

ETHICAL RESPONSIBILITY OF OFFICIALS OF THE EUROPEAN UNION AND TYPE OF SANCTIONS IMPOSED FOR UNETHICAL CONDUCT

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Abstract

The official acts as a 'link' in the public administration between the EU citizens and politicians, that is why the official is perceived by society as an example of ethical conduct, and acting against ethical norms may cause the decline of the level of values. Participation of the functionaries in the making of law to which society conforms is also important. That is why a person who makes decisions regarding behaviour of other persons ought to prove that his/her own conduct is above suspicion.

Key words

Responsibility, answerability, accountability, ethical responsibility, penalties, disciplinary sanctions.

Officials are important 'components' of the whole mechanism of public administration. Each official ought to realise that decisions made by him/her impact on specific matters and on a number of related legal situations. It is obvious that the official bears responsibility for not fulfilling his duties, and the type of such responsibility depends on the level and kind of misconduct. One may distinguish among i.a. disciplinary, penal or financial responsibility, but is there anything like ethical responsibility, and is it as significant equally significant to aforementioned and does it have the same consequences as disciplinary responsibility or responsibility in respect of order ?

Considering this article focuses on responsibility of the official of the European Union, at first it should begin with indicating the specific character of that function, which was created in the 1960s, along with first steps taken towards the integrity of Europe¹. According to the legal definition of a EU official, it is a person who has been appointed to an established post on the staff of one of the EU institutions by an instrument issued by that institution².

The notion of a EU functionary indicates the simultaneous representation of the European Union and a home country. One should not stick to a straightforward theory that a EU official is a French, Polish or Spanish official who has been employed in the European structures, because the mere definition of 'the European Union' is not of secondary meaning, but, on the contrary, it is the EU official who at the same time is a French, Polish or Spanish official. In this way the EU official is characterised by the multinational and multicultural aspect which determines the significant part of his/her actions³.

¹ G. Vilella, *Le Fonctionnaire européen. Un essai d'introduction*, Les Editions du Boulevard, 2007, p. 16

² *Le statut des fonctionnaires des Communautés européennes et le régime applicable aux autres agents de ces Communautés, Titre I : Dispositions Generales*, Journal officiel des Communautés européennes, no L 56 du 4 mars 1968, http://ec.europa.eu/civil_service/docs/toc100_fr.pdf

³ G. Vilella, *Le Fonctionnaire européen...* pp. 17-19

The legal basis for the functioning of the EU officials is formed by a set of regulations included in the Council Regulation No. 259/68 of 29 February 1968, which is the only document that is not included in the primary law, contrary to regulations and tasks of the EU institutions regulated by the primary law⁴. That regulation does not introduce any new rules to *acquis communautaire*, and in accordance with some opinions expressed in the administration jurisprudence it is not a normative act⁵, but in the hierarchy of the sources of the EU law it is an act of internal secondary law⁶. That set of regulations was replaced in 1990 by a new name –the Staff Regulations of Officials of the European Communities⁷.

The official is responsible for deliberate violation or non-fulfilment of his/her official duties. According to a dictionary definition responsibility is ‘a moral or legal accountability for one’s actions and facing the consequences; being responsible before someone for someone else or something’⁸. Responsibility is a fundamental element of representative democracy, and the democratic system functions in the way that politicians as representatives of their electors in the government ought to be sensitive towards the social needs and responsible for implementation of politics, whereas the officials are responsible both before citizens and the government for administering public services, and the citizens – the society – responsible for keeping the social agreement, that is, accepting the social and economic order⁹.

The complexity of the notion of responsibility has been presented by A. Pawłowska in her speech. She differentiates among three types of responsibility: responsibility – in legal sense, answerability – as a reaction to social needs, and accountability – as a relation between two parties where one of them, a person or an organisation, is responsible for providing services by the other party¹⁰.

P. Giusta has divided the responsibility of the EU functionaries into three disciplines: law, ethics and deontology. Each of them has a source in a different factor of a distinct range and sanctions adequate to the source. Thanks to those three disciplines everyone who holds an office in the EU institutions faces the sanctions provided for by law, which include sanctions for non-fulfilment of moral obligations (disciplinary sanctions) as well as a requirement of subordination.

In view of the complex meaning of responsibility it seems appropriate to present the notion of administrative sanction, defined by M. Wincenciak as ‘negative (unfavourable) effects for those legal entities that do not comply with obligations arising from legal norms or law application acts, resulting from administrative law relation, imposed through application of

⁴ C. Mik, *Europejskie prawo wspólnotowe. Zagadnienia teorii i praktyki*, vol. 1, Warszawa 2000, pp. 524-525.

⁵ J. Galster, C. Mik, *Podstawy Europejskiego prawa wspólnotowego*, Toruń 1998, p. 150.

⁶ *Ibidem*, p. 145.

⁷ Council Regulation No. 259/68 dd. 29 February 1968 with further amendments., *Journal officiel des Communautés européennes*, no L 56 du 4 mars 1968.

⁸ *Słownik języka polskiego PWN*, Wydawnictwo Naukowe PWN SA 2004.

⁹ A. Pawłowska, *Odpowiedzialność administracji w społeczeństwie informacyjnym*, IX Annual Conference SEAP "Odpowiedzialność w administracji", 25- 27 May 2008, quoted after: J. M. Moncrieffe, *Reconceptualizing Political Accountability*, "International Political Science Review" 1998, no. 4, p. 393.

¹⁰ A. Pawłowska, *Odpowiedzialność administracji ...* quoted after: B.S. Romzek, M.J. Dubnick, *Accountability* [in:] J.M. Shafritz (ed.), *International Encyclopedia of Public Policy and Administration*, Westview Press, Boulder 1998, pp. 6-11,

law by a public administration body'¹¹. It means that the official who fails to fulfil his/her duties will be penalised.

The Staff Regulations of Officials of the European Communities is the first and primary source of ethical and deontological principles. It includes certain values which present proper ways of conduct of the officials, not only towards the clients of administration.

Title II of the Staff Regulations entitled "Rights and obligations of officials" includes and defines the expected types of conduct of the EU functionaries. From the ethical point of view - respect, confidentiality, honesty, co-operation and independence may be considered as values constituting legally sanctioned obligations. The profession of an official and performance of a public function are characterised with the need to comply with such ethical standards which other members of society are not obliged to comply with¹². J. Dobkowski states that professional ethics should in this context become normative ethics. The Staff Regulations determine obligations of the officials. Firstly, the official ought to be neutral and without prejudice, he/she should evaluate the reality in a realistic way, regardless of his/her own personal likes and dislikes, in other words, 'balance the rational and emotional elements'¹³.

The EU official should also act according to the interest of the European Communities and the decisions made by him/her must not be influenced by any other organisation, government or institution. The EU official has to honourably represent the institution in which he/she is employed, and in the event of electing him/her to public office his/her duties of a EU official are suspended for the time of performing his/her function in Parliament¹⁴. If dealing with a matter is directly or indirectly influenced by personal, family or financial interest, which could impair the official's independence, he/she ought to notify the Appointing Authority which may find that functionary inappropriate to settle the case¹⁵. Second part of Article 11, according to which the EU official shall not without the permission of the Appointing Authority accept from any outer source any honour, decoration, favour or payment of any kind¹⁶, is significant for ethical reasons. The general rule is 'no gift without the permission of the Appointing Authority'. That rule, although it exists in law, does not allow to be precisely interpreted – it is not clear if the ban on accepting any gifts is dependent on the importance of a specific gift or on the circumstances of giving it. Here law has given way to ethics. Each institution of the European Union has introduced its own code of conduct in specific situations, e.g. the European Commission has decided that the Appointing Authority shall accept all gifts whose value shall not exceed the amount of €50, provided that the total value of gifts shall not exceed the amount of €50 annually. Despite the solutions accepted by the EU institutions the problem still exists, because it is not known which feelings it arouses in persons from outside the EU institutions: may the acceptance of a gift, which should not

¹¹ M. Wincenciak, *Sankcje w prawie administracyjnym i procedura ich wymierzania*, Warszawa 2008, p. 73.

¹² J. Dobkowski, *Charakter prawny kodeksów etycznych oraz kodeksów postępowania urzędników publicznych i wybieralnych przedstawicieli do organów administracyjnych*, p. 164, [in:] Bąk D. (ed.), *Etos urzędnika*, Warszawa 2007.

¹³ P.J. Suwaj, *Gwarancje bezstronności organów administracji publicznej w postępowaniu administracyjnym*, Kolonia Limited 2004, p. 111.

¹⁴ *Le statut des fonctionnaires...(Titre II : Droits et obligations du fonctionnaire*, art 11 and next).

¹⁵ *Le statut des fonctionnaires...(Titre II : Droits et obligations du fonctionnaire*, art 11 bis).

¹⁶ *Le statut des fonctionnaires...(Titre II : Droits et obligations du fonctionnaire*, art 11).

theoretically have impact on the undertaken decision, in practice influence the objective judgement made by the official¹⁷.

Responsibility of the official for his/her actions is included in Article 21 of the Staff Regulations, according to which the official is responsible before the immediate superior for carrying out the duties assigned to him/her. In case of any failure, incorrect performance or negligence of the duties the official may be liable to a disciplinary action (Article 86 § 1 of the Staff Regulations). The officials are also obliged to inform of corruption, malpractices, breach of the EU interest, as well as of situations of the breach of duties. The official who possesses such information notifies his/her immediate superior or Director-General, or Secretary-General, and may also notify the European Anti-Fraud Office (OLAF)¹⁸. The Appointing Authority (or OLAF) initiates the disciplinary proceedings against the EU official or a former official against whom penal proceedings may be initiated¹⁹. The following penalties may be imposed on the official:

- a written warning;
- a reprimand;
- deferment of advancement to a higher step for a period of between 1 and 23 months;
- relegation in step;
- temporary downgrading for a period of between 15 days and one year;
- downgrading in the same function group;
- classification in a lower function group with or without downgrading;
- removal from post²⁰.

Disciplinary sanctions are proportional to the misconduct committed. In order to determine the seriousness of the misconduct and the kind of sanctions one should take into account the following factors:

¹⁷ P. Giusta, *Des valeurs ...* p. 89.

¹⁸ In March 2007 a 3-year investigation conducted by the European Anti-Fraud Office was closed. 3 EU functionaries were arrested. For 10 years the officials had been accepting financial benefits and had been involved in numerous frauds regarding public procurement, i.a. related to the search for offices for the European Commission agencies abroad (the Indies, Albania) and equipping them with alarm systems. The embezzlements cost the EU a few dozen million Euros. It is worth noticing that the investigation that lasted for quite a long time and was considered by sceptics as unlikely to end with success, was defended by Max Strotmann, the spokesman for Siim Kallas, Vice-President and EU Commissioner for administration, audit and anti-fraud. He stated that the arrests showed 'a zero tolerance approach of the EU to fraud' (webservice: http://www.lefigaro.fr/international/20070329.FIG000000255_scandale_financier_a_la_commission_europeenne.html).

¹⁹ M. Małecki, K. Tomaszewski, *Status Urzędnika Unii Europejskiej*, Warszawa 2005, p.70.

²⁰ *Le statut des fonctionnaires...(Annexe IX, Section 3 : Sanctions disciplinaires, art. 9).*

- the nature of the misconduct and the circumstances in which it occurred;
- the extent to which the misconduct adversely affects the integrity, reputation or interests of the Communities;
- the extent to which the misconduct involves intentional actions or negligence;
- the motives for the official's misconduct;
- the official's grade and seniority;
- the level of the official's duties and responsibilities;
- whether the misconduct involves repeated action or behaviour;
- the conduct of the official throughout the course of his career²¹.

One may determine those spheres of public life which are related to the rights and obligations of the officials included in the Staff Regulations and in the Code of Good Administrative Behaviour. The Staff Regulations regard spheres which include the actions of the official lying in the range of his function (instructions in Title II of the Staff Regulations). Four spheres in which the official deals with ethical choice in the decision-making process may be distinguished: 1) the official as an individual, 2) group of employees, 3) organisation, 4) entities involved in the decision-making process, here: clients of the administration.

According to R. Kidder, the founder and president of the Institute for Global Ethics, ethics is 'subordination that is not subject to legal enforcement'²², and thus, is it possible to speak of sanctions for unethical conduct of the EU officials?

Ethical conduct is a challenge not only for the EU officials, but it is ethics thanks to which they serve the general interest, and every kind of their behaviour is determined with a need of equal treatment of the citizens²³. The EU officials ought to act not only according to the rules established by law, but they should also act in compliance with the rules of ethics and professional conduct²⁴. For that purpose the N. Kinnock's Commission working on the reform of the Staff Regulations has created the Code of Good Administrative Behaviour²⁵.

The ethical code fills the gaps in regulations regarding relations between the official and the client of the administration, and that sphere is extensive contrary to the norms included in the

²¹ Ibidem, art. 10.

²² P. Giusta, *Des valeurs...*, p. 42, quoted after Kidder R. M., *Ethics Newslines, Business Ethics: Should We Give It Up?*, 2002.

²³ D. Bossaert, Ch. Demmke, K. Nomden, R. Polet, *Civil Services in the Europe Of Fifteen. Trends and New Developments*, Maastricht 2001, p.233.

²⁴ *Le statut des fonctionnaires...(Titre II : Droits et obligations du fonctionnaire*, art. 11 and next).

²⁵ M. Małecki, K. Tomaszewski, *Status Urzędnika Unii Europejskiej*, Warszawa 2005, pp.35-36.

Staff Regulations. The second broadest sphere is the one concerning a functionary as an individual and participant in the decision-making process.

Ethical code includes a group of standards of desirable conduct of functionaries, which to a great extent contributes to better understanding of the principles of political neutrality, impartiality, reliability or honesty, by officials and their superiors. Breach of ethical principles involves not only responsibility inside the organisation, but also penal responsibility²⁶. To illustrate it with an example, an investigation conducted by OLAF may reveal personal participation in fraud or offence where penal sanctions shall be imposed by courts of the home country of the official. The contents of Article 22 Staff Regulations provide for financial responsibility: the functionary may be obliged to partial or total repairing of the damage inflicted by the Communities as a result of personal mistake made by the official while performing his/her functions.

Why does the responsibility of the officials for unethical conduct is so significant? The official acts as a 'link' in the public administration between the EU citizens and politicians, that is why the official is perceived by society as an example of ethical conduct, and acting against ethical norms may cause the decline of the level of values. Participation of the functionaries in the making of law to which society conforms is also important. That is why a person who makes decisions regarding behaviour of other persons ought to prove that his/her own conduct is above suspicion. In fact, society treats the EU officials as public sector workers, and, consequently, citizens look at them as at national officials making careers and receiving remuneration from taxpayers' money, and so it is natural that appropriate, ethical conduct is expected from them²⁷.

J. Dobkowski claims that ethical codes of the officials, similarly to the codes of conduct of the officials, are 'the pillars of a new system of public human resources management'²⁸.

The American scientists state that responsibility of the officials increases with their advancement to higher step, because the scope and effects of administrative duties as well as the expectations of the clients of the administration become increased²⁹. The increased level of responsibility is followed by the increased degree of difficulty of ethical dilemmas³⁰. In spite of the fact that ethical responsibility interweaves with other kinds of responsibility and often involves severe sanctions, is it possible to avoid it at all? According to R. Goodin, we naturally accept ethical responsibility and moral claims in family relations³¹. If that happens, then accepting them in public life and affairs, that is, accepting subjection and subordination in the administrative structure, shall probably enable avoiding sanctions for unethical conduct.

²⁶ B. Kudrycka, *Neutralność polityczna urzędników*, Warszawa 1998, pp. 106-109.

²⁷ Ch. Demmke, *Working towards common elements in the field of ethics and integrity, Study for the 43rd meeting of the Directors-General of the public services of the member states of the european union*, Maastricht 2004, pp. 14-15.

²⁸ J. Dobkowski, *Charakter prawny ...* p. 163.

²⁹ B. Kudrycka, *Dylematy urzędników administracji publicznej*, Białystok 1995, p. 90, quoted after: Y. Willbern, *Types and Levels of Public morality*, [in:] *Ethical Insight, Ethical Action; Perspectives for the Local H Government Manager*, (ed.) E.K. Kellar, ICMA 1988, p. 15.

³⁰ B. Kudrycka, *Dylematy urzędników...* p. 90.

³¹ B. Kudrycka, *Dylematy urzędników...* p. 89, quoted after: R.E. Goodin, *Vulnerabilities: An Ethical Defense of the Welfare State*, [in:] *American Political Science Review*, no. 79, 1985, pp. 775-787.

In case of the Staff Regulations of Officials of the European Communities we do not deal with, nor we even have an impression of, 'the artificiality of regulations which, despite their binding force, are not executed', as B. Kudrycka wrote about bans, limitations and duties of ethical nature included in the national legislation³². Society imposes high expectations on the EU functionaries, and the warranties of substantive, legal and ethical nature (which jointly ensure the efficient system of protection against partiality and the conflict of interests)³³ enable the officials to act in compliance with the law and moral principles through the application of sanctions provided for in the Staff Regulations.

Literatura:

- Bossaert D., Demmke Ch., Nomden K., Polet R., Civil Services in the Europe Of Fifteen. Trends and New Developments, Maastricht 2001
- Demmke Ch., Working towards common elements in the field of ethics and integrity, Study for the 43rd meeting of the Directors-General of the public services of the member states of the European union, Maastricht 2004
- Demmke Ch., Are Civil Servants Different Because They Are Civil Servants ? Who Are the Civil Servants – And How ?, Maastricht 2005
- Demmke Ch., European Civil Services between Tradition and Reform., Maastricht 2004
- Dobkowski J., Charakter prawny kodeksów etycznych oraz kodeksów postępowania urzędników publicznych i wybieralnych przedstawicieli do organów administracyjnych, [in:] Bąk D. (red), Etos urzędnika, Warszawa 2007
- Galster J., Mik C., Podstawy Europejskiego prawa wspólnotowego, Toruń 1998
- Giusta P., Des valeurs et des choix : guide d'éthique pratique à l'intention des fonctionnaire de l'Union européenne, Luxembourg 2007
- Kudrycka B., Neutralność polityczna urzędników, Warszawa 1998
- Kudrycka B., Dylematy urzędników administracji publicznej, Białystok 1995
- Kudrycka B., Dębicki M., Etyczne administrowanie. Wyzwanie dla samorządu terytorialnego, Warszawa 2000
- Małecki M., Tomaszewski K., Status Urzędnika Unii Europejskiej, Warszawa 2005
- Mik C., Europejskie prawo wspólnotowe. Zagadnienia teorii i praktyki, vol. 1, Warszawa 2000

³² B. Kudrycka, M. Dębicki, Etyczne administrowanie. Wyzwanie dla samorządu terytorialnego, Warszawa 2000, p.73.

³³ P.J. Suwaj, Gwarancje bezstronności ..., p. 117.

- Pawłowska A., Odpowiedzialność administracji w społeczeństwie informacyjnym, IX Doroczna Konferencja SEAP "Odpowiedzialność w administracji", 25- 27 May 2008
- Pope J., Rzetelność życia publicznego. Metody zapobiegania korupcji, Warszawa 1999
- Romzek B.S., Dubnick M.J., Accountability [in:] J.M. Shafritz (ed.), International Encyclopedia of Public Policy and Administration, Westview Press, Boulder 1998
- Suwaj P.J., Gwarancje bezstronności organów administracji publicznej w postępowaniu administracyjnym, Kolonia Limited 2004
- Vilella G., Le Fonctionnaire européen. Un assai d'introduction, Les Editions du Boulevard, Bruxelles 2007
- Wincenciak M., Sankcje w prawie administracyjnym i procedura ich wymierzania, Warszawa 2008

Selected documents:

- Le statut des fonctionnaires des Communautés européennes et le régime applicable aux autres agents de ces Communautés, Titre I : Dispositions Generales, « Journal officiel des Communautés européennes» no L 56 du 4 mars 1968, (website : http://ec.europa.eu/civil_service/docs/toc100_fr.pdf)
- Rozporządzenie Rady nr 259/68 z dnia 29 lutego 1968 r. z późn. zm., Journal officiel des Communautés européennes, no L 56 du 4 mars 1968

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