

GOOD MANNERS AND GOOD FAITH AS A PROBLEM OF CIVIL SERVICE ETHICS

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Összefoglalás

A jogtudományi kutatások többnyire figyelmen kívül hagyják a közzolgálati etika nagy rendszereit. A jóerkölcs és a jóhiszemőség nem szokványos fogalmak e területen. A 'Good Manners' kifejezésnek van jogi és etikai jelentése is, (jóerkölcs, illetőleg megfelelő/helyes viselkedés, magatartás) és ezek a jelentésmezők jelentéstanilag egymástól eltérnek. A tanulmány kihangsúlyozza, hogy a kétféle fogalomnak különféle szokásos formái vannak a különféle jogrendszerekben és a különböző etikai kódexekben. Jelen munka bemutatja a közzolgálati etika három különféle modelljét a szerző önálló kutatásai alapján. A *contributio* elemzi az 'Udvariasság és tisztelettudó segítségnyújtási hajlandóság' EU közzolgálati jogban ismeretes elvét, és a német hivatalnoki erkölcs, a '*Beamtenethos*' legizgalmasabb kérdéseit (pl. a viselkedés, azaz a '*Verhalten*' és a tartózkodó magatartás, azaz a '*Zurückhaltung*' alapelvét), az udvariasság követelményét az ausztrál Közzolgálati Etikai Kódexben, és a jóhiszemőség megjelenését a portugál Közigazgatás személyzetéről szóló törvényben, továbbá a német Közzolgálati jog egységesítéséről szóló kerettörvényben.

Kulcsszavak

Boa Fé, Közzolgálati etika, udvariasság, jóhiszemőség, jóerkölcs, közzolgálati etikai normák a különböző országokban, Verhalten, Zurückhaltung.

Abstract

The legal scientific researches seek the Major Systems of the Civil Service Ethics infrequently. The 'Good Manners' and 'Good Faith' are not typical concepts in this field. The expression 'Good Manners' has a legal, and an ethical meaning, and these meanings are different semantically. This paper emphasizes the different typical forms of that two concepts in the different laws, and the different Codes of Conduct. That work shows the three different models of the Civil Service Ethics (the Anglo-Saxon Model, the French Model, and the German Model) – by the own Theory of the Author. This contribution analyses the question of 'Courtesy, and Willingness to Help in a Respectful Manner' in EU Civil Service Ethics, and the most interesting questions of the German '*Beamtenethos*' (e.g. '*Verhalten*' and '*Zurückhaltung*'), the requirement of 'Courtesy' in *Australian Public Service Code of Conduct*, and the appearance of 'Good Faith' in Portuguese Administrative Personnels' Act, and in *Federal Civil Service Framework Act* (Ger. *Rahmengesetz zur Vereinheitlichung des Beamtenrechts*).

Keywords

Boa Fé, Civil Service Ethics, Courtesy, Good Faith, Good Manners, Norms of the Civil Service Ethics in different countries, Verhalten, Zurückhaltung.

I. Conceptual Framework

Good Manners as Legal Concept

Good Manners (Cz. *dobré mrávy*, Fr. *bonnes moeurs*, Ger. *Gute Sitten*)¹, as legal concept, means the general norms and customs of the society. This is a typical border-concept between the Law and the Ethics. This concept appears in Civil Law, particularly in the countries of the Civilian (Roman law-based) Traditions². The Good Manners as legal concept, is a background of the Civil Service Ethics, this is not an *expressis verbis* knowledge between the Scholars of Civil Service Ethics, but it seems a natural, and self-evident fact. The Good Manners, as Legal Term, is an idle opportunity for the Civil Service Ethics.

Good Manners as Ethical Concept

Good Manners, as ethical concept, is a formulation of behavioural expectations. This concept means the opposite of the 'Bad Manners'. The seeking of the (ethical or unethical) behaviour of Civil Servants is a typical research field of the Civil Service Ethics. Courtesy is similar notion, like Good Manners in Ethical meaning.³

Good Faith as a General Principle of Law

This expression close to the 'theory of the good and diligent father' (lat. *bonus et diligens pater familias*), it is synonymous with sincerity. The Good Faith means in Latin *bona fides*, in Czech *dobré víře*, in Dutch *goede Trouw/redelijkheid en billijkheid*⁴, in French *bonne foi*, in German *Treu und Glauben/guter Glaube*⁵, in Italian *buona fede*, in Polish *dobra wiara*, in Portuguese *boa fé*, in Russian *добрые услуги*, and in Spanish *buena fe*. We found with this concept or notion in the field of Civil Service Ethics in a rare case in the Portuguese Administrative Personnels' Act (and the German law, too). The using of the expression is a real rarity in this topic.

¹ See in German Contract Law the notion of 'unmoralische Vertrag', as similar category. The correct English legal term is 'Immoral Contract' in Common Law. See, on Immoral Contracts, as a question of Law Comparaison: Menyhárd, Attila: *A jóerkölcsbe ütköző szerződések. [The Immoral Contracts.]* Budapest: Gondolat, 2004. 332. ISBN 963 9567 67 1.

² On Civilian Traditions in a comparative point of view, see: Hamza, Gábor: *Entstehung und Entwicklung der modernen Privatrechtsordnungen und die römischrechtliche Tradition.* Budapest: ELTE Eötvös Publishing, 2009. 826. ISBN 978 963 284 095 6

³ On connection between Professional Courtesy and Good Manners, as Ethical Concept, see the next paper: Nyman, Ronald E.: Professional Courtesy: When Good Manners Violate the Law. *MediStar Vol. I. (2007) No. 1. 1-2.*, available at: <http://www.scribd.com/doc/50873522/Professional-Courtesy-When-Good-Manners-Violate-the-Law>.

⁴ The new Dutch Civil Code use the second legal term from 1992. 'Redelijkheid en billijkheid' means by and large 'reasonableness and fairness'.

⁵ 'Treu und Glauben' is the objective form of Good Faith, and 'guter Glaube' is the subjective form of Good Faith in contemporary German law. This categories were formed by Professor Wächter. Földi, András: *A jóhiszeműség és tisztesség elve. Intézménytörténeti vázlat a római jogtól napjainkig. [The Principle of Good Faith. Outline of the History of a Legal Principle from the age of Roman Law to Present Days.]* Budapest: ELTE Faculty of Law, 2001. 118. ISBN 963 463 525 3 On this problem see generally: page 3, 6. et sqq. and on Wächter's conception: page 35.

II. The Different Models or Major Systems of Civil Service Ethics⁶

The Major System (Fr. *grand système*) means from the publication of world famous monography⁷ of the well-known French Scholar, René David, the model-based systems means, in present case, the model-based systems of Civil Service Ethics. The three major model of the Civil Service Ethics are the Anglo-Saxon Model, the French Model, and the German Model.

Anglo-Saxon Model

The most typical system in Civil Service Ethics is the Anglo-Saxon. The base of this system is the Code of Conduct. The cradle of the Code of Conduct was Great Britain. The first code appeared in 1764, at the time of the colonization of India, the reason was the corruption issues of the English Civil Servants. The newest English code is in force from 2006. The top category of the Civil Service Ethics is the regulation of the United States of America. The US Ethical regime is stricter, than the British. The Anglo-Saxon Model had taken over in rest of the World (it means 25 countries) or the regulation is typically based on that model.

French Model

In French Model⁸, the cognitive resources of the system of Civil Service Ethics are the different law texts. The typical French laws, which contains information on Civil Service Ethics are the next: The Constitution; the Penal Code; Act on Rights and Obligations of the Civil Servants; Decree of Organic Law on Legal Status of the Judges, etc. The Code of Conduct is not a frequent form in French Civil Service, except for Policemen⁹ and trade-union leaders in Civil Service.¹⁰ The French model is unique, the other countries had not taken over.

German Model

The regulation is typically unwritten in German Model. The knowledge of the Ethical Rules is the part of the internal training of the German Civil Servants. This topic is an essential question of the German Administrative Culture and Organisational Culture. The name of this phenomenon is the Ethics of the Civil Servants (Ger. *Beamtenethos*). The legal Background of

⁶ This classification is the theory of the Author.

⁷ David, René - Jauffret-Spinosi, Camille: *Les grands systèmes de droit contemporains*. Paris: Dalloz, 2002. 11^e VII, 552. ISBN 2-247-02848-9

⁸ On French Model of Civil Service Ethics, see: Braibant, Guy: *La déontologie*. In: Braibant, Guy: *Le droit administratif français*. Paris: Dalloz, 1993³ 386-402. ISBN 2-7246-0617-5

⁹ *Code de déontologie de la police nationale*. Available at:

http://www.interieur.gouv.fr/rubriques/c/c3_police_nationale/c34_deontologie/code_deontologie.

¹⁰ *Charte de déontologie des cadres dirigeants des collectivités locales*. An other example: *Charte de la déontologie du directeur général des collectivités territoriales et de leurs établissements public* (Adoptée le 26 novembre 1997, lors du Congrès national de Perpignan). Available at: <http://www.congres-sndg.info/sndg/nous-connaître/15/>.

that theme is only three sections of the Federal Civil Service Framework Act (Ger. *Rahmengesetz zur Vereinheitlichung des Beamtenrechts*)¹¹.

The law contains the next text from section 35 paragraph 1 to section 37:

“35. § (1) The officer should serve all the people, not a party. He has to perform his duties impartially and fairly and to take care in his administration to the public good. He has through his entire attitude to the free democratic basic order within the meaning of the Basic Law profess and advocate for their preservation.
 (2) The officer has to uphold political activity, that of moderation and restraint, which results from its position in relation to whole and from a regard to the duties of his office.
 36. § The officer has to devote themselves with full devotion to his profession. He has to manage his office disinterestedly in *Good Faith*. His conduct is within or outside the service must respect and trust of justice, which requires his profession.
 37. § The official shall advise his superiors and support. He is obliged to execute the orders issued by them and follow their general guidelines. This does not apply to officials, according to special legal provision not bound by instructions and are subject only to the law. ”

The key concepts of the law text is the following: Impartiality (Ger. *Unparteilichkeit*); Neutrality (Ger. *Neutralität*); Restraint or reserved behaviour (Ger. *Zurückhaltung*); Conduct (Ger. *Verhalten*); Hierarchy (Ger. *Hierarchie*). *Zurückhaltung* and *Verhalten* are the conventional form of the ethical concept of Good Manners. The German law text knows the expression of 'Good Faith', as the Portuguese, too. The German model is unique, the other countries had not taken over.

¹¹ „35. § (1) Der Beamte dient dem ganzen Volk, nicht einer Partei. Er hat seine Aufgaben unparteiisch und gerecht zu erfüllen und bei seiner Amtsführung auf das Wohl der Allgemeinheit Bedacht zu nehmen. Er muss sich durch sein gesamtes Verhalten zu der freiheitlichen demokratischen Grundordnung im Sinne des Grundgesetzes bekennen und für deren Erhaltung eintreten.
 (2) Der Beamte hat bei politischer Betätigung diejenige Mäßigung und Zurückhaltung zu wahren, die sich aus seiner Stellung gegenüber der Gesamtheit und aus der Rücksicht auf die Pflichten seines Amtes ergibt.
 36. § Der Beamte hat sich mit voller Hingabe seinem Beruf zu widmen. Er hat sein Amt uneigennützig nach bestem Gewissen zu verwalten. Sein Verhalten innerhalb und außerhalb des Dienstes muss der Achtung und dem Vertrauen gerecht werden, die sein Beruf erfordert.
 37. § Der Beamte hat seine Vorgesetzten zu beraten und zu unterstützen. Er ist verpflichtet, die von ihnen erlassenen Anordnungen auszuführen und ihre allgemeinen Richtlinien zu befolgen. Dies gilt nicht für Beamte, die nach besonderer gesetzlicher Vorschrift an Weisungen nicht gebunden und nur dem Gesetz unterworfen sind.”

In German, see: Vigouroux, Christian: *Déontologie des fonctions publiques*. Paris:Dalloz, 2006. 683. ISBN 2 247 07045 0 The similar German text via Internet: <http://www.juraforum.de/gesetze/brrg/>. On problems of the German Civil Service Ethics in Historical Context, see: Fisch, Stephan: *Beamtenethik und Beamtenethos – Anmerkungen aus historischer Sicht*. In: Albert Hofmeister (Hg.): *Brauchen wir eine neue Ethik in der Verwaltung?* Schriftenreihe der Schweizerischen Gesellschaft für Verwaltungswissenschaften Bd. 40. Bern: Schweizerische Gesellschaft für Verwaltungswissenschaften, 2000. 161-177. pp. ISBN 3-908128-40-4.

III. Some Examples in Different Laws and in Different Codes of Conduct

'Courtesy, and Willingness to Help in a Respectful Manner' in EU Civil Service Ethics and 'Courtesy' in Australian Public Service Code of Conduct

For the EU Civil Servants, the *'Courtesy, and Willingness to Help in a Respectful Manner'* means the follows. The actions of Civil Servants should be focused on the interest of the organisation, and the public, who are dependent on that organization. Civil Servants should treat citizens – and each other – with respect, and they should give due heed to the standpoints, perceptions and contributions of others. This core value also extends to factors such as customer-orientations, helpfulness, decency, collaboration, refraining from discrimination.¹²

The *Australian Public Service Code of Conduct* (1999, 2005) emphasizes in paragraph 3:

„(3) An Australian Public Service (abbr. *APS*) employee, when acting in the course of APS employment, must treat everyone with respect and courtesy, and without harrasment.”¹³

The importance of courtesy is a splendid example of the Good Manners as Ethical Concept.

'Good Faith' in Portugese Administrative Personnels' Act

This concept or notion appears in the field of Civil Service Ethics in a very rare case in the Portugese Administrative Personnels' Act.¹⁴ The *boa fé* (Good Faith) found in the text of Act on Legal Status the Management Personnel of the Public Administration, Art. 4 (Civil Service Ethics): "General principles of ethics. The owners of the leadership positions are exclusively serving public interest and should observe in carrying out its functions, core values and key administrative activities enshrined in the Constitution and law, particularly those of Legality, Justice and Impartiality, Competence, Responsibility , Proportionality, Transparency and Good Faith to ensure the respect and confidence of employees and of society in public administration. "

This is a very nice, and interesting example of the meeting of the Good Faith, and the Civil Service Ethics theoratically.

¹² The source of the text: *Main Features of an Ethics Framework for the Public sector. As proposed by by the Dutch Presidency and adopted by the Directors General responsible for Public Administration int he members states and the institutions of the European Union in their 43rd Meeting Maastricht (NL) 22 November 2004.* See, Bossaert, Danielle – Demmke, Christoph: *Main Challanges in the Field of Ethics in the EU Member States.* Maastricht:EIPA, 2005. 253-267. ISBN 90-6779-196-2, on the details: page 258.

¹³ On English text, see: Vigouroux, 2006. 684.

¹⁴ Act 2/2004 on Legal Status the Management Personnel of the Public Administration, Art. 4 (Civil Service Ethics): „Principios gerais de etica. Os titulares dos cargos dirigentes estao exclusivamente ao servico do interesse público, devendo observar, no desempenho das suas funcoes, os valores fundamentais e principios da actividade administrativa consagrados na Constituicao e na lei, designadamente os da legalidade, justica, e imparcialidade, competencia, responsabilidade, proporcionalidade, transparencia e boa fé, por forma a assegurar o respeito e confianca dos funcionários e da sociedade na Administracao Pública.” On Portugese text, see: Vigouroux, 2006. 683.

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