that respects the provided rules of professional and civic conduct". The legislator draws attention to the conduct and accomplishment of the duties by the term "obligation", meaning an inclusion of the ethical dimension in the sphere of professional duties (Article 43) [10]. The following article of the law, Article 44, sets interdictions to public servants with regard to political interests, clearly distinguishing the public sphere from the political one. This neutrality stated in the law confirms the morality that must be displayed by the public official, which is associated with impartiality in relation to the political forces in power. It is further proof that public interest should not be subservient politically and it does not favor anyone from the political area [11]. Reality has shown that deviations from legal norms take place with the complicity of local and central administration representatives, and, moreover, proved that they involve representatives of the legislature. In such a combination of forces representing local or central authorities, there is the recent effect acting with the support of the perpetrator's public authority.

Article 47 [12] of Law no. 188/1999 brings important provisions on the behavior of public officials concerning benefits of any kind, declaration of assets, and its annual update. Most offenses are committed in this area, generated by receiving undue benefits. The temptation of the advantage at any price is nothing new; Aristotle recorded a concern among chiefs of state: "it must be done so, by law, or any other means with similar force, so that public offices never bring wealth to those who hold them." [13] As

for the transparency of public spending, Aristotle states: “to avoid misappropriation of public funds, it should be decided for one to be accountable before all gathered citizens, and display copies of them in brotherhoods, cantons and tribes; for magistrates to be honest, rewards should be brought to those who distinguish themselves by their good administration.” [14] We find that rewards do not constitute a method of disposal for the misappropriation of public funds for the Romanian society, and other forms of reaction would be situated on the level of public opinion, which would pull the alarm for deviation manifested in public space.

Legislative regulation for the conduct of public servants will work when moral norms will be applied in everyday practice. The legislator will never comprise psychological aspects with no legal coverage in the law. The emotional and volitional level of community members remains a territory belonging to social psychology and can only be “judged” by moral values and principles. Individual good has representation as long as it is correlated with the social good. In the area of social good, the guiding factors are those entrusted with political power. In the collective mind, there are preserved the behaviors of those deciding upon the history of the community. Any deviation from moral norms, resulting in criminal matters allowed for decision makers, usually becomes the rule for the other citizens. The moral norms and principles within permissiveness can only act through internalization, assuming them as own life aspirations. Thus is assumed the action inscribed in the immoral area and its repetition avoided. When morality becomes one of the criteria for assessing the profile of an individual, then we shall distinguish between the spiritual beauty and the silliness of undue income or the situational political power. Wisdom remains an individual act and “beauty subsists in the soul through wisdom”, just as “foolish souls are ugly”. [15]

**References:**

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- [3] Aristotle, *Politica*, Semne Publishing, Bucharest, 2008, 173.
- [4] Kant, I., *Critica ratiunii practice*, Scientific Publishing, Bucharest, 1972, 12.
- [5] Aristotle, *Etica nicomahică*, 265.
- [6] Aristotle, *Politica*, Semne Publishing, Bucharest, 2008, 109
- [7] Machiavelli, N., *Principele*, Mondero Publishing, Bucharest, 2008, 86-87
- [8] See Vieriu, E., General Aspect Regarding the Status of the European Public Servant, in *Jus et Civitas, A Journal of Social and Legal Studies*, vol. I (LXV), issue 1/2014, ISSN 2360-4026, 7-16
- [9] Carrol, A. B. & Buchholtz, A. K., *Business & Society Ethics, Sustainability and Stakeholder du Management*, International Edition, 2000, 38

[10] Law no. 188/1999, Art.43 (1) Public officials are obliged to perform their job duties with professionalism, impartiality and according to the law, and to restrain from any deed that could bring prejudice to the natural or legal persons or to the prestige of the body of public officials.

(2) Public officials in charge are obliged to support the motivated proposals and initiatives of their subordinates in order to improve the activity of the public authority or institution in which they carry out their activity, as well as the quality of the public services offered to citizens.

(3) Public officials have the duty to follow the norms of professional and civic conduct provided by law.

[11] Law no. 188/1999, Article 44(1) Public officials are forbidden to hold management positions, elected or appointed, in the management structures and bodies of political parties, defined in conformity with their status, for the organizations with the same legal regime as the political parties, foundations or associations functioning alongside political parties.

(2) The superiors of public officials are forbidden to be part of political parties or organizations with the same political regime as the political parties, foundations or associations functioning alongside political parties.

[12] Law no. 188/1999, Article 47. (1) Public officials are forbidden by law to request or accept, directly or indirectly, for them or for others, considering their public position, gifts or other advantages.

(2) When appointed in a public position, as well as when terminating the work rapport, public officials are obliged, under the law, to present to the manager of the public authority or institution the declaration of assets. The declaration of assets is annually updated, according to the law.

[13] Aristotle, *Politica*, Semne Publishing, 2008, 305

[14] Aristotle, *op. cit.*, 306.

[15] Plotin, *Opere*, I, Humanitas Publishing, Bucharest, 2003, 229.