OPENNES AND TRANSPARENCY IN GOVERNANCE:

CHALLENGES AND OPPORTUNITIES

EDITED BY MICHAEL KELLY

THE SECOND NISPACEE CIVIL SERVICE FORUM
HELD IN MAASTRICHT, THE NETHERLANDS, OCTOBER 28-29, 1999

NISPAcee
The Network of Institutes and Schools of Public Administration
In Central and Eastern Europe

And

EIPA
European Institute of Public Administration

OPENNESS AND TRANSPARENCY IN GOVERNANCE: CHALLENGES AND OPPORTUNITIES

Proceedings of the second NISPAcee Civil Service Forum held in
Maastricht, The Netherlands
October 28-29, 1999

Edited by:
Michael Kelly
EIPA
Maastricht, The Netherlands

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OVERVIEW OF THE 1999 CIVIL SERVICE FORUM

Michael Kelly [1]

The First Civil Service Forum took place in Paris on October 23 and 24, 1997, under the title "Civil Service Training: Challenges and Prospects". The Forum was organised jointly by the Network of Institutes and Schools of Public Administration in Central and Eastern Europe (NISPAcee), the *Institut International d'Administration Publique* (IIAP) and the SIGMA programme of OECD (Support for Improvement in Governance and Management in Central and Eastern European Countries).

The main objective of the Forum was to help Central and Eastern European countries to develop policies to support comprehensive training delivery for the public administration sector, by bringing together administrators and training providers from the region, and from Member States of the European Union, for professional exchanges and discussions. It was planned that the Forum should take place every second year. The European Institute of Public Administration (EIPA) agreed to join with NISPAcee in organising the Second Civil Service Forum, which took place in the Institute's main premises in Maastricht, Netherlands, on 28 and 29 October, 1999, with the support of the European Commission and the Netherlands Foreign Ministry. The title adopted by agreement was "Openness and Transparency in Government: Challenges and Opportunities", and the programme, developed jointly by NISPAcee and EIPA, is enclosed as Annex 1.

Following the introductions and some keynote presentations, the main body of the programme comprised two workshops, the first centred on the issues of Government/Citizen relationship, and the second on Impact of Openness on Administration. The programme ended with a Round Table discussion on Implementing Transparency and Openness in Government, and final conclusions. A total of over 20 presentations were made during the two days. Some 55 international experts took part, of which 36 came from the Central and Eastern European countries represented in NISPAcee, representing 16 countries of the region. Counting the other 7 countries represented, the participation covered a total of 23 countries, and 5 international organisations (Commission, OECD-SIGMA, UN, NISPAcee and EIPA).

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[1] Director of Development, European Institute of Public Administration (EIPA) Maastricht, Netherlands

In the course of the presentations and discussions, it became clear that openness and transparency in government is a very live issue in both the transition countries and the Member States of the EU. Developments such as the improving educational standards of the population, changing role of the media, new technological services and opportunities, increasing expectations and awareness of the need for overview and accountability in public life, were mentioned as common factors which demand change in our political systems. In all countries, these factors serve to ensure that the old approaches are no longer acceptable.

At the same time, it is true that the countries in transition face particularly pressing demands. Reports on current developments in some of these countries (Bulgaria, Slovenia, Czech Republic, Latvia, Ukraine, Hungary, Slovakia, Estonia, Poland) mentioned major initiatives in respect of new legislation embodying extensive citizen rights of information access and consultation, new administrative bodies to ensure citizens' rights, and new systems for information distribution and service delivery, including applications of the latest Internet technology. In some cases, it seems that the transition countries have gone faster, and further, than some of their Member State counterparts in seeking to implement modern, open, transparent administration.

The relative conservatism of some countries may be explained by reference to some potential problems identified by several speakers. It is not yet clear how public administration will function if it takes place under constant media and public scrutiny - "in a fishbowl". It is possible to hypothesise a number of destructive reactions to such circumstances in place of the desired results – policy-making and decision-making could be "driven underground" instead of made more open.

Speakers also mentioned some practical problems in achieving effective and constructive involvement of the general public in public policy-making. Many individuals might not be interested, and those who are could wield unbalanced influence through interests and pressure groups. The available channels of communication with citizens are not always suitable or effective, and some privileged sections of society could enjoy superior access and influence which would increase the differentials within society. Finally, the role of elected representatives in a democracy must be co-ordinated with the direct involvement of citizens in policy-making: any development which appeared to substitute for the traditional responsibility of elected politicians would have to be handled with extreme care.

The fact that these movements towards openness and transparency are taking place in parallel with other reform drives in public administration provides additional concerns in relation to the predictability of current changes. Traditional forms of bureaucratic control are being replaced by more flexible, decentralised, systems, using different methods to achieve accountability of public officials. Properly managed, the new approaches to openness and transparency towards our citizens could play an important role in ensuring this accountability, both in relation to policy-formulation *and* in relation to methods and standards of service delivery. But it could be dangerous to expect too much from the simple fact of opening doors to public access.

Finally, the role of the formal information channels between government and citizen was explored. This function is new in the transition countries, and has obvious potential for supporting the reform and development in these countries. It was stressed that the role should not be seen as a passive one: government information services have an important responsibility for creating interest in and awareness of public issues, and for improving the public understanding of public policy issues. In this connection, the *quality* of public information was as important as the *quantity.* The information services should be pro-active in presenting information which is accurate, relevant, clear and understandable .

The general conclusion of the proceedings was that the international trend towards openness and transparency in public administration was well established, continuing and inevitable. Every country approached this trend from the background of its own history, culture and society, and each would have to find solutions which were appropriate to its own circumstances and requirements. At the same time, the international exchange of information on problems, approaches and experiences was important as a source of ideas for national policy-making, and the Second Civil Service Forum was generally applauded as playing a useful and interesting part for the participants.

The information and opinions which were aired at the Forum were regarded as being of the highest interest and value. It was agreed that the proceedings should be made the subject of a joint NISPAcee/EIPA publication during early 2000, to allow the widest international access to the materials. The present joint NISPAcee /EIPA publication is the result of that agreement, and reproduces in full all papers delivered at the Forum.

OFFICIAL OPENING

*Isabel Corte-Real**

In my capacity as Director-General of the European Institute of Public Administration I am extremely pleased and honoured to host the 1999 Civil Service Forum at the European Institute of Public Administration here in Maastricht.

The Civil Service Forum is organised by NISPAcee and with the support of the Commission and the Dutch Government. I think it is worth underlining some of the most important features of the different organisations involved.

NISPAcee (the Network of Institutes and Schools of Public Administration of the Central and East European countries) was established in 1994 and focuses on the public administration challenges facing Central and East European countries during the transition period.

The mission of NISPAcee is to promote the development of public administration expertise and training in post-communist countries, to increase the quality of training and research, and to assist its member institutions in their development at both international and national level.

NISPAcee, as referred to in its statement, is a forum for dialogue through joint research, educational and training programmes, and discussion between trainers, professors, civil servants and public managers.

EIPA, which was established in 1981, can also be considered as a network of European experts in training on public management and European affairs. In fact, the Board of Governors of EIPA is composed of representatives of the Member States (usually the Director-General in charge of the Public Service) and the Commission; our Advisory Body, the Scientific Council, is composed of Directors of National Schools of Public Administration of the Member States, a number of distinguished European academics and the so-called associated countries (Cyprus, Bulgaria, Hungary, Switzerland and Norway).

The Civil Service Forum is a forum for discussion and cooperation between training institutions, civil servants and officials responsible for the civil service, in order to improve the capacity of institutions to cope with training needs. The forum is supposed to take place every two years,

* Director General, EIPA, Maastricht, The Netherlands

involving participants from the East and West. The last forum was organised in Paris in 1997 by NISPAcee in cooperation with the *Institut International d' Administration Publique* and SIGMA (Support for Improvement in Governance and Management in Central and East European countries). The theme at the 1997 forum was "Civil Service Training Challenges and Perspectives".

This year, the forum is dedicated to the topic "Transparency and Openness in Governance: Challenges and Opportunities".

Allow me to express our thanks to the Commission for its support of this initiative. Without this support, it would be impossible to organise the forum.

I would also like to thank in particular the Dutch authorities (the Ministry of Foreign Affairs and the Ministry of Home Affairs) for supporting this activity. Again, without their support, it would be very difficult or even impossible to organise this seminar.

The programme of today and tomorrow focuses on 4 main issues:

- **Openness, transparency and accountability in public administration**

Our intention is to "set the scene" in this session, by introducing approaches to administrative reform, focusing on government-citizen relationships, good governance and sustained development.

- **Legitimacy in public administration**

This topic covers the issues related to inevitable expectations on the part of citizens, who demand better service and better information in the field of governance and public management.

- **Impact of openness in administration**

Concrete cases of international experience as consequences of open government will be presented as well as cases from candidate countries, international organisations and Member States.

- **Finally,** some conclusions will be drawn, in order to foster future developments in the field.

Without taking up too much of your time, I would like to share with you some more thoughts about cooperation between NISPAcee and EIPA.

First of all, I would like to recall the first steps of our cooperation. In June 1997, together with the previous Chairman of the Scientific Council,

Peter Mehlbye, I had the opportunity to attend a meeting of the Steering Committee of NISPAcee in Vienna. Afterwards, I met Professor László Váradi, the Chairman of the Steering Committee, as well as other members of the network.

At the time we jointly started to explore a simple but pragmatic programme for our cooperation, based on four assumptions:

1. EIPA should make attempts to organise an East/West conference on a specific subject, that is the Phare programme, in order to examine the provisions and implementation of the new Phare rules and regulations. This meeting would also have to be an occasion to launch a more systematic approach between the two networks: EIPA's Scientific Council and NISPAcee.

I am happy to say that our intentions of 1997 have been realised. In October 1998, we organised the meeting on the implications of new Phare programming for initiatives of public administration and East/West cooperation between NISPAcee and EIPA. The programme covered other interesting topics such as the twinning arrangements and the concept of institution building.

2. A second assumption was related to the organisation of the second Civil Service Forum. Again I think that the ambitions were quite realistic and things are actually happening here today.
3. A third assumption was that EIPA should become an associate member of NISPAcee, which has indeed happened, and as an institute we have benefited from being associated to the Network.
4. Finally, our intentions for the future became more ambitious. We aimed at building and connecting the two networks, EIPA's Scientific Council and NISPAcee, in a more consistent and institutional way by establishing a new operational link between them. The general philosophy behind the implementation of this project would be:
   - to establish an operational programme of cooperation between the two networks which will lead to a more effective way of satisfying the needs of acceding countries by providing civil servants with high-quality training and education programmes on public management;
   - to establish a "clearing-house" of approaches, ideas and initiatives where both networks can learn from each other. With this philosophy and with the active involvement of both networks we were able to

formulate a proposal regarding the support to institution building in the accession process through networking and training. This proposal will be submitted to the Commission and we hope that our ambitions will again prove realistic and that the networking system designed will become a reality.

I have mentioned meetings, programmes, initiatives and achievements. Allow me to conclude my speech with something that I believe is more important than anything else: the opportunity we have had during these two years to meet colleagues from the East and West. I will not forget the enthusiasm I have shared with our colleagues from NISPAcee, Professor Laszlo Váradi, and other European colleagues such as Jake Jabes from SIGMA, Walter Dohr and Anita Weissganger from the *Verwaltungsakademie*. This enthusiasm will certainly be a driving force behind future developments. The confidence and trust that we have been able to build between us is certainly much more important than all the programmes we can put together.

EIPA, as a European institute, is committed to enhancing East/West cooperation. We feel that this task is part of our mission, serving European ideals for the Union and for enlargement, and serving the Member States and the European institutions.

Finally, I would like to thank all of you for attending: organisers, lecturers, colleagues and all participants from East and West.

I welcome you to this Forum and I wish you great success.

Thank you

OPENING SPEECH

*B. J. M. Baron van Voorst van Voorst**

The European Institute of Public Administration organises many conferences and training programmes for all kind of Europeans here in the heart of Maastricht. We regard it as an outstanding example of the European identity and international dimension of our region. We are pleased that many central and eastern European countries turn to the EIPA and Maastricht to explore opportunities for co-operating with and integrating into the European Union.

Maastricht, ladies and gentlemen, has always been European in outlook. It was founded two thousand years ago by the Romans. The Romans were not the only people to settle in these parts. The Spanish, the Prussians, the Habsburgs and the French and many others all left their mark upon our town. Even after Napoleon and the French had gone, Maastricht remained international in outlook.

Small wonder, then, that the Dutch government selected Maastricht – the most European town in the Netherlands – to host the European Summit during its presidency of the European Communities in 1991. While negotiating the Maastricht Treaty creating the EU here, Europe's government leaders charted a new course for Europe for the next century.

One of the decisions taken during that Summit is reflected in the theme of your conference on Transparency and Openness in Governance. I am referring to subsidiarity. It is only when the division of power is transparent for individuals, business and institutions, that we can speak of transparent government.

The importance of this principle is that it allows us to define the authority of the European Commission and other European institutions in a very delicate matter, namely the balance of power between the European Union and its Member States. What the Maastricht and Amsterdam Treaties do not say, but what is patently clear, is that power should be divided according to the same principles applied within the Member States themselves.

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* Queen's Commissioner for the Province of Limburg, The Netherlands

As in the greater entity of Europe, also in the member states decentralisation seems to me to be an excellent tool for clarifying which tier of government is responsible for, and is authorised to act in, a particular area of government concern.

Ladies and Gentlemen,

A government that is transparent but closed is incompatible with the requirements of democracy. That is why many Dutch laws have special provisions guaranteeing the openness of decisionmaking processes.

Article 110 of our Constitution obliges the government to act openly in carrying out its tasks. This obligation has been embodied in the Open Government Act, which states that the government is obliged to volunteer information in the interests of proper and democratic administration. It will be obvious to you that this obligation is mainly a question of implementing a suitable public information policy. Such a policy should embrace all the different elements of public relations, throughout every phase of policy preparation, presentation and implementation.

In addition, the government is obliged to comply with certain conditions and restrictions. One of these is that public information "overkill" is considered inappropriate in every phase of the policy-making process. What this means is that government should not utilise so many channels of information that is misrepresents the alternatives – including financial alternatives – on offer, for example in the Cabinet's relations with the opposition. This has always been an important basis of proper democratic relations in our country.

Another general restriction is that public information should always refer to policy and never be used by politicians for purposes of personal "image-building". Any such use would be inappropriate within our country's democratic framework. We are, after all, politically unacquainted in this country with the phenomenon of press secretaries.

The nature of the issue at hand and the phase of the policy-making process also dictate a degree of caution. The government has to exercise some reserve when it comes to providing information about an issue that is still open to discussion, and the more controversial the issue, the more circumspect it will have to be.

In such cases, circumspection means emphasising disclosure and clarification (as opposed to "selling" or convincing).

The emphasis on disclosure does not, however, entail ruling out all other elements of public information during the policy preparation phase. After all, when disclosing policy intentions, the government may be forced to publicise the contents of the policy not only in the official sense, but also in a way that is more accessible to the general public, for example by publishing a layman's version of a policy document. Such publications should never be promotional in nature, however. On the other hand, promotional material is permitted when the object is to encourage people to take part in public enquiries.

Once a policy has been adopted and is being implemented, the emphasis gradually shifts towards using public information as a service and a tool. At this point the government can overcome some of its reserve and, where necessary, focus more on shaping attitudes, mentality and behaviour. It is particularly appropriate to do so in those policy sectors in which public information is the only possible or primary policy tool. The government uses its own public information channels in this endeavour, for example advertisements, brochures, exhibitions, television commercials, radio broadcasts and, increasingly, the Internet.

The Dutch system of open government is laid down in numerous special laws. One example is the law that guarantees open and transparent permit procedures. Another sets out that all meetings of representative bodies (in our case the Provincial Council) must be open to the public, and that all documents discussed during such meetings must be in the public domain.

Such openness and accessibility can have a negative impact on transparency, however. People cannot see the woods for the trees. The "overkill" that I mentioned briefly before may give rise to an information overload and, consequently, to non-information for laymen. Putting all that information on the Internet is fine and well, but we have reached a point nowadays where we have databases on databases, and in my opinion that is simply going too far. When it comes to specific, single issues, however, the Internet does hold out the promises of participation. But it is the job of government to weld all of those single issues together and evaluate them.

The public must be shown where they can find what on the Internet without being snowed under by information. That is the only way that individuals and institutions will be able to speak their minds about government plans. In the past we used to call that participation. It has proved to be frustrating for citizens who expected that their remarks would be honoured by the government. This is obviously not always possible.

Nowadays we develop policies in collaboration with the interest group being targeted.

We identify these groups as early on as possible and involve them as soon as we can, preferably while we are still defining the problem to be resolved. Joint policy-making means a broader basis of support for the results. And that is something that governments around the world and at every level need.

That is particularly true when it comes to government legitimacy. As you may know, in the Netherlands voting is a right, but not an obligation. Unfortunately the percentage of people who do take the trouble to vote is disappointingly low.

That puts government in an awkward position. Conversely, the public is surprisingly involved and interested in particular issues.

An enormous number of people have banded together outside of political parties by lending their support to such organisations as Greenpeace, the World Wildlife Fund and Amnesty International.

The government faces the difficult task of restoring the primacy of politics. It must bring a halt to the decline in its own authority and position in public affairs.

The absence or failure of political primacy is primarily a problem to be solved by government, politicians and political parties. That is because political parties and politicians are failing to mediate between the public and government – to offer a platform for shaping opinions about public issues and a framework for integrating common courses of action.

Today political parties and politicians more frequently play the role of managers in the government firm, the brokers of necessary compromise, instead of providing a context for and expressing different views on public affairs.

Large sections of the public see no difference between political parties, especially at local level, and that in itself is already a decisive factor when it comes to their involvement in democracy and government. Evidently, political parties are incapable or no longer sufficiently willing to develop and propagate visionary, all-embracing ideas. Because of this, they have lost their power to inspire and integrate, a vital factor for a living political democracy and for the public's involvement in government and government action.

On top of this, the way in which public administration operates is also responsible for alienating the public from government. To many, government appears to be some kind of supermarket of public services – one run by a political bureaucratic complex in which input, political direction, responsibility and power have become obscured.

It is not surprising, then, that many people lump all politicians together and no longer see them as their representatives, but rather as part of the machinery of government.

People increasingly see the government as an institution that provides certain necessary services, but beyond that they view it as something that takes decisions and drafts rules for the most obscure reasons – decisions and rules that should be ignored as much as possible.

In effect, a gap has opened up between the public's interest in incidental political or public issues on the one hand, and its willingness to accept democratic government as the best channel for promoting the public interest on the other.

In the eyes of many, government has become just one more party alongside all the others in the public field of influence. You use it when it's convenient and you oppose it if you think that your interests are being threatened or are not being served.

The end result is that the system of administrative law, originally intended to protect people against improper government action, is increasingly being used by people to prove themselves in the right when a democratic assessment of their interests does not turn out in their favour.

My conclusion is that a society that is basically organised along democratic principles, that offers countless opportunities to participate in government, to raise objections and submit appeals in what are frequently extreme forms of legal protection, is leading to the opposite of what we want, namely an open and transparent government. We have produced so much procedural fog in the glass house of government that the windows have clouded over.

In Western Europe, I notice a shift from the representative democracy towards new forms of involving citizens in the decision making on single issues. This makes governance perhaps more open and transparent, but may have in the long run a negative impact on the role of political parties and the system of representative democracy.

OPENING SPEECH

*Martin Potůček**

Ladies and gentlemen,

We are about to open the second Civil Service Forum. The term FORUM means a public space. Please note that it has a deep symbolic meaning for the specific topic of our gathering: Transparency and Openness in Governance.

To meet together in an open FORUM to discuss and influence public afffairs is not only a relict of history – as old as the original forms of democracy in ancient Greece. Remember, that ten years ago, hundreds of thousand of citizens met in big squares (such as the Wenceslaus Square in Prague) to demand major political changes toward democracy all over Central and Eastern Europe.

Nevertheless, 1989 represented an extraordinary and rare event in modern history. Contemporary complex societies do not allow for a routinized usage of FORUMs as an effective form of governance. What is needed is a well structured, well functioning and sustainable public administration: open, transparent and accountable to the public in many - traditional as well as innovative – ways and forms.

I can see a huge paradox here. Let us compare data from a representative public opinion poll characterizing the attitudes of the Czech population in the middle of the 90s.

Table 1
Degree of impact of politics on feelings of personal satisfaction (%), 1995

Decisive impact	15
Large impact	34
Neither large nor small impact	27
Rather small impact	12
No impact	9
“I don't know” or “I can't judge”	3

Source: Potůček (1999:59)

* Professor, NISPAcee Vice President, Director of Institute of Sociological Studies, Charles University, Czech Republic

Table 1 shows that only about one quarter of the population estimates the impact of politics on feelings of personal satisfaction as minor or even non-existent.

The Table 2 reveals the level of the preparedness of citizens to be personally involved in public affairs.

Table 2
Interest in personal involvement in public affairs (%), 1995

Response	Men	Women
Yes	40	27
Probably, not fully decided	22	23
No	33	41
I don't know	5	9

Source: Potůček (1999:57)

Perhaps less than one half of the population is ready to be active in political life. We can ask a crucial question: what prevents those who feel that their life is influenced by politics from an active public involvement ?

My hypothesis, and I would like you to test it during the next two days, is that both public policy and public administration institutions in Central and Eastern Europe do not offer enough opportunities and capacities to facilitate such an active and productive participation.

Consider the findings in the Table 3.

Interestingly enough, both actual and potential participation in the activities of various civic associations is much higher than that which is directly mediated by political parties. In other words, there is an explicit need to complement traditional channels of representative democracy by the new channels of participative democracy.

I believe that one of instructive examples of how civic associations may rapidly develop a considerable capacity in influencing public affairs is NISPAcee itself. Now it has 100 member institutions from Central and Eastern Europe and Asia, and 125 observer institutions from Western Europe and the USA. Without exaggeration, it has influenced quite a lot the public debate among politicians, civil servants and scholars about goals, needs and instruments of public administration reform in the region.

Table 3
Willingness to participate in the activities of the following organizations (%), 1995

Organization	Do	Want to	Want to, but cannot	Do not want to
Voluntary cultural, physical training, and other leisure time organizations	20	14	23	43
Voluntary organizations providing services to the public	6	16	29	49
Environmental movements	4	18	28	50
Human rights movements	2	18	23	57
Professional associations	13	11	16	60
Trade unions	13	7	13	67
Local self-government	5	9	19	67
Government administration (i.e., commissions)	5	6	16	73
Church or religious organizations	7	5	7	81
Protest movements or single protest actions (strikes, petitions)	5	9	4	82
Rightist oriented political party	3	4	8	85
Centrist oriented political party	2	5	8	85
Leftist oriented political party	3	3	5	89
Nationalist political movement	1	1	2	96

Source: Potůček (1999:58)

I would not like to break the golden rule of communication: to be as short as possible. I wish our FORUM to be really open, transparent and accountable to the institutions we represent, the states we come from and the future of Europe as a whole.

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Presentations

ACCOUNTABILITY AND PUBLIC ADMINISTRATION: CONCEPTS, DIMENSIONS, DEVELOPMENTS

Antonio Bar Cendón *

1. Introduction: Liberal State, Social State, Market State

The classic theories on the Liberal-democratic State conceived it as a complex structure of checks and balances, addressed mainly at preventing the abuse of power and at protecting the sphere of freedom and personal development that corresponds to each individual and to the society at large. This equilibrium was inspired by a negative conception of government and a reductionist philosophy of political power, the basis of which was in fact the prevention of its abuse. The State, therefore, was reduced to basically maintaining law and order and had very little capacity to directly intervening in the natural development of social and economic processes. Society developed autonomously and only demanded from the State the keeping of this autonomy. Both, State and society, acted within the limits of the Constitution and the law, based on the sacred principle of the rule of law.

The economic crises and the social convulsions of the first third of the twentieth Century meant the collapse of this system and the establishment of a new political system that, although based in the classic liberal pattern, replaced that negative and reductionist conception of political power by another one of a positive and expansionist character. The State becomes then a decisive actor in the social processes, intervening in an active manner in the economic development of society and in the personal development of the citizens themselves. The old Liberal State becomes now the "Social State", or the "Welfare State". Society ceases to demand autonomy and, on the contrary, requires a more active and extensive participation of the State, regulating, delivering services, and providing help and social benefits at all levels. Thus, the State now takes hold not only of the traditional law and order services, but also of new social services such as education, health, housing, social security, transports, but even of other kind of activities of purely economic content, such as banking, private insurance, and ownership of companies of every kind.

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As a consequence of this development, the State grew and, with it, the public administration, which became the manager of an immense amount of heterogeneous activities. The organic dimension of public administration ended up being so big and the administrative intervention became so extensive that critical analysts started to call the new system "Bureaucratic State". But, paradoxically, it is in fact this very same expansion of the Welfare State what produced its crisis. The enormous dimension of the administrative apparatus, the enormous financial costs of its operation and of the services and benefits delivered, finally meant a dramatic reduction of its financial capacity and of the society's capacity to support it.[1] Thus, in the mid 80's of the last century most of the developed countries experienced a great contraction of their economies that limited the capacity of their Governments to assume the entire cost of the services rendered or promised to the citizens.[2]

This caused a strong reaction that begins to take place in the 70's, is accentuated in the 80's and became almost general in the 90's of the twentieth Century: a reaction that seeks a reversion of the process followed until then and that aims at reducing again the dimension of the State and to increase that of the society. This reduction takes place mainly through a process of privatisation of goods and services held by the State –which becomes now a buyer or a renter of products and services that it used to deliver itself– and through substantial changes in the structure and dynamics of public administration. A dynamic that –under flashy names such as "reinventing government" or "new public management"– tends to follow principles and managerial guidelines developed by the private sector, and to consider the citizen more as a client than as a subject.[3] This subjection of the State to the requirements of the market, in an economy characterised by globalisation and supranational competition, allows us now to speak of a "Market State" –at least in the developed countries of the western world.

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[1] See J. O'Connor, *The Fiscal Crisis of the State* (New York: St. Martin's P., 1973).

[2] See OECD-PUMA, "Synthesis of Reform Experiences in Nine OECD Countries: Government Roles and Functions, and Public Management", Report for the Symposium 'Government of the Future: Getting from Here to There', OECD, Paris, 14-15 September, 1999.

[3] See, for instance, T.J. Peters, R.H. Waterman Jr., *In Search of Excellence* (New York: Harper & Row, 1982); D. Osborne, T. Gaebler, *Reinventing Government: How the entrepreneurial spirit is transforming the public sector* (Reading, Ma.: Addison-Wesley, 1992); A. Gore, *Creating a Government that Works Better and Costs Less* (New York: Penguin, 1993); W. Waldegrave, *The Reality of Reform and Accountability in today's Public Service* (London: CIPFA, 1993).

All these changes affect not only the structure and operation of public administration, but also the performance of the system of checks and balances that characterised both the Liberal and the Social State and, among them, the basic principle of accountability of public administration.

The aim of this paper is to analyse the impact that such transformations in the structure and dynamics of public administration, mean in terms of accountability. In order to do this, however, it is necessary first to clarify the concept of accountability and its possible dimensions and forms when applied to public administration. Thus, the paper begins with a terminological and conceptual definition of the different dimensions of "responsibility", followed by an analysis of the political, administrative, professional, and democratic forms of accountability; a study of the impact of the new public management techniques on the different forms of accountability; and it concludes with the consideration of a possible new model of administrative accountability, its content and conditions.

2. Responsibility as accountability

The term "responsibility" is not a single-meaning term. Its scope is even wider in languages like French or Spanish, where "responsibility" is used in relation to a very wide field of juridical, political and economic relationships, and, within them, to their respective different dimensions. In English, the existence of different terms to refer to the various dimensions of responsibility –"responsibility", "accountability", "liability"– allows a more precise application of the concept. However, this does not fully prevent any confusion and the debate about the application of one or another term to the different relationships of responsibility continues to take place within the field of public or administration.

From the point of view of public administration –not in abstract or philosophical terms–,[4] it could be said that the term responsibility has mainly three different meanings[5]:

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[4] On the concept of responsibility, there is a large literature in the field of Theory of Law and mainly in the field of Penal Law. In this paper, a more modest perspective is taken, one adapted to the specific needs of the analysis of the concepts of responsibility and accountability in the field of public administration.

[5] See, in similar terms: G.E. Caiden, "The problem of ensuring the public accountability of public officials", in J.G. Jabbra, O.P. Dwivedi (eds.), *Public Service Accountability: A Comparative Perspective* (West Hartford, Conn.: Kumarian, 1989), pp. 17-38; B.W. Hogwood, "Autonomía burocrática y responsabilidad", *Gestión y Análisis de Políticas Públicas,* 15 (1999), pp. 19-37.

- *Responsibility as "capacity":* It refers to the ability or the authority of the public servant to act. Responsibility in this sense implies the existence of a set of laws and regulations that define the capacity or the authority of the public official to perform his or her duties. A set of rules and regulations that operate both as an obligation to act –functions, duties– and as a limit for this action. In a more specific manner, responsibility is frequently used in this sense to mean a specific "task", or the "authority" of the public official.
- *Responsibility as "accountability":* It refers to the obligation that public officials have of providing information, explanations and/or justifications to a superior authority –internal or external– for their performance in the execution of their functions. In this sense, one can say that public administration is not an irresponsible activity, but rather is always a "responsible" one, for –even in non democratic systems– there is always the duty for public officials to give account for their activity and, therefore, to be subject to a judgement or evaluation of a superior authority. The difference lies, for sure, in the manner in which this accountability takes place –processes, criteria, before whom, consequences, etc.
- *Responsibility as "liability":* It refers to the assumption of the consequences of one's own acts and, sometimes, also of acts carried out by others, when these acts take place within the field of authority of the ultimate responsible administrator. The consequences of this dimension of responsibility are normally fixed by law and can vary a lot, depending on the legal order of each country. In general terms, these consequences may imply the imposition of a sanction –resignation, dismissal, disciplinary penalty, etc.– and the compensation for the damage caused, but they may also have positive implications for the official that acted correctly or in an exemplary manner.

Of course, the relationship of responsibility as liability implies the existence of a causal relationship, a necessary nexus between the action or omission of the public servant and its effects –responsibility understood as "cause". But it is also required that the effects could be rightfully or legally attributable to the official who carried out the action or omission that caused them. That is to say, it is required that there has been an unlawful infringement of a command or formal provision; that it was possible to act otherwise; that there was a legal relationship between the agent and the official responsible, when they are different; and that damage has been caused.

To these different dimensions of responsibility, Bovens adds another one, that of responsibility as "virtue". By this is meant the conscious and correct attitude or performance of the public official; in other words, that which takes into account all the possible circumstances and consequences of the action, and is also abiding by the law. In this sense, one can say that an official is "responsible" when he/she acts in a conscious manner and performs his/her duties in the correct and legal way.[6]

The concept of responsibility more relevant for the purpose of this paper is that of responsibility as "accountability", since it is the one that is more meaningful for the analysis of the public administration's performance, and is also more telling about the democratic character of any administrative system. On the other hand, the other two meanings or dimensions of responsibility converge in this concept and are also integrated within it. In fact, for an administrative official to be able to give account for his/her performance –responsibility as accountability–, he/she must be competent or invested of authority on the subject matter –responsibility as capacity– and he/she may be considered liable for the action or omission that took place and its effects or consequences –responsibility as liability. There is, thus, a logical concatenation between these three dimensions of responsibility and one follows the other in a necessary manner.

As Caiden puts it, taking the perspective of the individual official: "it is highly desirable to have all three terms conjoined. Public officials, who should take responsibility for all that is done in the name of the public [responsibility as capacity], should also be accountable to external bodies for what they have done or failed to do while in public office [responsibility as accountability] and should be liable, legally and morally, for correcting or compensating for their wrongdoing as judged internally or externally [responsibility as liability]".[7]

However, even when responsibility is understood only as accountability, it may appear in several different manners in reality. Thus, it can be manifested in different institutional forms; it may involve several different subjects; there may be several evaluation criteria; and there may be several

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[6] M. Bovens, *The Quest for Responsibility: Accountability and Citizenship in Complex Organisations* (Cambridge: Cambridge U.P., 1998); also: M. Bovens, "Two concepts of responsibility", and "Bureaucratic responsibility as a virtue", papers delivered at the European Group of Public Administration Annual Conference, Leuven, 10-13 September 1997.

[7] G.E. Caiden, "The problem", *cit.,* p. 25. Text between brackets added by me.

consequences to be drawn. All of this have made the literature to create numerous classifications of the various types of responsibility and accountability, according to different methodological criteria. For instance, Dwivedi and Jabbra distinguish between "administrative", "legal", "political", "professional", and "moral" accountability.[8] Romzek and Dubnick identify "hierarchical", "legal", "professional", and "political" forms of accountability.[9] Bovens distinguish between "hierarchical", "personal", "social", "professional", and "civic" responsibility.[10] Stone identifies "parliamentary control", "managerial accountability", "judicial" and "quasi-judicial review", "constituency relations", and "market accountability".[11] And in similar terms, although with a different perspective, Metcalfe understands that there is a correlation between the various forms of exercising authority –hierarchical authority, expert authority, influence, exchange– and the different forms of accountability. Accordingly, in his conceptualisation, "administrative accountability" corresponds to hierarchical authority; "professional accountability" corresponds to expert authority; "democratic accountability" corresponds to influence; and "responsiveness" corresponds to exchange.[12]

Whatever the classification, though, there is in fact a certain coincidence among the different conceptions as regards the existence of at least two main forms of accountability, and even about the content of each one of them; that is: political accountability and administrative accountability. However, in my view, to these classic forms of accountability a new form should be

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[8] O.P. Dwivedi, J.G. Jabbra, "Public service responsibility and accountability", in J.G. Jabbra, O.P. Dwivedi (eds.), *Public Service Accountability, cit.*

[9] B.S. Romzek, M.J. Dubnik, "Accountability in the public sector: Lessons from the Challenger tragedy", *Public Administration Review,* 47:3 (1987), pp. 227-238; y B.S. Romzek, "The dynamics of public sector accountability in an Era of reform", paper delivered at the Conference on 'Accountability in Public Administration: Reconciling Democracy, Efficiency and Ethics' of the International Institute of Administrative Sciences, Sunningdale 12-15 July 1999. In the same line: L. de Leon, "Administrative reform and democratic accountability", in W.J.M. Kickert (ed.), *Public Management and Administrative Reform in Western Europe* (Cheltenham: Elgar, 1997), pp. 233-248.

[10] M. Bovens, "Bureaucratic responsibility" *cit.*

[11] B. Stone, "Administrative accountability in the 'Westminster' democracies: Towards a new conceptual framework", *Governance,* 8:4 (1995), pp. 505-526.

[12] L. Metcalfe, "Accountability and effectiveness: Designing the rules of the accounting game", keynote speech delivered at the European Institute for Advanced Studies in Management Conference on 'Accounting for the New Public Management', Venice, 17-19 September 1998.

added, which would take into account the goals of administrative action and which would judge it according to them; that is, the "democratic accountability". This is a form of accountability that may be called "democratic", not in the sense that the other forms of accountability are not, but because it establishes a direct relationship with the citizens, to whom public administration gives account directly. Democratic accountability, thus, judges the results of administrative action with the perspective of their incidence on individual citizens and on the social and economic life at large.

It is evident that other dimensions of accountability, which –as stated above– are frequently mentioned in the literature on this topic are also relevant. Nevertheless, from the point of view of public administration and its mechanisms of control and evaluation, which is the main concern of this paper, those other forms of accountability have a smaller relevance, for either they are not subject to these mechanisms of control and can only be exercised outside of them, or they can be integrated within the other classic forms of accountability. This is, very specifically, the case of professional accountability, which, in spite of being conceptually different, can also be exercised within the general framework of administrative action and accountability. It is precisely in this sense that it is taken into account and analysed in this paper.

Thus, in the following pages I will try to highlight the main characteristics of four forms of accountability: *(a)* political accountability, *(b)* administrative accountability, *(c)* professional accountability –within the framework of administrative accountability–, and *(d)* democratic accountability.

3. Political accountability

Political accountability takes place in a double dimension –vertical and horizontal. In its vertical dimension, political accountability is a relationship that links those in the high positions of the administrative structure; that is to say, those officials who are appointed and removed freely, according only to political reasons –positions of political confidence. This includes the Prime Minister or President of the Government, Ministers, and top positions of the public administration. As regards the top positions of the public administration, the title and the level of the positions concerned depends on the legal and constitutional provisions in force in each country. Thus, in some countries there is a very clear cut definition and separation between what is the Government and what is the public administration –this is the case, for instance, of most Anglo-Saxon countries–; whereas in other countries there is a intermediate territory between them, where

although the activity conducted can be labelled "administrative", the form of appointment of those positions and their accountability is truly political. [13]

In its horizontal dimension, political accountability is a relationship that links the Government with the Parliament –sometimes as a college, sometimes its members in individual terms. But it may also include some of the positions at the top of the administrative hierarchical ladder. This, again, depends on the legal and constitutional provisions of each country. However, it is in fact more and more frequent to see high level administrative officials reporting and giving account directly to the Parliament for their individual performance or for that of their respective administrative units.

Parliamentary political systems differ here from presidential ones, for in presidential political systems this horizontal relationship of accountability does not have a permanent and direct character. The vertical relationship of accountability is among them, therefore, the only permanent and direct relationship of political accountability and, in any event, the most intense one. Thus, while in parliamentary systems the Parliament participates in the formation of the Government and controls its performance in a permanent and direct manner –through mechanisms such as questions, interpellations, votes of confidence, motions of censure, parliamentary committees–, in presidential systems the Parliament can only approve or reject certain appointments for high political or administrative positions and, only in very exceptional cases, force their resignation through the "impeachment" procedure. Nevertheless, even in parliamentary systems, the Parliament does not act in the same manner as any other mechanism of administrative control. It tends to focus only on specific issues, rather than continuously monitoring in full areas of government. Thus, its control power serves more as a deterrent to prevent malfunctioning of public administration, that as a means of correction through accountability mechanisms. [14]

The realisation of this form of accountability is based on a very wide set of criteria, including technical and objective considerations, but more than

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[13] The most frequently used titles for these high positions at the top of the public administration are: Ministers of State, Secretaries of State, Under-Secretaries, Parliamentary Secretaries, etc.; positions which are known in the British political system as "Junior Ministers". In some countries, the intermediate territory is occupied by positions such as Secretaries-General, Director-Generals, etc.; positions which although are politically appointed and dismissed, the appointees tend to be senior civil servants only.

[14] B. Stone, "Administrative accountability", *cit.*

in any other criterion –principally in the relationship Government-Parliament– the horizontal dimension of political accountability is based on political considerations and on value judgements of an ideological or partisan nature. In the vertical dimension, inferior positions are accountable to superior ones, and the latter may supervise and control the performance of the former. In the vertical dimension, though, the realisation of political accountability is based on considerations of a technical or objective character, although always loaded with a certain political perspective. In both dimensions, vertical and horizontal, the consequences of political accountability may end up with the resignation or the dismissal of the official in question.

The main problem that the new lines of administrative reform cause for political accountability is the level of autonomy that is sought for administrative units and agencies. The questions arising here are thus, to what extent is the political authority responsible or accountable for the performance of the autonomous agencies? To what extent can the formal arrangements that might be established for this kind of accountability affect the performance of the autonomous units and agencies?

This, for sure, depends on the legal and constitutional framework of each political system. However, a common pattern tends to be applied in most of the countries, which consists of establishing a clearer distinction between the policy designing and general programming functions, and the administrative or executing functions. In fact, the increase of the autonomy of administrative agencies deepens in this dividing line and this, consequently, operates in a double direction: on one hand, the administrative agency is more independent in the performance of its tasks and, on the other hand, the Minister or corresponding political authority is relieved from any relation of accountability for the daily work of the agency.

In this context, it must be underlined here that the very same autonomisation of administrative units and agencies tends to enhance also their capacity for policy-making and programming within the general framework of that of the Government. Thus, at least to a certain extent, this divide between Government and administration as regards policy-making and programming is paradoxically blurred by the same accentuation of the separation of these functions.

Nevertheless, there still remains a relationship of accountability as regards the implementation of the designed policies and the political programming and, therefore, the attainment of the –politically– established

goals. In this aspect there is, in fact, a clear relation of political accountability that links the managers of the autonomous agency with the relevant Minister or political authority. Thus, in this vertical dimension, the managers of the administrative agency have to give account for the attainment of the established objectives to the relevant political authority; and the political authority has also to give account for that same attainment to whom might be concerned, i.e. the Prime Minister. Logically linked to this kind of accountability is the right of ministers to appoint and dismiss the managers of the autonomous agency, and the right of the Prime Minister to appoint and dismiss the relevant Minister, on the grounds of the attainment of the political objectives programmed within the framework of his/her authority. And, in the horizontal dimension, the relevant Minister, the Prime Minister, or the Government at large, are responsible to the Parliament, which can demand any kind of explanation for the performance of the administrative agencies under their responsibility.

Thus, although it could be said that there is a certain transfer of responsibility from the autonomous agencies to the relevant political authority, this does not mean that they remain out of any control by the political authority. On the contrary, they are "politically" accountable to the political authority and, in some cases, they have also to give account to the Parliament directly. In this respect, although there is not a parliamentary procedure to dismiss managers of administrative autonomous agencies in parliamentary systems, it is not at all unusual that the Parliament may request the presence of these managers in public hearings and demand from them explanations about the performance of their agencies. Political accountability, therefore, does not mean irresponsibility for autonomous administrative units or agencies.

In the framework of political accountability, then, public officials are not rigidly constrained in their performance by a narrow legal or procedural setting, rather they enjoy a large decisional autonomy and act within a rather ample framework of political and/or programmatic guidelines issued by the superior authority in the hierarchical ladder. Political accountability, therefore, tends to use outcomes as the main parameter for evaluation or performance, rather than compliance with administrative rules and procedures. For this reason, public officials tend here to keep in mind the expectations of the elected authority and, ultimately, of the electorate itself, and to act accordingly, for their permanence in office –having been directly elected by the citizens or not– depends on it. Parliament and electorate,

therefore, are the main and ultimate reference for the control and the evaluation that takes place within the framework of political accountability. [15]

The main characteristics of political accountability are then the following ones (see Table 1):

- autonomy or discretion of the agents involved –political authority and public officials;
- evaluation mainly for results;
- different realisation methods, according to the legal and constitutional system of each country;
- different consequences, according to the legal and constitutional system of each country;
- the hierarchical superior –in legal and political terms– as agent of the control, in the vertical dimension;
- the Parliament as agent of the control, in the horizontal dimension; and
- citizens –the electorate– as the ultimate reference for the control and the evaluation.

4. Administrative accountability

a) Different types of administrative accountability?

It is frequent in the literature about accountability in public administration to distinguish between administrative accountability and other possible manifestations of accountability, such as "hierarchical" or "bureaucratic" accountability, and "legal" accountability. [16] However, such a distinction is not very accurate since these suppose to be different types of accountability are, in fact, dimensions or aspects conceptually inseparable of the same concept of administrative accountability. They are aspects or dimensions that, on the other hand, cannot either be separated in practice, since they are functionally united. In other words, administrative accountability does not exist either without its hierarchical dimension or without a specific legal framework establishing its content and consequences. Separating and

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[15] B.S. Romzek, M.J. Dubnik, "Accountability", *cit.;* B. Stone, "Administrative accountability", *cit.;* J. Martin, "Changing Accountability Relations: Politics, Consumers and the Market", Paper delivered at the Seminar on "Accountability and Public Organisations: Responsiveness to Politicians, Customers and Market Forces" (OECD, Paris, 24-25 November 1997).

[16] See, for instance, O.P. Dwivedi, J.G. Jabbra, "Public service responsibility", *cit.;* M. Bovens, *The Quest, cit.,* "Two concepts", *cit.,* y "Bureaucratic responsibility", *cit.;* B.S. Romzek, M.J. Dubnik, "Accountability in the public sector", *cit.;* B.S. Romzek, "The dynamics", *cit.*

Table 1
Characteristics of the different forms of accountability

	Political accountability	Administrative accountability	Professional accountability	Democratic accountability
Basic operational principle	- acting following the political and programmatic provisions adopted by the Government	- acting in full compliance with the legally established rules and procedures	- acting in full compliance with the technical rules and practices of the profession	- acting according with the needs and interests of social groups or society as a whole
Internal accountability, to whom?	- superior political authority	- superior political authority - superior administrative organ or authority	- superior professional organ or authority (technical evaluation) - superior administrative organ or authority (administrative evaluation)	
External accountability, to whom?	- Parliament	- external organs of supervision and control - citizen as subject - courts of justice	- external organs of supervision and control (technical or administrative)	- social groups - society as a whole
Subject matter	- results of the administrative performance	- forms and procedures followed by the administrative action	- professional rules and practices followed - results of the professional performance	- results of administrative performance
Criteria	- political criteria - technical or objective criteria	- formal criteria: compliance with established rules and procedures	- professional criteria: compliance with established rules and practices of the profession	- social impact of administrative performance
Mechanisms	- internal supervision and control mechanisms (internal responsibility) - parliamentary mechanisms of control (external responsibility)	- internal supervision and control mechanisms - external supervision and control mechanisms - administrative claims - judicial procedures	- internal supervision and control mechanisms (technical or administrative) - external supervision and control mechanisms (technical or administrative)	- mechanisms of civic participation - media and instruments of expression of the public opinion - information technology
Consequences	- political criticism or recognition - resignation or dismissal	- revision of the administrative act (confirmation, modification annulment) - sanction or recognition of the official involved - compensation for the citizen	- sanction or recognition of the official involved	- adoption of administrative act - revision of administrative decision - democratic legitimisation of administrative performance

differentiating these aspects is thus not only a conceptual artifice, but it would also mean to empty administrative accountability of its own substance.

A different problem is posed by "professional accountability". Professional accountability is, in fact, a special type of accountability relationship which can be conceptually and practically differentiated. Professional accountability is a form of accountability that normally takes place in the world of professions, outside the walls of public administration –professional associations, corporative bodies, collegia, etc. Nevertheless, in spite of the difficulties in combining them, professional accountability can also take place within the general framework of the operation and accountability of public administration. It is for this reason that professional accountability is here taken into consideration and analysed after administrative accountability.

b) Administrative accountability

Administrative accountability, like political accountability, takes place in a double dimension –vertical and horizontal. In its vertical dimension, administrative accountability is a relationship that links inferior administrative positions with superior –political or administrative– ones. And in its horizontal dimension, administrative accountability links the individual administrator and the public administration as a whole *(a)* with the citizen, as a concrete subject or user of the service, but also *(b)* with other external organs of supervision and control established to this purpose, such as oversight bodies, audits, comptrollers, "ombudsmen", etc.

The criteria taken into account for the realisation of this kind of accountability are –in its classic formulation– only juridical, for they are fixed by law in specific terms. The content of this relationship of accountability, as much in its vertical dimension as in its horizontal one, can thus vary, depending on the legal and constitutional provisions in force in each country. However, unlike political accountability, administrative accountability presents a great homogeneity among the different national administrative systems as regards the criteria used for its realisation.

Thus, both the vertical dimension of administrative accountability and the horizontal one are based on strict and objective criteria of a legal and functional character, which take the form of obligations of doing or not doing that bind public officials. For instance, the duty of fulfilling all the obligations linked to the position; the duty of obedience and loyalty towards superiors; the duty of neutrality or impartiality; the duty of integrity; the duty of discretion; the duty of using appropriately public resources; the

duty of treating citizens, as much as superiors, colleagues, and subordinates, with attention and respect; and the duty to abide by the Constitution and the rest of the legal order. To which the corresponding duty of abstaining from carrying out any action that infringe these principles must be added.

The fulfilment of these duties and obligations is assured, in the vertical dimension of administrative accountability, through a wide set of internal mechanisms of control and supervision –inspectorates, comptrollers, audits, etc. The aim of these mechanisms is indeed to assure the strictest compliance of administrative performance with the established rules and procedures, and the correct use of public resources. In this respect, it is very common that mechanisms of financial control acquire a special relevance among the different instruments of control, by means of controlling expenditure *ex ante.* This allows them to condition administrative programming and performance to such an extent that –mainly when this includes a veto power– they become in practice the real policy-makers or programmers, thus inverting the logic of political and administrative direction and management.

The consequences of the realisation of administrative accountability in its vertical dimension are fixed by the legal order and take place through a set of internal procedures. In those cases where there is an infringement of law, they may take the form of disciplinary procedures and they may end, in most serious cases, in the expulsion of the official in question. However, the consequences of the realisation of this dimension of administrative accountability may also be positive, when the mechanisms of control or supervision acknowledge the correct performance or behaviour of public officials and administrative units. In these cases, the realisation of administrative accountability may also imply a prize or public recognition for those who have distinguished themselves in the exercise of public administration.

In its horizontal dimension, administrative accountability –besides being subjected to the legal principles described in previous pages– it is also based on other formal criteria, legally established, which frame the terms of the relationship between *(a)* public administration and the citizen, and *(b)* public administration and the external organs of control and supervision. This relationship is here a concrete relationship established on the occasion of a specific administrative act. The citizen, therefore, is here a concrete and identified individual –the user of the service or, in managerial terms, the client–, not the citizenry in global or abstract terms.

In this relationship between the administration and the citizen, the law fixes the rights and possible expectations of the latter and the functions and duties of the former –as much those that correspond to each administrative unit, as those that correspond to each public official. In fact, it can be said that, interpreted in such manner, administrative accountability provides the citizen with the highest guarantee of attention and equal treatment, as well as total certainty, at least, as regards the forms of his/her relationship with the administration –organs, procedures– and its possible results.

Nevertheless, this type of relationship of administrative accountability, formally and legally set, does not exclude the existence of another type of horizontal accountability before the citizens or social groups, such as the democratic accountability, which is analysed later. Thus, in spite of the similarities with the horizontal administrative accountability, democratic accountability differs from it for not being so formalised, for being realised before the citizens or social groups in general, and for being based only on the attainment of certain results through administrative action.

On the other hand, the horizontal dimension of administrative accountability implies also the existence of external organs of control and supervision, to which public administration has to give account for its performance. However, this type of organ, although frequent, does not exist in many countries. Where they exist, their structure and functions vary considerably from one country to another and, in any event, they are subjected to a specific legal setting, frequently established in the Constitution itself. This includes bodies such as independent commissions of supervision, parliamentary commissions, state organs of control, accounting or financial audits, courts of auditors, etc. The commonly called "ombudsmen" deserve separate mention. This last kind of institution is generally characterised by the broadness and flexibility of its procedures, by its accessibility, and by the lack of coerciveness of its decisions and recommendations. The latter is precisely the most relevant characteristic since, unlike most of the other external organs of control and supervision, "ombudsmen" usually lack the power to resolve or to impose their own decisions, which usually have only the form of recommendations and, some times, the form of a public denunciation of the acts of the administration. The effect of these recommendations or public denunciations, though, depends very much on the prestige and acceptance of this institution within each administrative system.

The consequences of the realisation of administrative accountability in its horizontal dimension are equally fixed by law and they are brought

about through internal administrative procedures and external control mechanisms. Ultimately, appeals and acts of control against public administration may end up being submitted to the decision of a court of justice through the relevant judicial procedures. In some countries, administrative matters fall within the competence of ordinary courts of justice, whereas in others they are allocated to courts specialised in administrative matters. The resolution of these procedures may mean the acceptance or rejection of the request filed by the acting citizen –concession, authorisation, compensation, delivery of the service, etc.–, but it may also mean the revising of an incorrect administrative act –adoption, modification, annulment– and a sanction for the official responsible.

From a practical point of view, however, the picture described above must be qualified, since some of its elements operate in fact in a way somewhat different from the one habitually used to describe them in abstract terms. For instance, as regards the duty of neutrality or impartiality that should govern the public officials' performance and that of the public administration at large, it does not –neither should it– operate in absolute terms, since this would be contrary to the very idea of democratic government. That is to say, the public officials' duty of neutrality or impartiality cannot prevent them from executing commands or instructions issued by their superiors in the implementation of the political programme of the Government in office: a programme that is, by definition, a partisan programme and, therefore, not neutral at all. Not executing these commands would imply an infringement of the duties of obedience or loyalty that equally bind every public official. Thus, the neutrality of public administration means, in this sense, the officials' readiness to work with the different Governments and to carry out their different political programmes with full loyalty. Neutrality, in this sense, requires paradoxically loyalty to the Government in office, that is to say, non-neutrality. Bovens describes this paradox with an expressive sentence: "in the carnival of beasts, the functionary would go dressed not as grey mouse, but as chameleon". [17]

However, the duty of neutrality or impartiality is fully manifested in the horizontal dimension of administrative accountability, that is to say, as regards the citizens. In this sense, public officials cannot differentiate or discriminate between citizens on the grounds of political ideology or affiliation, for they are equal before the law. Public officials must, therefore, maintain absolute neutrality in the delivery of administrative services.

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[17] M. Bovens, "Bureaucratic responsibility", *cit.,* p. 7.

On the other hand, the horizontal dimension of administrative accountability acquires a larger dimension in decentralised systems, since it also covers the relationships among the different areas and levels of public administration, where it becomes complex or plural. That is to say, the horizontal dimension of administrative accountability also takes place within the relationships between the central administration and the peripheral one, as much as within those between the central administration and the autonomous units or agencies, and within those between the decentralised and autonomous units and agencies with each other. In this field, once again, the relationships between the different levels of government are fixed by law or the Constitution and, therefore, so are the relationships of administrative accountability and the specific content of each one of them. [18]

The main characteristics of the classic conception of the administrative accountability are, thus, the following ones (See Table 1):

- full subjection of public officials and administrative units to a wide set of constitutional, legal, and administrative rules and procedures that govern tightly their performance;
- full subjection of public officials and administrative units to instructions and commands issued by officials and bodies superior in the hierarchical ladder;
- realisation of accountability, in its vertical dimension, through bodies and officials hierarchically superior and according to numerous internal mechanisms of supervision and control, among which mechanisms of financial control are specially relevant;
- realisation of accountability, in its horizontal dimension, through external bodies of supervision or control and courts of justice, either at citizen's request or ex officio;
- evaluation based on the fulfilment by public officials and administrative units of the provisions and procedures set by formal rules and regulations, and also on the correct use of public resources;
- establishment by law of possible consequences of accountability, they being different from country to country. Consequences of administrative

[18] On this question, see: OECD-PUMA, *Managing Across Levels of Government* (Paris: OECD, 1997); OECD-PUMA, *Performance Management and Service Quality Network* (Paris: OECD, 1998); E. Löffler, *Managing Accountability in Intergovernmental Partnerships* (Report for the OECD-PUMA; Paris: OECD, 1999).

accountability may include a revision of the administrative act, compensation, and a sanction or a reward for the public official involved.

c) Professional accountability

Within the general framework of administrative action and accountability, a special problem is posed by the so-called "professional accountability". This concept of accountability, first formulated by Romzek and Dubnik, [19] refers to a special type of relationship of accountability, perfectly identifiable, that takes place primarily in the world of professions. However, professional accountability may also take place –and, in fact, it does– within the general framework of administrative action and accountability. This is due to the enlargement of public administration and to the increase in the complexity and technical specialisation of its tasks, which has meant the entrance in the administrative structure of a great number of professionals of high qualification and, therefore, to the development of numerous administrative activities of a professional character.

Professional accountability is characterised by the existence of a set of norms and practices of a technical or professional nature that govern the behaviour and performance of members of a certain profession. These norms and practices, as long as their respective profession is integrated in the organic structure of public administration, become also part of the set of rules, regulations, and principles that govern the operation of public administration in those areas where the profession is exercised. Members of the profession, thus, are subject to this normative set, but they move with full autonomy when performing professional activities, acting only according to their own criteria and professional knowledge. In any event, besides respect to the general legal framework of public administration, a special loyalty to the rules and principles –technical and ethical– that govern the profession, which, on the other hand, are fixed by the profession itself, is expected from them. These professional rules and principles have, therefore, both a technical and an ethical dimension. In fact, it is frequent for the organised professions to have their own codes of behaviour and codes of professional ethics, and to establish special mechanisms for their application and control. These professional controls, where they exist, tend to focus on the profession members' compliance with the provisions of these professional rules and

[19] B.S. Romzek, M.J. Dubnik, "Accountability in the public sector", *cit.*

principles, as well as on the technical results of their performance, and they are carried out only by members of the same profession.

Professional accountability, therefore, has a difficulty in fitting into the general framework of administrative accountability, since it subjects professional performance not exclusively to the general rules and defining principles of public administration –legality, hierarchy, obedience, fairness, etc.–, but mainly to a set of professional rules and principles that are alien as regards the legal system of public administration, with which they collide in many aspects. The problem is, therefore, how to match the classic criteria that govern the operation and accountability of public administration with those that govern the operation and accountability of the integrated professions.

This problem, however, is not new, since in many countries highly qualified professional sectors, such as university education, scientific research, medical services, etc., have been included in public administration for many long years. In such cases, as in the new ones that can take place with the same character, the solution to the problem lies on the attribution to these professionalised sectors of public administration of full autonomy for the realisation of the relevant technical or professionals tasks; but, at the same time, maintaining the elements necessary for the existence of the administrative bond or relationship, such as the subjection to the general management of the public administration, the administrative status of personnel, etc.

Nevertheless, it is evident that no peaceful integration of professional sectors in the general framework of public administration can be carried out if the classic system of control and administrative accountability is maintained as the single and only system of accountability. On the other hand, it is similarly unsustainable to try to establish professional control and accountability as the only system of accountability for these professional sectors integrated in the public administration, excluding the classic forms of administrative accountability. Thus, professional activity in public administration requires a special model of accountability that must be integrated within the general framework of administrative accountability.

In this context, it can be said that, for the purpose of professional accountability, neither is there a single criterion of evaluation, nor can this evaluation be carried out by a single administrative organ of supervision or control. In the operation of these technical-professional administrative units, two different dimensions can be distinguished: one, which consists

of the technical-professional elements –the professional performance, in specific terms–, and the other one, which consists only of the organic or procedural administrative elements –the formal or legal dimension. or of legality. The first dimension –professional acts and decisions– can only be supervised or controlled by organs of the same professional character, formed by members of the profession with technical knowledge on the subject matter in question, who conduct their evaluation using only professional criteria. Whereas the second dimension –the administrative procedural or formal aspects– can be supervised or controlled by ordinary organs of control of the public administration.

As a practical example, it can be said that, for instance, in a laboratory of scientific research integrated in the organic structure of public administration, technical or professional aspects such as the selection and evaluation of research personnel and the control of their technical performance, or that of the research activity conducted in that laboratory at large, can only be carried out by organs of a technical or professional character, formed by members of the same profession with knowledge on the subject matter. Whereas other aspects of the laboratory's activity, such as budgeting and spending, recruiting and firing administrative staff, as well as the fulfilment of the basic principles of legality of their operation –respect of constitutional and legal rights and principles, such as non discrimination, etc.– can and should be supervised and control by ordinary mechanisms of control of the public administration.

Thus –contrary to what is maintained by some sectors of the literature– the integration of professional accountability in the framework of administrative activity does not fully exclude the existence of administrative accountability. On the contrary, both can coexist at the same time within the framework of the professionalised administrative activity. Administrative accountability deals with the administrative aspects of the professional action, in the terms described in the previous section of this chapter; and professional accountability covers the technical or professional aspects, in the terms described here.

Thus, described in a schematic manner, the main characteristics of professional accountability are the following: (see Table 1):

- subjection of professional officials to a set of rules and practices of a professional character –technical and ethical– distinctive of the profession, which are established by the profession itself;

- autonomy of members of the profession in the exercise of their functions, where they act following their own personal criterion and professional knowledge;
- realisation of professional accountability, in its technical or professional dimension, through organs of technical-professional character, formed by members of the same profession;
- realisation of professional accountability, in its administrative dimension, through the ordinary organs of supervision and control of the public administration;
- evaluation based as much on the performance's compliance with the technical rules and principles established by the profession, as on the performance's technical results;
- the consequences of this process of accountability are those established by the legal order, they being different from country to country.

5. Democratic accountability

Besides the forms of public accountability already analysed in previous sections of this chapter –which are basically characterised by the clear definition of their principles of operation and of the mechanisms established for their realisation–, there is another form of accountability, which is less defined and which can be called "democratic", since it is expressed directly as regards citizens or the society as a whole.

Democratic accountability, thus, entails the existence of a direct relationship between public administration and the society – a relationship in which the society is not only a passive object of the administrative action, but rather it adopts an active role, as much in relation to the adoption of administrative acts, as in relation to the request of accountability by the public administration.

Indeed, the growth of public administration and the arrival of administrative action to every possible aspect of the society, have caused the emergence of a participation process in which two different necessities converge: on one hand, the need of public administration to attain the largest possible support and social acceptance for its decisions; and, on the other, the need of society and specific groups within it to make sure that public administration takes into account and fulfil their own demands and interests. This participation process becomes a relationship of accountability where citizens and social groups transmute into agents of control of administrative performance, and public administration is forced to give account and to justify its acts before them. Citizens want today to have a

direct control over all those matters that affect directly their existence, such as security on the streets, education of their children, health, urban planning and housing, environment, etc. Therefore, public administration can expect from them the necessary support or collaboration only to the extent in which it can meet their demands and open itself to their participation. Citizen's participation and control is, therefore, a fundamental element for the democratic legitimisation of administrative action. [20]

Unlike the other forms of accountability analysed here, democratic accountability is not established in such a formalised and perfectly defined way. On the contrary, the elements of its process –agents of the relationship, evaluation criteria, control instruments, consequences– are not always well defined or specifically formalised in the legal order, and they can even vary on the grounds of the type of administrative action and, certainly, from country to country.

In any event, it must be underlined that this form of accountability within public administration is neither new, nor does it lack any formal or legal constraint. In fact, it is not uncommon to find –even in the most classic and bureaucratised models of public administration– instruments of civic participation in the administrative decision-making process. Thus, both in the formulation of regulations and in the adoption of other type of acts and administrative decisions, it is frequent to find a phase of the process which is address at public consultation and the reception of allegations made by individual citizens. And, certainly, this type of consultation is always formally foreseen and regulated in what refers to its procedure and consequences.

However, what is really new here is the fact that public administration have to give account directly to the citizens for its performance. It is not only that Government, as the supreme authority –politically– responsible for the performance of public administration, has to respond for the way in which it acts, as much to the Parliament as, ultimately, to the electorate. It is, in fact, –going beyond than the traditional view of public administration– now believed that administrative units and individual officials themselves may and must be held directly accountable to citizens for the managing

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[20] Osborne y Gaebler call this a "community-owned government", D. Osborne, T. Gaebler, *Reinventing Governmen, cit.,* pp. 49 ff. In the same line: OECD-PUMA, *Administration as Service: the Public as Client* (Paris: OECD, 1987); M. Rowe, "Joined up accountability: Bringing the citizen back in", *Public Policy and Administration,* 14 (1999), pp. 91-102; J. Martin, "Changing Accountability", *cit.*

and the results of their administrative activity. Thus, administrative units and individual officials cannot anymore be considered free from any direct relationship of accountability of this kind with the citizens –beyond the one linked to specific infringements of rules and procedures, affecting a concrete citizen–, on the grounds that this corresponds to the Government and its relationship with the Parliament and the electorate.

The main goal or purpose of administrative action is the satisfaction of the needs and interests of citizens, within the general framework of the Constitution and the rest of the legal order. In this respect, administrative performance must be inspired not only by the respect of that juridical framework, but mainly by the attainment of the highest possible satisfaction of these needs and interests. Democratic accountability, therefore, focuses its attention on the results of administrative action, in their impact in social and economic life, that is to say, in their general innovative effectiveness. But it also focuses on the satisfaction of demands of citizens and social groups.

Citizens and social groups directly affected by public administration activity become, in this way, the new agents of the control of public administration, according to this new concept of democratic accountability. The mechanisms that citizens and social groups use to realise this form of accountability may be the same mechanisms that are also used for civic participation in the administrative decision-making processes: citizens' committees, public hearings, consumers' organisations, etc. [21]

Besides these instruments of control of democratic accountability, another one, very effective indeed and of a growing relevance, has to be added: the media. In fact, the surveillance of the media exercise is more and more incisive and demanding in its scrutiny of public administration performance. This forces the affected administration units to give public account about their activities, to explain to them and to justify them, with hardly any room

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[21] See, on this subject: B. Rosen, *Holding Government Bureaucracies Accountable* (New York: Praeger, 1982), pp. 72 ff.; D.H. Rosenbloom, D.D. Goldman, *Public Administration: Understanding Management, Politics and Law in the Public Sector* (New York: Random House, 1986), pp. 400 ff.; B. Stone, "Administrative accountability", *cit.;* M. Rowe, "Joined up accountability", *cit.* With the same perspective, a recent study of the Forward Studies Unit of the European Commission proposes the adoption of an extensive number of mechanisms addressed at promoting citizen participation in EU administrative processes: N. Lebessis, J. Paterson, "Improving the Effectiveness and Legitimacy of the EU Governance: A Possible Reform Agenda for the Commission", working paper (Brussels: European Commission-Forward Studies Unit, 1999).

being left for administrative secrecy or discretion. Information technology, on the other hand, has opened the door to new instruments of communication, information and, therefore, citizens' control over public administration activities. In this respect, it is not only that public administration is now more open and transparent that few years ago, it is that the citizens' expectations have changed and they are now more aware, better informed, and more demanding of information, explanations, and justifications than they used to be. Thus, not only does public administration need to be efficient, but it also needs to prove it and to show it to the citizenry. Citizens require this, and information technology allows it. [22]

It can be said that there is today a real flourishing of instruments of supervision and control of administrative performance and that society is more and more aware of the relevance of this control, in order to assure the maximum efficiency of public administration. In this context, Power sustains that we live today in what he calls an "audit society". [23] In OECD's words, public officials work today in a fishbowl, that is, observed from every corner. [24]

The consequences of the realisation of democratic accountability do not have a concrete legal profile and they depend on the character of the control and of the social pressure that public administration has to undergo. In any event, it is evident that the exercise of this control cannot include, from a formal point of view, concrete consequences other than, the adoption of certain decisions or administrative acts; the modification of acts or decisions previously adopted; the annulment of acts or decisions; or, finally, the opening of disciplinary processes against the civil servants involved in undue behaviour.

However, the main general effect that is derived from the realisation of democratic accountability is the democratic legitimisation of public administration. This legitimisation is the necessary result of the direct implication of the citizenry in the adoption process of administrative acts and regulations, and in the control of their implementation. Thus, if it is true that democratic legitimacy means people's support and cooperation,

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[22] On this subject, see the comprehensive OECD-PUMA report: R. Gualtieri, *Impact of the Emerging Information Society on the Policy Development Process and Democratic Quality* (Paris: OECD-PUMA, 1998).

[23] M. Power, *The Audit Explosion* (London: Demos, 1994).

[24] OECD, *Ethics in the Public Service: Current Issues and Practice* (Paris: OECD, 1996), p. 23.

enhancing democratic accountability –as described here– cannot but improve the effectiveness of public administration.

The main characteristics of democratic accountability are then the following (see Table 1):

- officials and administrative units subjection to the needs and interests of social groups or society at large;
- relative autonomy of public administration since, although it is not formally or legally bound by the opinion expressed by social groups or society at large, the effectiveness of its performance depends on their support and cooperation;
- realisation of the accountability through mechanisms of popular participation in the decision-making process and in the implementation of administrative acts and norms, and through the media and other instruments of expression of public opinion (information technology);
- evaluation of administrative performance based on its outcomes, that is, on the satisfaction of the needs and interests of social groups or society at large;
- consequences of the realisation of democratic accountability are mainly the adoption, or not, of administrative acts, their revision (modification, annulment), the adoption of disciplinary acts, and the democratic legitimisation of public administration's performance.

6. Accountability and new public management

a) The new forms of public management

The new forms of administrative management that –as has been mentioned in the first section of this chapter– started to develop in the 70's and 80's of the last century under names such as "reinventing government" or "new public management", consist mainly on a set of strategic orientations, dynamic principles and organic or structural reforms. These reforms, however, have not been fully applied in every country, and even where they have, they have been applied with dissimilar intensity in the various sectors of the public administration. This makes the literature on the subject –mainly that addressed simply at describing those reforms– to be very uneven when highlighting the main features of the reform and the administrative changes introduced.

It is not the aim of this paper to study or even to make an exhaustive list of the many changes that the doctrine of the "new public management" has been proposing and has managed to apply since its beginnings. Rather,

the aim is only to mention briefly those reforms that might –and they do– affect the formulation and the realisation of the different forms of accountability in public administration, as they have been described in previous pages.

Thus, trying to simplify in few lines a question that already occupies a large number of pages in the specialised literature, and with the above mentioned perspective, it could be said that the "new public management" reform of public administration includes, at least, the following changes [25]:

1. A substantial change in the strategic focus and in the culture of public administration, which are now focus primarily on the results of administrative activity, not on its compliance with formally established rules and procedures.
2. A process of deregulation or elimination of all those unnecessary rules and regulations considered restrictive of the capacity to perform of administrative units and individual officials; accompanied by a parallel process of simplification and improvement of regulations, as well as the consideration of the possibility of using other administrative alternatives but formal regulation.
3. A process of decentralisation and deconcentration of powers and competences aimed at increasing the capacity to act of lower levels of public administration and of the peripheral and autonomous administrative units. At the same time, and in parallel terms, a process of coordination and cooperation is developed, aiming at establishing and/or tightening relationships of collaboration and, even, codecision, with the decentralised units.
4. The confering of ample autonomy to public employees to pursuit the programmed goals and targets. This means important changes *(a)* in the formulation of internal guidelines, which are now oriented at defining

[25] On this subject, see mainly: D. Osborne, T. Gaebler, *Reinventing, cit.;* A. Gore, *Creating, cit.;* C. Pollitt, *Managerialism and the Public Services* (Oxford: Blackwell, 1990); C. Hood, "A public management for all seasons?", *Public Administration,* 69 (1991), pp. 3-19; OECD, *Governance in Transition: Public Management Reforms in OECD Countries* (Paris: OECD, 1995); M. Holmes, D. Shand, "Management reform: Some practitioner perspectives on the past ten years", *Governance*, 8:4 (1995), pp. 551-578; Alice M. Rivlin (Director, Office of Management and Budget, USA), lecture in the 'Ministerial Symposium on the Future of Public Services', OECD, Paris, March 1996; W.J.M. Kickert, "Public management in the United States and Europe", in W.J.M. Kickert (ed.), *Public Management and Administrative Reform in Western Europe* (Cheltenham: Elgar, 1997), pp. 15-38; OECD-PUMA, "Synthesis", *cit.*

goals and objectives rather than at establishing concrete procedural guidelines; and *(b)* in the criterion for the accountability of public officials, which is now precisely the attainment of these results. To this, a change in the administration of human resources is added, that aimed at having more qualified and effective managers, at stimulating and controlling productivity, and at making public employment more flexible.

5. A management governed by the principle of economy and reduction of public expenditure. This means not only a restrictive attitude as regards public expenditure and a reduction in the number of administrative units, but also the pursuit of economic benefit where possible.
6. The introduction of private sector managerial practices and mentality. Thus, the licensing and contracting-out of public services; the privatisation of public enterprises; the use of market mechanisms, such as competition in the delivery of public services, charging for services, etc.
7. An administration oriented towards the full satisfaction of the citizen, who is now considered as a client or consumer of the public service. This includes the establishment of channels of direct communication between the citizen and the administration, aimed at defining the real needs of citizens and at facilitating their access to public services; but also the transfer of the direct administration of public resources or services to the citizens themselves, where possible.
8. An administration oriented towards the attainment of goals or objectives strategically defined, not simply guided by the execution of rules and procedural or budgetary principles. This means that the mission of administrative units is fixed in accordance with the attainment of certain social goals and, in any event, the logical sequence of its programming is: first, definition of the objectives to be attained; second, definition of the budget; and third, definition of the minimum guidelines or rules within the framework of which public officials will operate with full autonomy.

In fact, all of this implies a deep reconsideration about what public administration should really do or provide, and how should it be organised to this end. In any event, the reorganisation of public administration –as it is viewed by the new public management theories– aims at reducing severely its size and functions, limiting them to functions such as policy-making, strategic planning, enabling the delivery of services –rather than delivering them–, and reforming the public sector.[26] All of this in the

[26] In this line, see: OECD, *Governance in Transition, cit.*

pursuit of the maximum possible level of efficiency, efficacy and economy in the performance of public administration.

b) Impact in the dimensions of responsibility

This set of radical reforms in the structure and dynamics of public administration impacts directly on the principle of responsibility in public administration, in all of its different dimensions and forms. As regards the impact on the three dimensions of responsibility, as they have been described in previous pages –responsibility as capacity, responsibility as accountability, and responsibility as liability– one can say the following:

1) Administrative reform and responsibility as capacity

Firstly, as regards responsibility as capacity, the framework of the official's performance tends to be fixed today in a more ample and flexible manner and, due to the intense process of deregulation that is followed in various administrative systems, there are less and less norms and procedures that determine their action in an inescapable manner. Thus, administrative units and individual officials not only have a larger autonomy, but also the parameters on which accountability is based are not so clearly defined and specific, and tend to focus on the attaining of results, more than in the compliance with the rules and procedures.

This, however, does not mean that the capacity to act of any public official is left fully unconditioned. Rules, instructions, procedures, programmes, and performance guidelines will always exist and operate as a framework –limit and orientation– for public official's action. In fact, this is why strategic programming and direction acquire such a relevance in the new public management, since they establish goals and targets leaving at the same time a wide frame of autonomy for the civil servant's performance. This, for sure, depends heavily on the legal and administrative system of each country and, within each of them, on the special arrangements of each department or administrative agency. In fact, it can be said that countries of the Anglo-Saxon world –mainly US, Canada, Australia, New Zealand and the United Kingdom– have already gone much further in this process of administrative reform than most of the countries of the European continent.

On the other hand, the void left by the deregulation process, tends to be filled by the formulation of codes of conduct and codes of professional ethics. However, although these codes respect the autonomy of public officials, due to their merely indicative and guiding character, they also

provide them with certain rules and principles that help them in the conduction of their administrative responsibilities. [27]

Thus, the normative framework that defines the public official's functions or capacity to act is not left totally undetermined and, although the parameters for the evaluation of accountability have changed, in fact they continue to exist. Nevertheless, it is clear that, in any event, the formal criterion –compliance with rules, regulations, and procedures– is not anymore –nor can it continue to be– the only valid criterion for the evaluation of administrative performance.

2) Administrative reform and responsibility as accountability:

Secondly, as regards responsibility as accountability, the traditional public administration system imposed a hierarchical structure of accountability that went from the inferior positions of the administration up to the summit, at the top of which the relevant Minister, the Prime Minister, or the Government as a whole, were to be found. The characteristics of the accountability relationship, the forms of giving account and their consequences, were different according to the various levels of the hierarchical structure in which they could be realised –political accountability or administrative accountability. In any event, the agents and the procedures of the process of accountability, as well as the object, the evaluation criteria and their consequences, were perfectly defined and specified in the legal order.

However, in the new reformed public administration these elements of the accountability process can appear less defined or concrete. The problem emerges, due to, on one hand, the relevant role being granted to new agents of the relationships of accountability, and, on the other, to the existence of autonomous administrative units which are not integrated in the traditional administrative hierarchical structure. Up to now, in the framework of the classic public administration, the relationship of accountability was established primarily and ultimately in connection with the Parliament, with the superior organ in the hierarchical structure, and with the courts of justice. To these instances, other bodies of supervision

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[27] See, on this subject: OECD, *Ethics, cit.;* A. Bar Cendón, "Accountability and Ethics: The Role of Values and Legal Procedures in Raising Standards", in *Accountability in Public Administration: Reconciling Democracy, Efficiency and Ethics. Proceedings of the 1999 Sunningdale Conference* (Brussels: IISA/IIAS, 2000), pp 59-78; M. Brereton, M. Temple, "The new public service ethos: An ethical environment for governance", *Public Administration,* 77:3 (1999), pp. 455-474.

and control –internal and external– were added: inspectorates of services, audits, financial controls, "ombudsmen", etc. Now, the new forms of public management give citizens, both as individuals and associated with others, a larger role as clients or consumers of services and, therefore, as active agents in the request of accountability by the provider, that is, the public administration.

On the other hand, another problem also arises as regards the kind of administrative accountability that would correspond to the new autonomous agencies, which have recently flourished, and their management of the relevant public services. It is clear that their special character, sometimes commercial or quasi-commercial, does not allow a system of control and accountability similar to the one that is used for the ordinary administrative units, since it might harm the very autonomy that has justified their creation. Furthermore, the flexibility and broadness of their management criteria, do not allow either any other system of accountability but that which is only based on the results of their activity.

The solution to this problem, as regards the agents, the content, and the consequences of this kind of accountability relationship depends, in fact, on the manner according to which the autonomy of these entities and their dependence of the relevant ministerial department has been articulated legally and politically. In any event, it seems logical that, at least, three elements should always be present in the relationships between these autonomous agencies and the respective Ministry. First, the political responsibility of the directing or managing teams of these agencies as regards the Minister in charge of the relevant department; second, the corresponding political responsibility of the relevant Minister as regards the Prime Minister –or the Government at large– and as regards the Parliament; and third, the focus of this relationship of accountability should be placed on the general results of the agencies' activities. And all of this because, if responsibility for managing or administration rests with the agency in an autonomous manner, policy-making and the definition of goals and targets, within the general framework of the Government's political programme, rest with the relevant Minister.

The problem consist then in defining the value, content, and consequences of the new relationships of accountability required by the new trends of administrative reform, but also to find the necessary balance that should exist between the new forms of administrative accountability and the classic mechanisms of control. In any event, it seems evident that

a type of accountability so undefined in its forms, criteria, and consequences, such as the new one, cannot fully replace the classic forms and mechanisms of accountability. Otherwise, there is a serious risk of transforming what intends to be a very democratic exercise of responsibility into a practical exercise of irresponsibility.

3) Administrative reform and responsibility as liability:

Thirdly, as regards responsibility as liability, the traditional administration established a direct causal relationship between the effects and the action or omission of the relevant administrative authority. This meant that the consequences of the realisation of responsibility could be taken beyond the direct agent of the action or omission, up to the superior instance that could be considered as the source of the agent's authority and, therefore, ultimate responsible for his/her action. All of this took place whenever there was a juridical relationship between the agent and the responsible authority, and when the agent acted within the framework of powers and competences of the responsible authority.

The main problem that the new trends of administrative reform poses for this dimension of responsibility is the autonomisation of the administrative management and, consequently, the accentuation of the cleavage between the policy-making and general programming functions, which correspond to the Government, and their administration or execution, which correspond to the public administration. A functional differentiation that paradoxically –as described before– enhances also the capacity of the autonomous units and agencies to define policies and programmes.

To this respect, however, the same could be said again here as what has been already said in previous pages about the accountability of autonomous administrative units and agencies.

c) Impact in the forms of public administration accountability

Out of the four forms of accountability that take place within the framework of public administration, as they have been described in previous pages –political accountability, administrative accountability, professional accountability, and democratic accountability–, administrative accountability is the one that experiences in a more radical and dramatic way the impact of the reforms introduced by the new public management. However, all four are in fact affected by these reforms.

1) Administrative reform and political accountability:

As has been seen above, political accountability is characterised, among other aspects, by the broadness of its evaluation criteria and by its focus on the results of the administrative activity (see Table 1). Its conceptual structure, thus, accepts with no problem the substantial principles that inspire the new administrative management: broadness and flexibility in the performance criteria, and valuation for results.

The aspect of political accountability which is more affected by the new reforms is, in fact –as has been said in previous pages–, the separation between the policy-making and the administrative functions, which is now deepened by the new concepts of governance and administration. The autonomy that is endowed to administrative units and the new autonomous agencies tends to make political accountability more remote and difficult to be realised. As a consequence, there is a certain danger for political authorities of loosing control over the administrative structure and, therefore, of diminishing of political accountability.

In any event, this depends heavily on the kind of legal arrangements that may be established in this regard. These arrangements, therefore, should give special attention to establishing the terms of accountability relationships between the political authorities and the administrative autonomous units and agencies.

2) Administrative reform and administrative accountability:

As said before, administrative accountability is the form of accountability that suffers more dramatically the impact of the new administrative reforms. In fact, it could be said that the theoretical conception of the new public management contradicts all the fundamental elements in which administrative accountability –in its vertical dimension– is based. Thus, classic principles such as compliance with administrative rules and procedures, as the basic operational and evaluating principle for the realisation of accountability; the lack of autonomy of administrative units and individual officials; and the strict subjection to the organic hierarchy, are reversed by the new public management principles, such as the focus on the results of administrative action, and the autonomy of administrative units and individual officials that is drawn from deregulation and decentralisation.

The main questions to be asked here are, thus, should administrative accountability be fully replaced by a new form of accountability adapted to the new principles of administrative management? Or is it possible to

support the coexistence of two models of administrative accountability –the classic and the new one– within the same administrative system? These questions are, at the same time, very easy and very difficult to answer. It is easy to answer because, in fact, the new administrative reforms do not impose on the old administrative structure and dynamics drastic options of the type of "all or nothing", white or black. On the contrary, in none of the countries in which this process of reform has been implemented, has the old administrative model been fully replaced by the new one. In fact, the reform has tended to concentrate only or mainly in certain areas of public administration and, even where these reforms have been made, they have kept many elements of the old system. Therefore, the old model of administrative accountability remains and coexists with the new reforms in many countries where they have been introduced and in many areas of administrative activity.

But, these questions are also difficult to answer because, although the logic and progression of administrative reforms go in the direction of replacing the old model of administrative accountability, the new elements constitutive of the new model of administrative accountability are neither clearly defined, nor is there a wide consensus on the literature on the subject and on the solutions implemented in practice to this regard. It is difficult, therefore, to seek a radical substitution of something that has been working for so long and that, in spite of its evident deficiencies, has been good at guaranteeing fundamental principles –citizens' fundamental rights, principle of legality, certainty about procedures and possible resolutions– and replacing it by something that is so open and undefined.

In any event, at the conclusion of this paper a definition of the general features of a new model of administrative accountability, adapted to the new trends of administrative reform, is attempted.

3) Administrative reform and professional accountability:

Professional accountability does not present any problem to the introduction of new public management reforms. On the contrary, it is perfectly adapted to them, since it is based on similar principles, such as the autonomy of professional officials and the evaluation of their performance on the grounds of its results. Their coexistence or integration in a new model of accountability based on the new criteria of administrative management does not cause any problem; on the contrary, it would allow it to be fully implemented in practice.

4) Administrative reform and democratic accountability:

With regards to democratic accountability, one can also say the same as what has already been said in relation to professional accountability. Thus, the conceptual structure of democratic accountability, based mainly on very broad criteria of evaluation and on evaluation by the results of administrative action, is perfectly adapted to the new principles and reforms of administrative management.

The substantial difference remains to be the type of agents that operate in each form of accountability; since, while in the democratic accountability the main agent is the collective citizen, in the administrative accountability –even in its new conception– the agent is a concrete citizen, the user of the service. (In the new public management terminology: the client).

7. Conclusion: A new model of administrative accountability?

As has been seen in previous pages, the new lines of administrative reform that are being introduced in many administrative systems collide with the basic elements that define the traditional model of administrative accountability and require the formulation of a new one. The questions that arise to this respect are, thus, which model of administrative accountability fits in a public administration in transition? Which, in any event, should be the general features of a new model of accountability in public administration?

The answer to the first question is, in fact, included in the solution that could be given to the second one, since it is difficult to imagine a new administrative system that would be built up on the total demolition of the old one. Any administrative reform has to be founded on the old administrative structures, many of which remain in its integrity afterwards –and this may even be seen in those countries that went further in the process of reform. On the other hand, the new structures of accountability that may be introduced should include forms of accountability that are fully congruent with the character of the activity of the administrative unit in question. [28]

The problem that is posed here is, thus, twofold: on one hand, to find a model of accountability that could be adapted to the requirements of the new administrative management, being at the same time also applicable to remaining areas of traditional administration; and, on the other, to define

[28] L. Metcalfe, "Accountability and effectiveness", *cit.*

this model in such a manner that it would not impose restrictions in the new administration that would reduce the main objective that is sought – the maximum possible level of efficiency and effectiveness of public administration.

(a) Thus, as regards the basic principle of operation and criterion for the evaluation of administrative accountability, it is clear that the compliance with the administrative rules and procedures cannot any more be the single or main operational principle and evaluating criterion. Performance according to the goals and targets established for each administrative unit within the general framework of the Government's political programme is, without any doubt, something that takes public administration closer to the full satisfaction of the citizens' needs and interests.

The problem, however lies with regard to the substance of those criteria to evaluate accountability. On this question, it should be underlined that economic or market-oriented criteria, which are heavily integrated in the concept of new public management, should not blur the perspective that, at the end of the day, public administration exists to manage general interests and, above all, is to manage with full respect to the fundamental rights enshrine in the constitution and, among them, the principles of fairness, neutrality, and equality of every citizen before the law.

(b) As regards the agents of the accountability relationship, it is clear that vertical mechanisms of supervision and control must be reduced and, in any event, reoriented in their operation and objectives, so as not to block administrative action and to direct it towards the attainment of established goals and targets. In this respect, it is important that the logic of administrative action is not inverted in such a manner that control takes precedence to policy-making and programming. This is, in fact, a very serious problem that affects the administrative system of most of European continental countries and which has became paradigmatic in the case of the European Commission. [29]

As for the horizontal control, citizens acquire now a special relevance, since public administration must be especially attentive to the satisfaction of their needs. It is precisely here that the new concept of public management

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[29] On this question, see Committee of Independent Experts, *Second Report on Reform of the Commission: Analysis of current practice and proposals for tackling mismanagement, irregularities and fraud* (Brussels, 10 September 1999).

stresses the consideration of the citizen as a client, meaning by this the transfer to public administration of the treatment and attention that customers receive, for commercial reasons, in the private sector. This is, in fact, more evident in those sectors of public administration where the delivery of services is carried out in a commercial or quasi-commercial manner and, therefore, it is necessary for the provider to attract the client to the service. [30]

Nevertheless, it is also important that the consideration of citizens as clients does not serve as a means to establish discrimination for economic reasons. Public administration has to make sure that the delivery of services has an universal dimension; that is to say, that public services reach all citizens and that no citizen is excluded from them without any legal justification.

(c) As regards the subject matter on which the relationship of accountability is established, it must be the results of administrative action, as much the direct or immediate product of the activity –the service delivered, or "output"–, as its impact on the general demands of society and, therefore, in the attainment of the general goals or objectives strategically defined by the public administration –"outcome".

It is evident, however that, whatever the importance of the defined goals, not any means can be accepted for their realisation. Administrative units and agencies, as well as individual officials, must have the necessary managerial autonomy for the attainment of the targets that have been allocated to them. However, they must carry out their duties, not only in accordance with the established guidelines or programmatic provisions, but also in full compliance with the legal order –principle of legality of administrative activity.

(d) As regards the mechanisms for the realisation of administrative accountability, the new public management techniques do not require substantial changes in them, beyond the need already mentioned, to reduce the number of vertical mechanisms and to reorient their operation and objectives. The most difficult problem is posed here by the autonomous executive agencies and the commercial or quasi-commercial mechanisms of delivery of services, which, in fact, are not appropriate to be subject to the traditional instruments of supervision and control.

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[30] OECD-PUMA, *Administration as Service: the Public as Client, cit.*

This problem, though, is simply a legal problem that may be solved in the manner that is considered more congruent with the respective legal order of each country. Nevertheless, special attention should be given to the fact that these processes of decentralisation and autonomisation, as well as those of contracting-out and allowing private delivery of public services, might give way to the creation of "irresponsible islands", which escape any control or relationship of accountability and, therefore, cause the citizens unequal treatment or defencelessness.

(e) Finally, as regards the specific consequences of the realisation of accountability, they should not be different from those already established for the traditional model of administrative accountability; and certainly not in what refers to the rights or legal expectations of citizens.

The accountability of the public administration, thus, may and should change in many aspects of its formulation and dynamics, as it was stated in this paper. Nevertheless, it should not be accepted that these changes end in its radical reduction or in its making it inoperative or unsubstantial, for on the existence of a good system of administrative accountability depends to a large extent the effectiveness of the administrative system itself and, ultimately, the legitimacy of the political system at large.

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TRANSPARENCY AND OPENNESS OF QUALITY DEMOCRACY

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Proverb or Valid Principle?

Many years ago Herbert Simon wrote a famous chapter on "proverbs of public administration". Indeed, there is a serious danger of being captivated by "slogans", instead of seriously facing hard issues. A good illustration is the term "sustainable", which started with the slogan of "sustainable development" but moved on to many other areas, including the non-sense term "sustainable governance" – as if maintaining the same point or moving on the same linear curve is desirable and possible.

Ideas such as "dynamic non-catastrophic development" and "high quality governance" are much more valid for guiding action. But it is very difficult to overcome "Idols of the Market Place", as Francis Bacon called widely accepted but misleading catch phrases.

"Transparency and openness" are serious norms. But they must not captivate thinking. They are what the Greek called a *pharmacon,* that is a material which, if taken in correct dosage, heals, but is poisonous if taken in too large quantities. If applied carefully, transparency and openness are valid recommendations, normatively as well as instrumentally. However, it is a gross error to think that the more transparency and openness the better.

To apply correctly the principles of transparency and openness, four steps among others are necessary: First, the nature of transparency and openness as values and as instruments must be clarified. Second, some pathologies of transparency and openness must be diagnosed in order to be prevented. Third, some pre-conditions of moving towards more transparency and openness need exploration. And, fourth, increasing transparency and openness must be considered and reconsidered within upgrading of capacities to govern and moving towards "quality democracy" as a whole.

Adequate examination of these and related issues requires a book. Instead, I will proceed in leaps, moving concisely through the four steps

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and adding at the end some recommendations and principles, further to clarify the proposed approach.

Norm and Instrument

Transparency and openness partake of a double nature: They are both a norm and an instrument.

As a norm, transparency and openness are part of the value systems of liberal democracy and of human rights, which provide for a right of citizen to know what is going on in governance and for a duty of government to be transparent and open.

However, it should be noted that these are not unconditional or absolute rights and duties. Therefore, they have to be considered in relationship with other rights and duties. And, in case of conflict, value judgment is needed on the normatively correct "value-cost-benefit" evaluation and the resulting mix of rights and duties to be realized or not to be realized.

For example, citizens have a right to privacy and governments have a duty to arrive at as good policies as possible. These can easily conflict with transparency and openness. When this is the case, a value judgment is necessary on how much of transparency and openness to sacrifice as against privacy and policy quality.

In order to prevent arbitrariness in such value judgments and protect them against misuse, legislation should set down criteria and determine who shall exercise discretion in applying the criteria to specific cases. Judicial oversight is essential, but it may well be that it should be put into the hands of administrative tribunals that have expertise in governance and not only in law and that have access to internal governmental material without necessarily putting it on the public record.

Transparency and openness are also an instrument making for more efficiency and effectiveness, by forcing governance to be more careful so as to stand public scrutiny.

But requirements of efficiency and effectiveness are not automatically served by more transparency and openness. There is a danger that governance may be swayed by too much transparency and openness to act more "by the book" and in ways which protect it from criticism, instead of serving the public in substance and weaving the future for the better. Also, transparency and openness may contradict some other requirements of high quality governance, such as frank advice to be given by advisors –

which may be impossible if their papers are sure to reach the public and be used in political competition.

Therefore, a balance is needed between different norms and requirements in advancing transparency and openness.

A different emphasis is necessary in countries with a tradition of closed governance. In such countries, the rule should be to increase transparency and openness, without hiding behind sophistic arguments and pseudo-calculations. However, in these countries too, prudence is needed not to let fully justified efforts to overcome anti-democratic governance traditions and embedded bureaucratic habit go too far, and endanger other citizen rights and requirements of high quality democratic capacities to govern.

Pathologies

A short discourse on some pathologies of ill-considered expansions of transparency and openness will provide further perspectives on the proposed relativistic approach.

A main pathology is one of letting "blowing of bubbles" dominate substantive achievements. Contemporary democracies have a strong tendency to put emphasis on "image building", because of the pervasive influence of the mass media and the increasingly appearance-dominated nature of political competition. Undue amounts of transparency and openness can further increase the weight given to "image engineering", thus impairing substantive quality.

This pathology can take a number of grave forms, such as "double record keeping", with documents being prepared to be transparent and open, in contrast to the "real" material. This is not only wrong by itself, but has contagious effects by legitimizing corrupt practices.

Another serious form of this pathology, already hinted at, is repression of serious staff work, which necessarily involves consideration of unpopular alternatives and professional critique of pet ideas of politicians. If there is serious danger that such material will reach the public and be used as weapons against the government in the political arena then the natural reaction is to inhibit frank discourse and serious staff work in governance, with grave consequences for the quality of choice.

An additional dangerous pathology of overdoing transparency and openness is to motive governance to avoid dealing with difficult issues, to avoid revealing lack of good ideas.

This pathology is aggravated by the fact that transparency and openness are mainly used not by interested citizens, but by investigative mass media and interest groups. Investigative mass media can help a lot to upgrade democracy by exposing corruption and fiascoes. But they can also push governance into too much of a defensive posture, including avoidance of justified risk taking, and leaving subjects which should be dealt with by governance to "hidden hands" . Furthermore, interest groups, however often beneficial, may undermine the public interest if exerting disproportional influence through selective use and misuse of governmental material.

The last pathology of exaggerated attention to transparency and openness, which I would like to mention here, is one of distorting administrative reforms. Increasing transparency and openness is an important and even essential dimension of administrative reforms, especially in countries with "locked" governance traditions. But often other improvements should come first. Thus, building up a professional senior civil service should be a priority endeavor.

Pre-Conditions

Nothing that has been said should be understood as opposition to transparency and openness. But, to advance them in beneficial ways requires not only a balanced approach, but also satisfaction of at least five pre-conditions:

1. Governance must, first of all, achieve some measure of quality. When governance is dismal in main respects this will be obvious, transparency and openness will not help, and efforts should first focus on rebuilding governance.
2. Differentiation between domains with which citizen are directly concerned and other activities of governance, such as long-range policy thinking. In respect to the first, transparency and openness cannot really be overdone and should be advanced energetically. However, in domains with which citizen do not interface significantly, there is scope for intra-governmental processes which are not unconditionally transparent and open.
3. Upgrading of public discourse on governance. If most of the public completely misunderstand the nature of governance, if public discourse is dominated by dogmas and wild political competition, if narrow interest groups and "Mafias" overwhelm public discourse – than increasing

transparency and openness may open the door for more misuse rather than informed democracy and protection of citizen rights.

4. Transparency and openness of politics should come first, otherwise transparency and openness of public administration will be nothing but a sham.
5. One of the best ways to advance transparency and openness is to increase participation, especially in domains with which citizen are directly concerned or where social actors have much to contribute to governance. Therefore, increasing participation is often a pre-condition for deep transparency and openness.

The recommendations with which this paper will end will operationalize these pre-conditions and add to them. But, before moving to recommendations focusing on transparency and openness, the subject must be put into the context of moving towards quality democracy as a whole.

Integration into Advance towards "Quality Democracy"

Increasing transparency and openness is a significant component of trying to move towards quality democracy. Therefore, to understand better what is involved in transparency and openness, let me mention some main dimensions of quality democracy and point out the role of transparency and openness in them.

This is all the more important because of my view that contemporary democracies, some more and some less so, are on a slippery slope towards populistic mass-media democracy, with grave dangers for crucial future-weaving capacities. Hence, the urgent need to redesign governance and politics so as to exit the present trend and move towards what I propose to call "quality democracy".

Accordingly, the fit of transparency and openness into quality democracy must be examined and strengthened, as indicated in the following.

1. Highly moral

Quality democracy should be highly moral, in its goals, ways of action and personal ethics of politicians and civil servants.

Transparency and openness well fit in with this requirement, encouraging moral governance and serving it. However, there is more to it. The requirement for highly moral governance serves as the main justification for transparency and openness and their congruity with quality democracy.

This is the case because transparency and openness are themselves norms of democracy. Therefore, quality democracy, in striving to be highly moral, should also strive for much transparency and openness.

However, too sanguine a view of the fit between highly moral democracy and more transparency and openness may be premature. A major dilemma facing the endeavor of governance to follow a higher morality involves the content of values, which should serve as goals and standards. Thus, a crucial component of higher morality for governments may well be the requirement to give more weight to *raison d'humanité* at the cost of *raison d'etat*. Doing so may well require governance to be more moral than its citizens, at least for an interim period till our publics mature. If so, some non-transparency and non-openness in select domains may be necessary for highly moral governance.

Future-committed

This crucial dimension of quality democracy raises some similar problems in respect to transparency and openness. Unless large parts of the public share a commitment to the future and are willing to accept present costs for the benefit of coming generations, making future-commitment of governance very visible may be counterproductive.

Therefore, some limitations on transparency and openness in respect to long-range policy thinking may be essential, inter alia in the form of locating such thinking in units outside the public and political arena. A more constructive approach is to increase the policy-enlightenment of the public and facilitate social support for future-commitment, but this cannot be relied upon in the near future.

2. High-energy, but selective

Taking into account the predicaments, opportunities and dangers facing humanity as a whole and all societies and countries in particular, governance must be high-energy. But in many domains governments are not the best actor. Therefore, high-quality democracy is selective in what it deals with.

This dimension of high-quality governance raises only one significant problem with transparency and openness, namely the danger that too much of limited governance action capacities will be devoted to building images and facades in order to cope with pressured produced by transparency and openness. However, high-quality democracy can contain this problem

by communication activities that are compartmentalized, so as not to influence unduly substantive operations.

3. Deep thinking

In contrast to the growing tendencies of contemporary governments to "surf" on the surface of problems, quality democracy tries to deal with the core of issues, basing its choices and actions on a deep view of historic processes.

This requires capacities and willingness to cope with complexity with the help of complex thinking. However, trying to do so may produce tensions with public opinion, unless governance is skillful in explaining its policies and large parts of the public are able and willing to follow and evaluate demanding chains of reasoning. Therefore, transparency and openness may be problematic in pushing towards over-simplifications, until public policy enlightenment and governmental communication abilities are much improved.

However, transparency and openness may also help improve governance thinking, by encouraging inputs of diverse views and multiple types of values, knowledge and experience.

4. Holistic

Quality democracy takes a holistic view of issues, rather than an atomistic one. This requires quite radical redesign of governments. But what is important for our purposes is the danger that more openness and transparency pushes towards a "pragmatic" approach to issues, dealing with every painful spot without much concern for relevant systems as a whole.

5. Learning and creative

Learning and creativity are critical for high quality democracy in an epoch of rapid change. These involve, inter alia, revaluation of accepted policy orthodoxy, a good measure of scepticism on "common sense" views and quite some "creative destruction" of obsolete institutions, processes, structures and entitlements.

Here, again, quite some tensions with transparency and openness are to be expected. Thus, knowing plans of governance in advance may sometimes make them impossible to realize, because of mobilization of vested interests against them before governance policies are crystallized. Therefore, some

policy innovation processes need protection against transparency and openness, till their products are ripe to stand against "the tyranny of the status quo".

6. Pluralistic

Quality democracy should be pluralistic, taking into account diverse views and multiple perspectives. Here, transparency and openness can be of much help, by stimulating public reactions to governance thinking and thus providing a larger input of multiple views.

7. Decisive

Decisiveness is essential for quality democracy, because of the need to cope with novel opportunities and dangers which, in part at least, require determined action reaching a critical mass of interventions with historic processes.

Transparency and openness can help in achieving decisiveness and can hinder it. On one hand, democratic support for serious choices depends on public knowledge and understanding of the policies and their underlying reasoning. On the other, as already mentioned, advance knowledge may help opposition to freeze policies without regard to their merits.

Conclusion

The overall conclusion is mixed: Transparency and openness clearly realize norms of democracy and human rights and can help to advance some dimensions of quality democracy. But transparency and openness also can hinder realization of some important dimensions of quality democracy. Therefore, our additional analysis seems to lead to three conclusions, reinforcing what has been said before:

One, increasing transparency and openness are desirable normatively and can help instrumentally. But their advancement requires selectively and should be accompanied with additional measures.

Two, the effects of transparency and openness depend largely on the quality of the publics in considering thinking and activities of governance. Therefore, increasing transparency and openness is undoubtedly desirable on matters with which salient parts of the public are directly concerned and on which they may well have better knowledge and understanding than governance.

Three: a main additional measure needed for increasing transparency and openness in ways advancing quality democracy is to facilitate better public understanding of governance activities and main policy issues. This can be facilitated both directly, by appropriate presentation and explanation of main governmental thinking and choices; and indirectly, by better "governance issue enlightenment" of the public through pluralistic offerings in the education system, the mass media and cyber-space. But much care must be taken to prevent such endeavor from becoming "propaganda". Therefore, independent bodies that reflect different perspectives and views should be in charge of them.

Operational Recommendations and Principles

Let me conclude, first, with six operational recommendations illustrating concrete implications of the analysis proffered in this paper. Then, I will bring the paper to an end with reiterating four overall principles that are suggested as fundamental for advancing transparency and openness as part of a serious effort to move towards quality democracy.

First, six operational recommendations illustrating operational implications of our analysis:

1. Governments should publish documents clearly explaining their thinking, plans and decisions on main issues. Green Papers and White Papers, as common in some countries, provide relevant experiences.
2. Advancement of transparency and openness should be accompanied by broadening and deepening public participation, both in policy consideration and on "street level" issues.
3. Strengthening bodies that exercise oversight over governance and publishing their findings is a main way to advance transparency and openness. Different forms of Comptrollership and Ombudsman illustrate possibilities.
4. Governmental communication should be improved so as better to explain governance operations, but with care taken not to engage mainly in "marketing".
5. Within governance, units and processes should be institutionalized which draw lessons from public reactions to material made accessible through transparency and openness, so as to encourage learning instead of defensiveness.
6. Much attention should be given to protecting civil servants against undeserved accusations following increased access to governance material

by the public, the mass media and interest groups. Thus, taking of justified risks by officials should be explained, defended and rewarded when attacked by parts of the media and the public.

Leaving additional recommendations to another opportunity let me conclude with iterating four main principles tying in increasing transparency and openness with advancing towards quality democracy:

One. Increasing the transparency and openness of politics is essential for meaningful openness and transparency of public administration.

Two, increasing of transparency and openness of public administration should be integrated into overall reforms of public administration.

Three, increasing citizen understanding of the problems that governance is coping with, and of governance itself, is essential for increasing the positive effects of transparency and openness and reducing negative ones.

Four, increasing transparency and openness should be tied in with overall upgrading of the quality of politics and governance, as a dimension of progressing towards quality democracy.

CONSTITUTIONAL SAFEGUARDS OF LEGALITY AND LEGITIMACY

*Evgeni Tanchev**

This paper is an attempt at surveying the constitutional safeguards of legality and legitimacy in the constitutions of the emerging democracies in Central and Eastern Europe and some of the independent states of the former Soviet Union.

Theoretical issues of legitimacy and legality have been an object of intense political discourse through the last centuries of modern civilization.

It is natural that, due to the extent of this paper, the theory of legitimacy and legality and the practical performance of the constitutional safeguards cannot receive either the profound nor the exhaustive treatment they certainly deserve.

Hence the purposes of this paper are modestly reduced to presenting an outline of approaches to these problems and do not aspire for final answers, but are intended rather as an input in the discourse aiming to generate and incite robust discussion among the participants of this seminar.

Due to the extent of this paper, normative and comparative approaches will prevail in exploring the constitutional safeguards of legitimacy and legality, though this topic deserves to be treated from the prospect of contextual analysis and the "living constitution" in each of the relevant countries.

These ways of looking at the subject have been omitted from this paper after consideration of the program of the 1999 Civil Service Forum and the presentations of the other respected participants.

The comparative overview has been limited to the post-communist constitutions of Albania, Bulgaria, Croatia, Estonia, Hungary, Latvia, Poland, Romania, Russian Federation, Slovakia, Ukraine and former Soviet republics in Central Asia.

At the end of the preliminary remarks several different sets of problems which will be treated in the paper should be mentioned.

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In the beginning theoretical dimensions of legitimacy and legality are developed and some forms of the interrelationship between these phenomena will be analyzed.

A condensed survey of the constitutionalism in the 90s after the fall of the communist system will emphasize some of the common features in the new post-totalitarian constitutions. Then the basic types of constitutional safeguards of legitimacy and legality and their functioning within the classical and contemporary western political theory and constitutional doctrine will be briefly stated.

These two parts of the study are conceived to be instrumental prior to looking at the specific reflection of the constitutional safeguards in the constitutions of the emerging democracies.

The citation of the text of the constitutions is from the English version of the ICL documents in the Internet and in the Council of Europe, Venice Commission Bulletin on Constitutional Case - Law Basic Texts vol.I - IV, which might differ from the original language wording due to the translation.

Evolution of the Concepts of Legitimacy and Legality

It is common to start discussion of legitimacy and legality within the framework of the principle of rule of law, *Rechtsstaat* doctrine and practical performance of the principle, though the concepts of legitimacy and legality evolved at a much earlier stage of human civilization.

I will attempt to defend the thesis that the common feature and main ground of the interrelationship between legitimacy and legality lies in their subordination to hierarchy and, while legitimacy transcends the legal system with the law being inferior to some values lying outside the legal system and being meta-legal foundations of the legal order, legality reflects the observing of hierarchy within the legal system. If the logic of the legal system has been penetrated with the same set of values and principles serving as a foundation of the legal system then observing legality is instrumental to preserving legitimacy. Legality in government might be a generating source of legitimacy, especially when their founding value systems are compatible, but in history, incompatibility of these two concepts has led to the reverse constellation - legitimacy did not result in producing legality. Further, as many examples in history prove, legality cannot survive ignoring legitimacy for a relatively longer period of time and the breakdown of one of these foundations of the political and legal system leads to the

breakdown of the other.[1] Constitutional democracies are built on the coexistence of legitimacy and legality, being their foundation and providing citizen support of government. If a legal system is legitimate then legality seems to be the best safeguarding principle of the legitimate constitutional government. Legality produces legal certainty and legitimate expectations of the citizens, leads to trust in government and in this way increases public support and legitimacy of the democratic political system.

The appeal of the ancient and medieval legal systems to some higher law has been regarded as a foundation of the law created by rulers and a moral source mobilizing obedience to the democratic republican government by citizens in Greece and Rome or subjects to the king within monarchies. Even in pre-modern societies and even in despotic forms of government, the good performance of state power depended not on resort to and threats of use of the legitimate monopoly of violence of the state alone, but on the moral and just grounds of governmental action. So the prototype of modern concept of legitimacy can be traced in antiquity and medieval times, and has been associated with the higher, immutable law, divine will, morality or reason which have justified the political system established and mobilized voluntary acceptance of the legal acts[2] Accordance of the legal order and the political system with the natural law began to be regarded as a basic source of legitimacy during the period of the enlightenment.

The roots of legality might be traced to the organic growth of law in the antiquity and the middle ages when within the monarchical sovereignty a theory and practice evolved that law expands and develops as one king added to the legislation of his predecessors.[3] Within the English legal

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[1] According to J.Blondel , Tzarist Russia at the time of World War I is a typical example of a state observing legality having lost its legitimacy. It is possible that a new regime established in the start of the transition period would be legitimate without observing the imperatives of legality. However, conflict between legitimacy and legality cannot produce stability of political regimes even if the government mobilizes propaganda and attempts to manipulate public opinion through legitimation or justifying deviations from legality simulates justice engineering. , J. Blondel, Comparative Government, An Introduction , 2nd edition, London, 62-66

[2] See The "Higher Law" background of American Constitutional Law, Corwin on the Constitution, ed. R.Loss, 1981, Cornell Univ. Press, 79-140 ; Exploring the rudimentary forms of legitimacy during premodernity and absolutism is related to the reason of state doctrine, see F. Meinecke, Machiavelism, The Doctrine of Raison d'Etat and its Place in Modern History, London, 1998; C. J. Friedrich, Constitutional Reason of State, Providence, 1957, 4-5

[3] H.J. Berman, Law and Revolution, The Formation of Western Legal Tradition, Harvard, 1983, 536 - 537

system, statutes began to recognize superiority and to the requirement that they should be in conformity to Magna Carta.[4] It would take centuries , however, to establish the principle, by Sir E. Coke in 1610 Bonham Case, that common law is superior and should be observed as a prerequisite of the validity of all legal acts.[5]

Constitutional safeguards of legitimacy and legality, however, are a product of modern time. The first generation of the written constitutions, created after the origin of the modern nation state since Westphalian Treaty in 1648, starting with the constitutions in the States since 1776, contain the first set of safeguards of legitimacy and legality.[6]

The problems of political legitimacy, legitimacy of institutions and public sphere were expanded to new moral and rational grounds by Rousseau, Montesqueu and Sieyes on the eve of the French Revolution and preceded justification of the legal system. In fact building theoretical constructs of the ideal legal and political system, founded on social contract, popular sovereignty, separation of powers and juridical equality was an implicit refutation of legitimacy and legality of the *ancien regime*.

To the contractarians the legitimacy debate was focused on the process of formation, representation of the will of governed and governmental performance in accordance to that will within the terms of the contract. Early antecedents of the theory proposed safeguarding the legitimacy by extralegal methods ranging from justification of murdering the tyrants and withdrawing support for the ruler to the popular resistance to unjust government and civil disobedience.

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[4] In 1368 Eduard the III 42 statute provides that Magna Carta "be holden and kept in all Points; and if there be any statute, made to the contrary, it shall be holden for none.", A.E.Dick Howard, The Road from Runnymede, Magna Carta and Constitutionalism in America, Charlottesville, 1968, 9; In Tudor times Magna Carta became dormant and the king would not aspire for conformity of his acts., See Idem, Magna Carta, Text and Commentary, Univ. Press of Virginia, 1999, 25

[5] See Bonham case of 1610, M. Cappelletti and W. Cohen, Comparative Constitutional Law, Charlottesville, 1979, 9-10

[6] A different approach to the problem of constitutional safeguards to legitimacy and legality might be developed if we look at the constitutions through the concept developed by conservative theory where the concept of the real constitution has been associated to the specific conditions, mentalities, inclinations, moral,civil and social habits of the people, existing earlier than formation of the nation state., E. Burke, Selections, London, 1914, 263; J. De Maistre, Considerations on France, Montreal, 1974, 92

The legitimacy and legality debate developed within the discourse on the "rule of law", *Rechtsstaat* and *Etat de droit* principles. Although having different roots in the history of the main legal systems in the world these concepts have been united by the common approach of framing political power within the limits of valid legal rules. The laconic phrase of instituting the state on the principle of rule of law and not of men which has been attributed to J.Adams and J. Locke was used in the antiquity. Under the Anglo - American common law system the judges coined the law and by applying principles of justice and equity to particular cases created legally binding precedents. While in Britain the principle of sovereignty of parliament meant supremacy of parliamentary statutes, in the United States the constitution has been established as the law of the land. The common feature shared by all the national models of the classical and modern rule of law concepts within the common law system is the compatibility of between legitimacy and legality. For within the Anglo - American legal system the rule of law always acquired the meaning of establishing certain set of liberal democratic values of the political system which had to be preserved in the configuration and functioning of the institutions, as a precondition of legitimacy of government, which exercised its powers observing principle of legality. Constitutional safeguards provided for accordance of governmental action within the boundaries of legitimacy and legality.

The German doctrine of *Rechtsstaat* was established by R. von Mohl in the first half of the 19 century.[7] Initially the idea was founded on Kantian liberalism and was expounded as a principle having both material and formal dimensions. The perceptions that state is based on reason, on collective will, the governmental functions are limited to protection of liberty, security and property and even the goal policing and using violence is to remove hindrances to individual self-fulfillment and autonomy. Having both material and formal aspects *Rechtsstaat* met the standards of legitimacy

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[7] The expression was used for the first time by C.T. Welcker in 1813 and R.von Mohl developed the idea in 1929. , On the history and the evolution of the concept see E.-W.Bockenforde, State, Society and Liberty, Studies in Political Theory and Constitutional Law, Berg, Oxford, 1991, 47-70; O. Kirchheimer, The Rechtsstaat as Magic Wall,in Politics,Law and Social Change, Selected Essays of O Kirchheimer, Columbia Univ. Press, New York, 1969, 429-452; R. Grote, Rule of Law, Rechtsstaat, and "Etat de droit", in Constitutionalism, Universalism and Democracy - a comparative analysis, ed. C. Starck, Nomos, 1999, 269-306; J-Y. Morin, The Rule of Law and Rechtsstaat Concept: A Comparison, in Federalism - in - the - Making, ed. by E.McWinney, J.Zaslove, W.Wolf, Kluwer, 1992, 60-85

and legality. The *Rechtsstaat* concept was affirmed as an *antipode* of dictatorship and despotic government by including the legitimate values of juridical equality, human rights to be defended against the state encroachments on liberty, governmental action in accordance with the law and self-government by the liberal theorists.[8]

In the context of conservative theory *Rechtsstaat* received other connotation. It was reduced to a formal concept and by accepting a value-neutral approach to the state and the legal system it was reduced to supremacy of parliamentary statutes to be observed by the administrative bodies. Severing ties between legitimacy and legality received its final form in Stahl's definition that the *Rechtsstaat* is not implementing moral ideals and its substance is not the essence of governmental function and actions but only the manner, method and nature of their realization. Conservative interpretation of the principle had two immediate consequences:

- safeguarding legality of administration, which is bound by general and rational law, making the state interference in the sphere of individual liberty and property predictable and calculable;
- independence from the aims, values and forms of the state.[9]

Practical consequences of application of the conservative concept led to affirmation of legality, but by ignoring the substantive requirements of legitimacy limited the content of the principle as a procedural. What is even more important divorcing legality from legitimacy justified different forms of trespassing the legality itself.[10]

Totalitarianism marked the end of the *Rechtsstaat*, but, to some extent, the reduction of the principle to legality undermined *Rechtsstaat* long before that, and decreased the capacity of democracies for self-defense against dictatorships and paved the way for dictatorships.

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[8] For contributions of L.von Stein, O. Mayer, R. Gneist and other liberal exponents of the principle see Bockenforde, op.cit., 52-58

[9] See F. Neumann, The Rule of Law, Political Theory and the Legal System in Modern Society, Berg, 1986, 182-183

[10] Theoretically overcoming of legitimacy by legality was possible through Kelsen's legal normativism and by

C. Schmitt political decesionism, though on the eve of the Nazi takeover he held the view that it was illegitimate and unconstitutional under Weimer constitution to appoint a Nazi or a Communist chancellor., C. Schmitt, Legalitat und Legitimitat, Berlin, 1968, 61; H. Kelsen, General Theory of Law and State, Harvard, 1945, 117

All of the 4th generation democratic constitutions drafted after World War II , and especially the Germany's *Grundgezetz* of 1949 proclaimed and reaffirmed both substantive and formal content of *Rechtsstaat* principle forming resting on the unity of legitimacy and legality of the political and the legal system.

In the political and legal theory legitimacy has been defined by using different approaches. Two of them are most common and deserve special attention. In the context of justification of constitutional democracy legitimacy has been considered as a formula of moral, ideological or philosophical identity and self -image of a political system.[11] In political sociology the emphasis on political behavior led to describing of legitimacy as a capacity of the system to engender and maintain the belief that the existing political institutions are the most appropriate ones for the society.[12]

Adherence of the political and the legal system to different conventions has been used to define types of legitimacy. According to the classical threefold classification of legitimate domination and obedience three claims of legitimacy have been extrapolated and defined as traditional, charismatic or personal and domination by the virtue of legality or belief in the valid, rational , created by competent authorities impersonal rules.[13]

Legality maintains the hierarchy and integrity of the established legal and political systems. Preserving the legality in the performance of governmental functions protects the constitutional order by commanding the obedience of all legal subjects. Hierarchy of the legal system is a reflection of the institutional configuration of the political system. Ranking of the legal force of the juridical acts is based on two criteria - the status of the institution, drafting the act within the constitutional system of government and the essence of the social relations subject to regulation in the act.

State legality ensures obedience of the legal subjects through law enforcement which might be realized when citizens do not abide by the law or unauthorized action or contra legem acts of government and administration have been produced. The optimal situation according to the

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[11] C.Schmitt, The Legal World Revolution, Telos, N 72, Summer 1987, Special Issue on C.Schmitt

[12] S.M.Lipset, Political Man: The Social Bases of Politics, Doubleday, 1960, 77

[13] M.Weber, Economy and Society, New York, 1968, v. I, 215

rule of law principle in a constitutional democracy is the voluntary obedience of law by all legal subjects, due to their belief in legitimacy and understanding that it is better for their own and society's interest to comply with the legal norms. This means that the legitimacy of the established legal order is a sine qua non to achieve effectiveness of the legality. Contemporary legal philosophers have emphasized the other side of the interrelationship between these phenomena as well. Legitimacy of the legal and the political system is protected best with democratic rational legally institutionalized procedures of legality, which ensures that in the outcome of the legal discourse the valid law produced is justification of the different interests and opinions in the public sphere in the process of drafting impartial rules. [14]

These rational institutionalized legal procedures concern the three branches of power and their relationship to people.

The most important of these rational institutionalized procedures have been enshrined in the modern constitutions as constitutional safeguards of legality and legitimacy.

This speculation is one of the possible aspects of introducing the theoretical subject of legitimacy, legality and their interrelationship and is not aimed at precluding different complicated aspects of analyzing these phenomena.

Other possible ways of looking at legitimacy and legality might be used to point out that legitimacy is a qualitative, substantial, broader concept relating to substance of legal rules and the political system, while legality is a more quantitative, formal idea, concerning directly the legal system. Legitimacy has been treated as a political capacity, a fountain of political power, as a value and principle of justification of political authority, a way of governmental authorization. [15]

Brief Overview of Constitutional Safeguards of Legitimacy and Legality in the Constitutions of the Emerging Democracies

The main purpose of the comparative analysis that follows is outlining the common features, rather than following the particular evolution of the constitutions in the emerging democracies. Hence the content will be

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[14] J.Habermas, Wie ist Legitimitat durch Legalitat moglich? , Kritische Jusiz. Vierteljahresschrift. Jahrgang 20.Heft 1, 1987, 1-16

[15] See D.Radev, Legitimnost i legalnost, Savremeno Pravo, N 6, 1992, 53-57

focused on the issues of nature and types of constitutional safeguards and not on country by country approach of looking at the post - communist constitutionalism.

The new constitutions of the emerging democracies in Central, Eastern Europe and the independent republics of the former Soviet Union, drafted in the 90s, generically belong to the last wave of the 4th constitutional generation born after the World War II.

All of them were created after the crisis of legitimacy of the old regime and collapse of the communist system had taken place.[16] Building new legitimacy of the transition was a notification of the emergence of new statehood to the world community and a foundation of the transformation of the legal, political and social systems of these countries oriented to the rule of law, parliamentary democracy and market economy. By establishing the new legitimacy and implicit refutation of the legitimacy of the ancien regime, the new democratic constitutions are typical examples of reactive fundamental laws.[17]

Adhering to the classical separation between constituent and constituted powers, the new democratic constitutions belong to the rigid constitutions.[18] The procedure of constitutional amendment has been complicated in order to prevent the danger of premature, rash, ill -considered and undemocratic constitutional revision by the parties in government. The popular sovereignty through its institutions acting by super-majorities and building a higher degree of consensus than the will of the winner of regular elections has been authorized as a sole repository of constitutional amendment.

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[16] In general the crisis of legitimacy has been defined as a transition to a new social structure when the status of political institutions is threatened by the change or some of the political groups are excluded to the political system . , S. M. Lipset, Op.cit., 78; However, his concept has been challenged by two of contemporary developments at least. In fact the erosion of the legitimacy of the communist regimes took place long before the beginning of the falling apart of the system in the 1989. Current stage of development of EU and the transformation of the nation states in Europe at the turn of the century have been treated as a lack of legitimacy and democratic deficit in the EU institutional framework functioning.

[17] In contrast to derivative constitutions which are an outcome of the evolution of the national constitutional development, reactive constitutions mark new beginning or break the ties with the constitution they are replacing., For extensive treatment of reactive constitutions see V. Bogdanor's introductory essay Constitutions in Democratic Politics , Aldershot, 1988

[18] Hungarian constitution being the exception.

Non-amendability clauses in some of the constitutions serve as limitations to constituent power and preclude the destruction of legitimacy of the transition through abolishing basic values by constitutional amendment.[19]

The most common limitations of constitutional revision concern human rights and in general correspond to the international standards of inviolability of human rights during the periods of emergency.

Some of the constitutions, like the fundamental law of the Republic of Romania, have provided extensive list of inadmissible constitutional amendments.[20]

Rigidity of the constitutions in the post-communist societies was conceived to safeguard the transition legitimacy and irreversibility and to create a solid foundation of legality as a means of preserving the hierarchy of the juridical acts. This feature of the constitutions was efficient in providing stability of transformation process framing the changing majorities in the parliament and withholding the constitutional amendment from the parties or coalitions in control of government. Some countries, like Poland, Hungary, Lithuania and others, avoided objections to the early constitutional drafting by enacting interim or temporary fundamental laws at the initial stage of the transition.[21] Rigidity of the new democratic constitutions, however,

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[19] Unamendability clauses are the outcome of the experience of western constitutionalism to create safeguards to the preservation of constitutional democracy against the authoritarian encroachments or totalitarian takeover. The 1949 German Grudgezetz proclaims inadmissibility of constitutional amendment of federalism and democratic and social character of the Republic, basic constitutional principles of popular sovereignty, constitutional supremacy to legislature and law and justice to the executive, right to resistance to anybody seeking to abolish the constitutional order if no other remedy is possible, human dignity, inviolability, inalienability and direct enforceability of human rights. (art. 79,3; art.20; art.21). Following a tradition established by the 1875 Third republic, the 1958 constitution of the Fifth French republic provides in art. 89 that the republican form of government shall not be subject to amendment.

[20] According to art.148 of the 1991 Romanian constitution the national, independent, unitary, and indivisible character of the state, the republican form of government, territorial integrity, independence of the judiciary, political pluralism, official language, elimination of human rights freedoms and their guarantees are explicitly placed outside of the subject matter of constitutional revision .

[21] Another "revolutionary"solution proposed was that these countries should not engage in constitutional drafting at the start of the legal reform. A period of chaos with legality suspended was conceived to be a better and more efficient approach of purifying the legal system from the acts of communist legacy. , see S. Holmes, Back to the Drawing Board, East European Constitutional Review, vol 2, N 1, Winter, 1993, 21-25. Even if we admit that this way would speed the legal reform it would have had a devastating effect on the low and shaky legal culture of the society emerging from communism.

created some difficulties which would have not been experienced with more flexible constitutions, that could have been adapted during the transition. Constitutional courts' activism in interpreting the constitutions with a different degree of success and acceptance of the political actors and public opinion contributed to the solution to these problems within the framework of constitutional legality.

Constitutions of Central, Eastern Europe and the new independent republics of the former Soviet Union, fall within the type of normative constitutions and mark the break away from the nominal constitutionalism of the past.[22] It is a well known fact that since the 1936 constitution of the USSR the fundamental laws of "people's democracies" fell within the type of programmatic, facade constitutions, with the discrepancy between the written text and the material or "living" constitution. One of the general trends in the post-communist constitution drafting was the aspiration to avoid non normative statements and programmatic provisions. However, some exclusions of this principle deserve special emphasis. Due to the economic hardships of the transition provisions on the imperatives of the social state - for example universal right to work and housing - have proved to be ineffective, sometimes unenforceable by the courts and have acquired to a great extent nominal status.[23] Some persistent political and legal stereotypes in the behavior of politicians and public opinion have slowed down the emerging modern political and legal culture and contributed to deviation from the normativity and direct applicability of the constitutional provisions.

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[22] For differentiation see K.C.Wheare, Modern Constitutions, Oxford, 1966, 14-31; C.F.Strong, Modern Political Constitutions, London, 1970, 59 -79; H. van Marseveen and G.van der Tang, Written Constitutions, New York, 1978, 241-262; G. Sartory, Constitutionalism: Preliminary Survey, The American Political Science Review, v.56 , 1962, 853; Ch.Debbach, J.M.Pontier, J.Bourdon, J.C.Ricci, Droit constitutionnel et institutions politiques, Paris, 1983, 71-75; P. Pactet, Institutions politiques et droit constitutionnel, Paris, 1985, 69; G.Mobidelli, L. Pegoraro, A. Reposo, M.Volpi, Diritto Constituzionale Italiano e comparato, Monduzzi ed., 1995, 82-87

[23] See for arguments in the discussion of the abundance or superfluity of economic and social rights in the constitutions of the emerging democracies, C. Sunstein, Something Old, Something New, East European Constitutional Review, Spring 1992, vol.1, Spring 1992, 18; H. Schwartz, In Defence of Aiming High, East European Constitutional Review, v. 1, N.3, Fall 1992 25-29; C. Sunstein, Against Positive Rights, East European Constitutional Review, v.2, N 1, Winter 1993, 35-37

Sources of legitimacy and goals of legitimate government have been proclaimed in the preambles of the constitutions of the emerging democracies. [24]

Popular sovereignty, national historic heritage, cooperation of the democratic countries in the world, rights, freedoms and human dignity, have been proclaimed as common denominators to the legitimacy of the new constitutions of the emerging democracies. Few of them, especially the 1992 Slovak and 1992 Lithuanian constitution have explicitly stated the natural law among the foundations of legitimacy, but have limited its scope to self determination and the right of men and women to live in freedom. Aspiring for perfection some of the constitutions have extensively expressed national historic tradition. The 1997 Constitution of Poland is a typical example of this trend. [25]

Liberty, democracy, political pluralism, national integrity, rule of law, market economy, prosperity, social solidarity, human dignity and security, though phrased in a different manner are the most commonly expressed goals of the legitimate constitutional government in the constitutions of the emerging democracies. Most of the preambles have been explicit in proclaiming the need to protect national integrity and unitary state. The visions of the founding fathers - drawn from the past experience, have been concentrated on independence, national sovereignty and identity as the best means towards the national integrity preservation . In contrast, stating the multinational character of the state, the 1993 Constitution of Russia has emphasized historically established unity as a safeguard to the integrity of the federation.

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[24] Systems and behaviorist approach would divide sources of legitimacy into operating values and ideologies., D. Easton, A Systems Analysis of Political Life, Univ. of Chicago Press, 1979, 289 -298

[25] After mentioning the 1989 reemergence of the Homeland, the preamble of the constitution states that all Polish citizens - those who believe in God as a source of truth, justice, good and beauty and those not sharing such faith but respecting universal values ‘ beholden to our ancestors for their labours, their struggle for independence, achieved at great sacrifice, for our culture rooted in Christian heritage of the Nation and in universal human values, recalling the best traditions of the First and Second Republic, obliged to bequeath to future generations all that is valuable from our over one thousand year heritage... mindful of the bitter experiences of the times when the fundamental freedoms and human rights were violated in our Homeland...”

Although preambles are generally considered to contain solemn statements, without normative meaning of the constitutional provisions, they perform an important political function. Sources of legitimacy in the preambles define democratic standards and the goals of a legitimate government are terms of reference to the content of the legal rules in a constitutional democracy.

Constitutional safeguards of legitimacy and legality might be classified according to different criteria, which this paper does not aim to exhaust.

According to the prevailing features, constitutional safeguards might be divided into two groups - the first being more of a political and the second with the prevailing juridical nature. Timing of protective action of the devices in keeping the legitimacy and legality within the constitutional framework differs whether it is preventive, aiming to maintain one or both of these features of the government *a posteriori*, when the infringements or deviations have already occurred and legitimacy and legality has to be restored. Most of the safeguards protect both legitimacy and legality for legality especially when the legitimacy values have penetrated the legal system. The target of protection of the safeguards might be both legitimacy and legality in a constitutional democracy or separately only one of them. For example, classical civil disobedience, resistance to unjust, despotic government having roots in antiquity and natural law tradition, were revived in the beginning of the transition and speeded up the breakdown of the communist system that was already falling apart. It is obvious that these actions are exclusively of a political nature and are targeted at legitimacy and not at legality of the juridical system. They have been conceived as an ultimate available *a posteriori* check to civil society's reaction to a despotic government that has trespassed constitutional legitimacy even if this has taken place within the framework of formal legality. Severing of the political compact by the rulers resulted in refuting political obligation of the citizens to their government. In other words illegitimate government is justification to the abandoning of legality by the citizens. Being typically extra –parliamentary and anti-government, direct action forms of political activity they have been modified and found implicit recognition in some of the constitutions of the emerging democracies, under the condition that all other means of legal recourse against a usurper of the popular sovereignty have been closed to the people as a sole repository of the sovereignty. However, the constitutions of the Central and Eastern European emerging democracies and the new independent states of the former Soviet Union founding fathers have been extremely careful

in proclaiming these safeguards. Most of the constitutional texts contain a prohibition against usurpation of popular sovereignty, and by transforming these extra-legal checks on despotic government into juridical measures, they explicitly state that citizens might resort to all legal means to oppose tyranny. The 1992 Lithuanian (art. 3) and Hungarian constitution (art. 2, par. 3) contain the most radical wording in that direction compared to the 1991 Bulgarian (art. 1, par. 3), Romanian (art. 2, par. 3), or 1996 Ukrainian (art.5, par.3) constitutions.[26]

Constitutional safeguards of legitimacy and legality belong to 3 different groups according to their nature.

Functional safeguards include the founding principles of constitutional democracy.

Although the constitutional formulae differ, the governmental and legal framework in the new emerging democracies is built on popular sovereignty, separation of powers, political pluralism, rule of law, supremacy of the international law and recognition and protection of human rights. The transformation process in the post-communist societies has been a proof that simultaneous functioning of all of the democratic principles is necessary for the preservation of legitimacy and legality in the democratic governance.

Constitutional supremacy has been founded on the classical doctrine in the liberal constitutionalism of division between the constituent and constituted powers as the best protective mechanism for the constitutional system.[27] The essence of the constituent power as a sole repository of the constitutional amendment is to frame governmental power within the will of different forms of institutionalization and performance of popular sovereignty, to exclude the changing of constitutional rules on the basis of party politics and simple or absolute parliamentary majority. The recourse to popular sovereignty as a *sine qua non* of constitutional amendment resulting from the public consensus and super-majorities, requires agreement to transform the rules established for the constituted powers.

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[26] There are no examples, however, phrased as radically as art. 20, par.4 of the 1949 German Grundgezetz inserted after the 1968 amendment. "All Germans shall have the right to resist any person or persons seeking to abolish the constitutional order, should no other remedy be possible."

[27] On constituent power see U.Preuss, Constitutional Powermaking for the New Polity: Some Deliberations on the Relations Between Constituent Power and the Constitution, in Constitutionalism, Identity, Difference, and Legitimacy, ed. M. Rosenfeld, Duke Univ. Press, Durham, 1994, 143 - 164

The principle of separation of powers proclaimed in all of the constitutions of the emerging democracies is a classical safeguard against illegitimate, despotic government and a fundamental protection device to human rights. In the context of post-communist societies the functioning of the separation of powers sometimes has brought tensions, conflicts and deadlocks between the institutions which have been resolved by the cooperation, political arbitrage of the presidents and juridical arbitrage of the constitutional courts within the constitutional framework. Institutional and functional separation of powers within pluralist multiparty systems have been established as a prerequisite for the legitimate, democratic, limited government with enumerated powers. In some cases, political pluralism and separation of powers were unable to prevent authoritarian trends which were facilitated by infringements of constitutional legality. [28]

Rule of law, proclaimed in the German wording of *Rechtsstaat*, has received different translations in English as law abiding state, law governed state, state bound by the law and even legal state in the constitutions of the emerging democracies. Juridical equality, has replaced egalitarian utopia of the communist constitutions, limiting the legal regulation to an equal start, equality in rights and before the law. However, the fall of the communist system and proclamation of national independence has not prevented retribution but by lustration. Citizenship and laws on the official language did not rule out elements of discrimination. Though the imperatives of legality were followed in drafting and enforcing the relevant parliamentary statutes, which were referred to the constitutional courts, the nature of these legal measures, justified by the parliamentary majorities as a reaction to the injustice of the ancien regime, did not stem from the sources of legitimacy stated in the preambles of the new democratic constitutions.

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[28] Though the most common explanations of authoritarianism have been difficulties in transition, deficit of democratic traditions and suppressing restoration of communism, this phenomenon stems mostly from the legal and political nihilism and fetishism, which have been cultivated for generations, I. Pogany, Constitution Making or Constitutional Transformation in Post-Communist Societies ? in Constitutionalism in Transformation : European and Theoretical Perspectives, ed. by R. Bellamy and D. Castiglione, Blackwell, Oxford 1996, 156 -179; E. Tanchev, Historical and Psychological Sources Shaping Constitutionalism and Constitutional Performance in the Post-Communist Societies: Reflections on Constitutionalism in the Transition, or Legacy of Transitory Constitutions, in Legal Reform in Post-Communist Europe, ed. S.Frankowski and P.B.Stephan III, Kluwer, London, 141-162

Institutional safeguards of legitimacy and legality in the constitutions of the emerging democracies relate to the formation, performance and distribution of powers between different branches of power.

While founding fathers in Central and Eastern Europe opted *mutatis mutandis* for parliamentary systems of government, the drafting of the constitutions of the new independent states of the former Soviet Union, with Baltic states being an exclusion, were influenced to a large extent by the mixed presidential - parliamentary type of government. However, this trend should not be overestimated at least for one reason. If the interwar period was marked by the crisis and breakdown of parliamentary systems in Europe, after the World War II classical pure parliamentary type of government was replaced with models of rationalized parliamentarism and dual semi-presidentialism.[29] Hence, the forms of government in the European Union member states might be situated on a segment with the parliamentary model (UK, Italy) being one pole and the semi-presidential type (Fifth French Republic, Finland) being the other, with intermediate forms of government in between.[30] To a large extent different constitutions of the emerging democracies have opted for relatively more flexible separation of powers scheme inherent to the parliamentary systems or a more rigid variant of the principle in the dual presidential - parliamentary type.

Emerging democracies did not copy or transplant any of the West European countries' systems of government without melding these models with specific features stemming from the past, apprehending that no repository of power should be able to concentrate and abuse power like the former general communist party secretaries. In Central and Eastern Europe the founding fathers tended to avoid instituting strong presidents, while in some of the independent states and most notably in Russia, Belarus and Central Asia semi-presidentialism went far beyond its prototype

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[29] See Constitutions and Constitutional Trends since World War II, ed. A. J. Zurcher, Greenwood Press, 1955, 67-94

[30] On the differences between these models of government see D. Verney, The Analysis of Political Systems, London, 1959,17-56; Parliamentary and Presidential Government, Oxford, 1992, 118-127, 142-151; G. Sartori, Comparative Constitutional Engineering, New York Univ. Press, 1994, 83-196 ; The Failure of Presidential Democracy, ed. J.Linz and A.Valenzuela, John Hopkins Univ. Press, 1994, 91 - 162; M. Duverger, Echec au roi (les regimes semipresidentiels), Paris, 1978

- the Presidential office in France after 1958 Constitution.[31] Due to specific developments in Russian Federation, Belarus and Central Asian republics semi-presidential government evolved into superpresidential government.[32]

A democratic institutional framework has been founded on requirements of legitimacy.

New parliaments elected by universal, equal, direct suffrage and secret ballot have had a consolidating effect on political stability and development of democratic governance.[33] Free, fair, multiparty elections held at reasonable intervals have guaranteed authentic legitimate political representation. The electoral system and general elections have met the international standards of free and fair elections.[34] Some of the new democracies like Czech Republic, Poland and Russia have opted for bicameral assemblies, which have combined different principles of recruiting deputies and senators in both chambers, multiplying the representativeness of constituencies and civil society.[35]

Impartiality, achieved by increasing the degree of consensus between the parliamentary relevant parties and guaranteeing minority rights has been provided in different ways in the constitutions of some of the emerging democracies. Super- majorities have been considered as means to exclude partisan content of parliamentary legislation in specified spheres. In Hungary passage of law on emergency regulation, Rules of the House

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[31] Political and legal tradition, geopolitic factors and centrifugal nationalist aspirations exerted the strongest influence in opting the type of constitutional system of government. To a certain extent in this selection the fate of the former governing communist party had some significance. While the formal ban of these parties excluded them to be in control of the institution of the head of state and lead to creating and electing of strong presidents dissociating themselves from their past career.

[32] See S.Holmes, Superpresidentialism and Its Problems, East European Constitutional Review, vol.2 and 3, N. 4 and 1, Fall 1993 and Winter 1994,123-126

[33] See The New Parliaments of Central and Eastern Europe, ed. by D.M.Olson and Ph. Norton, London, 1995;

The Role of Parliament for the Consolidation of the New Democracies in Central and Eastern Europe, Sofia, 1996

[34] See on the international standards G.S.Goodwin - Gill, Free and Fair Elections, International Law and Practice, Inter - Parliamentary Union, Geneva,1994

[35] The Romanian parliament been an exception for the both chambers are elected on the basis of same principles of representation. For this reason the structure of the Assembly has come under severe criticism which might lead to constitutional amendment.

and statutes on constitutional matters have to receive two thirds majority of the members of parliament. The Czech 1991 constitution requires three fifths majority to ratify international agreements and absolute majority for emergency statute approval (art. 39). The 1998 Albanian (art.81) and Lithuanian constitution provide that constitutional laws have to receive three fifths majority.(art.69, 3). In the 1993 Constitution of Russian Federation, constitutional laws which concern the accession or change of the status of the member state have to receive three fourths majority in the Chamber of the Federation and approval of two thirds of the members of the State Duma in order to be passed.

In other emerging democracies, following the example of the 1958 Constitution of the Fifth French Republic, the constitutions have provided a special list of matters to be regulated exclusively by parliamentary statutes (Romania, Ukraine). From a comparative prospective legislative reservations have had two main effects - increasing impartiality by exempting the listed social spheres from the regulation by the executive which under the parliamentary or semi-presidential government is in control of one party or coalition and reducing the ambition of a omnipotent assembly evolving in a convention by attempting to legislate on every possible matter.

In designing presidential institutions the founding fathers in the emerging democracies have followed two methods of electing heads of state, depending on the catalogue of their enumerated powers. [36]

The constitutions oriented towards the pure parliamentary system with the president being more a symbolic institution, rather than an agent of the executive power have opted for parliamentary election and in this way have transferred legitimacy of the assembly to the presidential institution.

In other constitutional systems like Belarus, Bulgaria, Lithuania, Poland, Romania, Russian Federation, Slovenia, Ukraine and in Central Asian independent republics of the former Soviet Union, semi-presidentialism has led to direct presidential election by the people and in this way bestowed double legitimacy on the parliamentary assembly and on the presidential power, being an important, and in some of these countries a decisive, part of the executive and policy making. The Bulgarian 1991 and to some extent Lithuanian 1992, Slovenian 1991 constitutions stand as an exception

[36] For details see Special issue on the Postcommunist Presidency, East European Constitutional Review, vol.2 and 3, N.4 and 1

with the double legitimacy and relatively asymmetric, directly elected president with powers which are usually assigned to the parliamentary head of state.

Cabinets and Prime ministers in constitutional democracies receive their legitimacy indirectly. Under the parliamentary government the executive, being a representative of parliamentary majority, derives its legitimacy from the party or coalition winning the mandate to govern in the parliamentary general election. Indirect legitimacy of the Council of Ministers in the semi-presidential government results from the appointment from the directly elected head of state and parliamentary approval of the cabinets.

Establishing an independent judiciary was among the most important institutional achievements of the transition. Common constitutional features in this direction have been method of appointment, providing for life tenure, immunity of the judges, separate budget of the courts and self management of the Judiciary by a special body formed under the Italian, French and Spanish models of *Magistratura*, which is distinct and separate from the executive and legislative branches.[37]

Institutional separation is crucial to the independence of the judicial branch in the new democracies, for it evolves from the so called phonograph and telephone justice in the communist period.[38]

With Estonia being an exception by concentrating constitutional review in the Supreme court, all of the constitutions of the emerging democracies have

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[37] For overview on the structure and powers of the Councils of Juudiciary, selection and promotion of judges see S.Bartole, Organizing the Judiciary in Central and Eastern Europe, East European Constitutional Review, vol. 7, N 1, Winter 1998, 62-69

[38] While the metaphor of telephone justice signifying the pressure exerted on judges from central and local nomenclatura has been used often in the literature, gramophone justice is a term explaining judicial constraint within the continental, civil law tradition, where judge has to apply the will of the Legislature to particular cases , while in the Anglo Saxon legal family the judge is supposed to find the law in particular cases. The term was coined by F. Neumann, See his The Democratic and Authoritarian State , New York, 1966, 36; Through the eyes of a famous American comparativist judicial process is a fairly routine activity with the judge being an expert clerk "presented with a fact situation to which a ready legislative response will be readily found in all except the extraordinary case. His function is merely to find the right legislative provision, couple it with the fact situation, and bless the solution that is more or less automatically produced from the union. The whole process of judicial decision is made to fit into the formal syllogism of scholastic logic. The major premise is in the statute, the facts of the case furnish the minor premise, and the conclusion inevitably follows.", J.H.Merryman, The Civil Law Tradition, Stanford Univ. Press, 1985, 36

opted *mutatis mutandis* for the Austro - German system of control of the constitutionality and have vested this function in special constitutional courts.

The founding fathers in the emerging democracies have created constitutional courts as guardians of constitutional legality supremacy. Traditional arguments like popular sovereignty, representation, method of appointment, lack of transparency and openness in the proceedings were sometimes present in the discourse and were used in the argument against constitutional control. Deriving their legitimacy from supremacy of the constitution and primacy of fundamental rights, separation of powers and intermediate status between constituent and constituted powers, constitutional courts have reaffirmed democracy and legality during the first decade since the start of transition.

Concentrated constitutional review is the common denominator of all the constitutional courts in Central and Eastern European emerging democracies and in the independent republics of the former Soviet Union.[39] All except for the Romanian constitutional court (art. 144), modeled after the *Conseil constitutionnel* of the Fifth French Republic, perform abstract, *a posteriori* control of constitutionality of laws.[40] In Hungary the powers of the constitutional court, which has been most active in the emerging democracies, combine *a posteriori* controll with *a priori* and abstract with the incidental forms of constitutional review.[41]

Constitutional courts have been more successful in keeping the functioning of the political institutions within the constitutional framework of values and principles and to a lesser extent in performing their counter-majoritarian function to checking the parliamentary majorities for overstepping

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[39] For detailed look on the status of the constitutional courts in the emerging democracies by a knowledgeable American scholar see H. Schwartz, The New Courts: An Overview, East European Constitutional Review, vol.2,N.2, Spring 1993, 28-31; H.Schwartz, The New East European Constitutional Courts, in Constitution Making in Eastern Europe, ed. by A. E. Dick Howard, John Hopkins Univ. Press, 1994, 163 -207

[40] Most of the constitutional courts perform preliminary control have controlling function over the compliance of international instruments to the national constitutions before the parliamentary ratification in order to spot out the conflicting provisions of the constitution a priori undertaking obligation of the nation state to uphold the primacy of the international law.

[41] See A.Agh, The Permanent "Constitutional Crisis" in the Democratic Transition: The Case of Hungary, in Constitutional Policy and Change in Europe, ed. J.J. Hesse, N.Johnson, Oxford Univ. Press, 1995, 296 -326, at 315-318

minority rights. Reacting against unconstitutional norms and statutes, the Constitutional courts prevented the constituted powers within the legitimate will of the constituent power and acted like guardians of the principle of legality of the juridical system.

Procedural safeguards of constitutional legitimacy and legality concern the procedures in the relationship between citizens and government designed to protect individual freedom and maintain the people's trust in government, being a cornerstone of support of democratic regimes. Democratic deficit and lack of legitimacy lead to citizens distrust in government, acting through unfair procedures. [42]

Like the inter- institutional procedures, legal relations between individuals and institutions should be founded on impartiality and non - partisan decision-making.

In the new constitutions of the emerging democracies, provisions on fundamental rights have been shaped according to the requirements of the international and European human rights instruments, being minimal standards of constitutional protection. Central and East European post-totalitarian states became Council of Europe members and ratified the European convention and most of the protocols. [43]

The principles of universality, equal protection, non derrogability, inviolability and inalienability of human rights have been established as a basis of the constitutional status of the physical persons. The proportionality principle meant to limit justifiable restrictions on the fundamental rights by

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[42] From political science prospective there are four ways of signaling fairness by the state and producing trust in government :1.coercion of the non compliant; 2.universalistic (non-partisan, impartial) recruitment of civil servants; 3. establishment of credible courts for disputes arbitration and conflict resolution; 4. citizen involvement in politics., see M. Levi, A State of Trust, EUI, Firenze, 1996 working paper RSC , N 96/23, 13-15

[43] Constitution-making in the emerging coincided with the timing of the adherence to the European protection of the human rights. By mid 1994 the European convention was ratified by more than 30 countries including Bulgaria, Czech Republic, Estonia, Hungary, Lithuania, Romania, Slovakia and Slovenia., Human Rights Law Journal, vol.15, N 3, 1994

the public authorities,[44] however, was explicitly provided only in a few constitutions of the emerging democracies among which the 1991 Romanian (art. 49, par.2) and 1990 Croatian (art.17, par.2) constitutions should be mentioned. In Bulgaria the requirements of the proportionality principle might be derived by interpretation of art. 31, par. 4 and 5 of the 1991 constitution and in Poland the Constitutional court applied the proportionality test in January 31, 1996 decision.

Although human dignity as a constitutional principle and a subjective individual right has been among the first provisions explicitly established by most of the constitutions of the emerging democracies it has received different meaning in the national constitutionalism context.[45]

In protecting human rights by the Constitutional courts the constitutions of the emerging democracies follow several different models.

Direct access of the citizens to the Constitutional court in Albania, the Czech Republic, Hungary, Poland , Slovakia and in Estonia to the Supreme court has been most a effective safeguard of constitutional legality and an exclusive constitutional remedy against governmental encroachment upon individual freedom. In other of the emerging democracies individual complaint is available under certain conditions, like exhaustion of all other forms of legal redress (Slovenia) , indirectly through the ombudsman or the Supreme court filing the case at the Constitutional court (Bulgaria). However in most of the countries the abstract constitutional review is available to the President, Cabinet and certain number of members of the Parliament, who

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[44] Proportionality principle, though not explicitly provided in the 1949 Grundgezetz has been established in the German constitutionalism after the World War II and in modified form has been applied in EC and EU law. The three components of the principle are used to test the admissibility of human rights limitation. 1.Government encroachments to individual liberty should be suitable to reach the purpose aimed by the measure ; 2. The least burdening to the individual measures should have been chosen by the government among other suitable measures; 3. A reasonable balance between the encroachment entailed by the measure and the purpose aimed at through the measure should exist., J.Kokott, From Reception and Transplantation to Convergence of Constitutional Models in the Age of Globalization - with Special Reference to the German Basic Law in Constitutionalism, Universalism and Democracy - a comparative analysis, C. Starck, Nomos, Baden - Baden, 1999, 74 - 133, 101; D. Grimm, Human Rights and Judicial Review in Germany, in Human Rights and Judicial Review, ed.D.Beatty, Kluwer, 1994, 267- 295, 276; D. Commers, Constitutional Jurisprudence of the Federal Republic of Germany, Durham,1989

[45] See the constitutions of Albania, Bulgaria, Hungary, Kyrgyzstan, Kazakhstan, Lithuania, Poland, Romania, Russian Federation, Slovakia, Slovenia, Ukraine.

can trigger constitutional review on different grounds including infringement of constitutional rights by the legislature or by the executive (Belarus, Croatia, Latvia, Lithuania, Romania, Russian Federation, Ukraine).[46]

Recourse to justice under the parliamentary systems has been also available through the Administrative courts, striking out the individual administrative acts, infringing the principle of legality by unconformity to the parliamentary statutes.[47]

Legitimate constitutional democracy and the rule of law provide for juridical procedures of governmental responsibility, being an *a posteriori* check by the government, opposition and the public on the institutions' and civil servants' breach of legality.

Depending on the form of government, constitutions of the emerging democracies contain arrangements for presidential impeachment and political responsibility of the cabinet. While the Presidents are not liable for actions committed in the performance of their duties except for high treason or violation of the constitution,[48] under the parliamentary government the cabinet is collectively responsible to the legislature. Procedures for political, civil and penal ministerial responsibility and responsibility of civil servants have been established by enacting new laws which have been ineffective in ruling out misbehavior and corruption in the administration.

Bringing individual claims for damages caused by illegal and illegitimate rulings and acts of governmental agencies and state officials has been provided in art. 7 of the Bulgarian 1991 Constitution. So far however this special tort proceedings has been applied as a remedy to the injustice

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[46] Except on the constitutions and statutes on the Constitutional courts and access to the constitutional justice I have relied on the data available on CODICES v.3.0, 1998/ 1, Centre on Constitutional Justice, Venice Commission Council of Europe; For Macedonia see C.Cvetkovski writing about availability of actio popularis, Judicial Power in Macedonia, 1999 at p.3, www cecl. gr./rigasnetwork.html

[47] Evolution of administrative justice since 19 century in France has been outlined as a peculiarity in the context of European rule of law, posing limits on constitutional review and a basic safeguard of legality. , See O.Kirchheimer, Legality and Legitimacy, in Rule of Law under Siege, Selected Essays of F. Neumann and O. Kirchheimer, ed. by W.E. Scheuerman, Univ. of California Press, Berkeley, 1996, 44 -63, at 46-47

[48] Estonian constitution (art. 82, par.2) provides for president's removal on the grounds of committing a legal offence, no grounds are stated in the Constitution of Latvia and in Slovakia (art. 106) activities against sovereignty, territorial integrity and democratic system of government lead to impeachment.

caused in the field of the Criminal law, notwithstanding that this constitutional provision and the procedure established by the parliamentary statute have provided that this is universal responsibility and it should not be restricted to a damage inflicted by injustice in Criminal law. Under the constitutional provision claims against civil servants and state agencies might be brought up by citizens and legal persons as well (especially when they have been overtaxed and they cannot recover their resources back for long time-periods).

Legal arrangements for citizens' political involvement in the public sphere constitute another set of safeguards of legitimacy and legality in constitutional democracies.

Preserving most of the fundamental values of liberal constitutions, new constitutionalism, being a dominant trend after World War II, elevates participatory democracy as one of the grounds of its legitimacy.

Citizen involvement acquires different shapes - from expressing political persuasion and attachments, forming the public opinion to influence and control governmental actions, participation in the decision-making through free elections and direct democracy.

While negative rights were the essence of the first generation of rights in liberal constitutionalism, republican values of the postwar constitutions envisage liberties and procedures channeling citizen political participation.

It seems that within the context of the normative constitution and the institutional framework, forms of direct democracy are of primary importance to the legitimization of the political and legal systems. However, it is worth remembering J. Madison's words that "a popular government, without popular information, or means of acquiring it, is but a Prologue to a Farce or a Tragedy; or, perhaps both." [49]

Public opinion can easily be manipulated if the government is operating in secrecy and citizens have been deprived from their right to information. Openness in governmental proceedings and transparency has a decisive effect on the citizens' opinion formation. Authoritarian regimes are always inclined to apply paraphrased versions of the Bentham's *panopticum* effect or transparency *antipode* - the government can observe citizens at all times

[49] The Mind of the Founder, Sources of the political Thought of James Madison, ed. M. Meyers, London, 1981,343

without the possibility to be seen by the public.[50] Avoiding transparency and openess in government leads to a phenomenon when state power ceases to be public and looses its legitimacy.

Access to governmental rulings and proceedings might be limited by *arcana imperii*, but not denied to citizens. Secrecy undermines legitimacy by depriving the public of information and of the possibility to partake in the public discussion. Instead of deliberative or discursive democracy,[51] where support of governmental policies evolves through robust public discussion direct democracy might be instrumental to authoritarianism and fake legitimacy of plebiscitary political regimes.

Considering these circumstances, political tradition and legal culture in the emerging democracies and in the new independent states one should not be overwhelmed with the appeal but take a more reasonable approach to direct democracy.

All of the post-totalitarian constitutions provide for different forms of direct democracy, channeling public opinion and citizen involvement in governmental decision- making.

National and local referendums are provided in most of the constitutions as a recourse to the public will, expression of popular sovereignty, considered as an ultimate legitimate source of authority.

Some of the constitutions contain other direct democracy forms like popular initiative, constitutional or confirmatory referendum, which in Poland has been shaped along the model of the ratification referendum in the Italy.[52]

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[50] By late 1790 J.Bentham worked out an utopian scheme of self-sufficient social system built on his prison building plans. According to his architecture criminals should be imprisoned in a tower with each chamber having two opposite windows - one for the light to come in and the other for the constant watch by the supervisor., A Bentham Reader, ed. M.Mack, New York, 1969, 19; For detailed description of the panopticon effect see M.Foucault, Surveiller et punir. Naissance de la prison, ed. Gallimard, Paris, 1975, III, ch.3; see his L'oeil de pouvoir, Dits et Ecrits, ed. Gallimard, Paris, 1994; In Bobbio's words the panopticon effect applied to government creates all seeing invisible government and people that are blind but visible. By the panopticon effect public government might be easily transformed into cryptogovernment, N. Bobbio, Il futuro della democrazia, Torino,1994, 14

[51] On deliberative democracy see J.Cohen, Deliberation and Democratic Legitimacy in Deliberative Democracy, ed. J. Bohman and W. Rehg, Cambridge, Massachusetts, 1997, 67-91

[52] Ratificatory referendum is a brand of the classical but outdated institute of popular veto.

Protection of minority rights and precluding transformation of direct democracy into an instrument of tyranny of the majority has lead the founding fathers to include some procedural guarantees and super-majorities in the constitutional text.

Referendums can be initiated by the Parliaments, by the Presidents or by the voters when they meet the requirement to collect a certain number of signatures. In the 1997 Constitution of Poland (art.125) the Parliament is to submit an issue for a national referendum by absolute majority decision, the President with the consent of the absolute majority in the Senate. The result of the Referendum is binding if at least half of the voters took part. The supreme court has been charged with determining the validity if the referendum concerning certain specified issues.

The 1996 Ukrainian Constitution prevents abuses by direct democracy against minority rights and for local interests, by requiring that when initiated by at least 3 million voters the signatures should be collected in the two thirds of regions and in each of these regions at least 100 000 of voters should sign the petition for the referendum (art.72).

Constitutions contain content limitations on the legislation's subject matter submitted for referendum. Common limitations concern financial matters, budget and tax bills. The longest list is to be found in the 1998 Albanian constitution and includes issues related to territorial integrity, limitation of fundamental rights and freedoms, budget, taxes, financial obligations of the state, declaration and abrogation of the state of emergency, declaration of war and peace, as well of amnesty (art. 141). These provisions are guarantees that the listed issues, which might lead to complicated consequences, should be decided on the basis of consensus formation following a robust debate in the representative assemblies with consideration of different opinions, including safeguarding of minority interests and freedoms.

Another precaution in the constitutional practice against using referendums to undermine constitutional legitimacy and legality has been the practice of subjecting issues submitted to direct people's decision for constitutional review.[53] Constitutional courts have been charged with the task to maintain

[53] For specific forms of constitutional review on the issues submitted to referendums in Hungary, Lithuania, Poland , Russia, Slovakia and Western Europe see Constitutional Justice and Democracy by Referendum, Science and Technique of Democracy N 14, European Commission for Democracy through Law, Council of Europe, Strasbourg, 1998

constitutional supremacy as the ultimate legal expression of legitimacy, reached by broadest fundamental consensus, from any encroachment by the institutions and direct democracy as well. Radical democracy arguments stemming from popular sovereignty, from the thesis that people are best guardians of their rights, cannot overrule the role of the Constitutional court as protector of constitutional legality and legitimacy, which is inferior to constituent power alone. And if we consider constitutional review as a triumph of legality over the legitimacy we will certainly be wrong. For in this case the Constitutional court acts to preserve legality which in the democratic systems is the best safeguard of legitimacy. In this train of thought constitutional review of the issues submitted to referendums should be viewed as a check against institutions designing referendums sometimes to avoid deadlocks in politics or to acquire more power. Under the limited, responsible constitutional government constituted powers are circumscribed to the constitutional limitations set by the constituent power, as ultimate expression of popular sovereignty. Hence, constitutional courts intervention to preserve legality is an effective safeguard of hierarchy and compatibility of two legitimacies. Legitimate decision reached through direct democracy has to be within the will of people expressed in constitutional legitimacy and legality.

Within the political context of the transition, referendums and forms of direct democracy bestowed legitimacy on independence movements, but have not been effective instruments of resolving deadlock between the institutions and the political elites.[54]

Concluding Remarks

The brief overview of the constitutional safeguards of legitimacy and legality in the emerging democracies is by no means an exhaustive one.

Some of the problems have been treated schematically and some of the issues have been consciously omitted partly due to the extent of this paper and partly due to the fact that they need a special analysis. Probably, the most important of these problems is the interrelationship between the international, European and Constitutional safeguards of legitimacy and legality of the evolving political and legal systems in Europe. For example,

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[54] See H. Brady and C. Kaplan, Eastern Europe and Former Soviet Union, in Referendums around the World, ed. D.Butler and A. Ranney, The AEI Press, Washington, 1994 , 174-215, at 210

the implications of the supremacy of the international law and situating of the ratified international agreements within the hierarchy of the national legal system, as well as the partial limited transfers of sovereignty as a precondition to compliance with the *acquis communautaire* for EU membership have been left aside.

This perspective of the investigation presupposes to look at the process of transition and reform in the emerging democracies not only from the prospect of the evolution of the civil society, government and the law during the social transformation from totalitarianism to constitutional democracy but within the context of the process of transformation of the classic nation state in Europe at the turn of the 20th century.

THE SPECIAL CHALLENGES FACING GOVERNANCE IN THE CANDIDATE COUNTRIES

Imre Forgács *

The main intention of this paper is to analyse the main challenges of the public administration reforms in the Candidate Countries, paying special attention to openness and transparency. In particular: it deals with two different aspects of the reforms:

1) The Challenges of Globalisation. What are the main connections of the new tendencies in the World Economy with the Public Administration Reforms?
2) The view of Hungary. The basic principles and some institutional developments of the current Hungarian Public Administration Reform.

As far as this second aspect is concerned the main thesis of this paper is as follows: the Public Administration Reforms in 2000 and in the years to come are not just reforms for reform's sake. They are important pre-conditions for the successful EU-accessions.

As the most recent Regular Report formulates: "Hungary has made steady progress in building up its administrative capacity to apply the acquis. Steps have been taken toward general public administration reform and continued emphasis has been placed on the development of specific European policy and law training courses throughout the administration and in the judiciary. Most of the key institutions needed for implementation of the internal market are in place. Nonetheless the administration still needs to be strengthened in specific areas such as state aid control, market surveillance and veterinary and plant health. Hungary needs to allocate sufficient budgetary and administrative resources to regional development and environment; and improve capacities to use, monitor and control EU financial assistance." (1999 Regular Report from the Commission on Hungary's progress towards accession)

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1. The Challenges of Globalisation

If we summarise the mushrooming special literature dealing with critical issues as well as the new roles and responsibilities of the public administration we can identify at least five different approaches:

a) demands of financial stability
b) regulatory approaches
c) criticism of the current world trade system
d) new regionalism
e) third way approaches

a) After the financial crisis of the former "wonder lands", the emerging markets of the Far East, more and more analysts say that the acceleration of the global capital flow, the "financial bubble"-effect, causes uncertainties in the World Economy. The financial bubble-effect as a special term indicates the widening gap between the real economy (manufacturing, trade, services etc.) and the financial sphere – as some say – the virtual part of the world economy. The lack of transparency, the limited available information on the Global Money Market, causes anxiety among top-ranking state representatives, financiers and the public as well.

In 1999 the historic legislation of the American Congress lifted the ban on the separation of the activities of banks, security firms and insurance companies. At the same time public interest groups (both on the conservative and the liberal side) formed a coalition to protest at what they saw as inadequate privacy protection in the bill. They argue that under the new legislation, financial institutions could more easily merge and offer everything under one roof. The public interest groups fear that the new powerful institutions will be allowed to share private financial information with affiliated companies.

Surprisingly, even Mr George Soros, the best known Hungarian-born financier, is among those experts who advocate the need for greater financial stability and for a supranational Monitoring Authority.

b) Drafting the priorities of the Public Administration Reforms in the Candidate Countries the new Regulatory Roles and Responsibilities of National States must also be taken into account. Prof. Phedon Nicolaides' major conclusion is that the national state remains the basic unit of governance in Western Europe, despite the fact that their involvement

in the national economy is declining.[1] The decline is partly an inability to control global economic forces, and partly a self-restraint of economic sovereignty transferring the national regulatory authority to the Community legislation.

As Prof. Nicolaides argues even the European Commission powers are largely limited to making legislative proposals and supervising the implementation of measures decided by the Council. The Commission has no real enforcement capabilities of its own. In the areas of common policies particularly, it has to rely on national administrations. These findings can be utilised by the candidate countries setting up administrative capacities to apply the *acquis communautaire*. They would help to identify the list of enforcement bodies in key areas of the acquis.

c) The growing concern about the world trade system and the complete failure of the WTO-conference in Seattle indicate a need for a newly established supranational economic structure including the new role and authorisations of the IMF and the World Bank. This critical approach is represented by a large number of experts: from the initiator of the People-Centered Development Forum, David C. Korten, author of "When corporations Rule the World", to even Michael Camdessus, the outgoing IMF chief-executive. Mr Camdessus also acknowledges the heavy imbalances in the current world trade system and supports the comprehensive reform of the supranational institutions, which could be a starting point for any Public Administration Reform.

d) The New Regionalism is another response to the challenges of globalisation. The logic of New Regionalism implies that the national-state has lost its usefulness, and that solutions must be found in transnational structures, i.e. global (functional) or regional (territorial) structures. At the same time solutions are sought in sub-national identities.[2]

As many analysts say, the new wave of regional co-operation and integration had already started by the mid – 1980's but took off only after

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[1] Phedon Nicolaides; The Role of Member States as Rule-makers in the European Union. Intereconomics, January/February 1998.

[2] See: Björn Hettne, Globalization and the New Regionalism: The Second Great Transformation In: Bjön Hettne-András Inotai-Osvald Simkel: Globalism and the New Regionalism. UNN/ WIDER Helsinki, Finland 1999.

1989 when the Cold War came to an end. That is why the "old" regionalism differs from the new one in the following aspects:

1. Whereas the old regionalism was formed in and shaped by a bipolar cold-war context the new is taking shape in a multipolar world order;
2. Whereas the old regionalism was created "from above" (by the superpowers), the new is a more spontaneous process from within the region and also "from below" in the sense that the constituent states themselves, but increasingly also other actors, are the main proponents for regional integration;
3. Whereas the old regionalism, as far as economic integration is concerned, was inward-oriented and protectionist, the new is often described as "open", and thus compatible with an interdependent world economy;
4. Whereas the old regionalism was specific with regard to objectives, some organisations being security-oriented and others being economically-oriented, the new is a more comprehensive, multidimensional process. This includes trade and economic integration, but also environment, social policy, security and democracy, including the whole issue of accountability and legitimacy.
5. Whereas the old regionalism only concerned relations between formally sovereign states the new forms part of a global structural transformation in which non-state actors are active and manifest themselves at several levels of the global system". (Hettne 7-8.p.)

This analysis compares the process of regionalisation with the historical formation of nation-states. However, an important difference remains: the core regions' coercive power, or at least the open use of force, is lacking in processes of regionalisation. "This is a historical outcome of attempts to find a transnational level of governance which reinforces certain shared values and minimises certain shared perceptions of danger." (Hettne: 9.p.)

e) The New Centre in Germany and the Third Way in the United Kingdom is an attempt by Social Democrats to find a new way between the neo-liberal laissez-faire approach in the past two decades as well as the 1970s-style reliance on deficit spending and heavy-handed state intervention.

In their current analysis [3], public expenditure as a proportion of national income has more or less reached the limits of acceptability. Constraints on

[3] See: Europe: The Third Way (Die Neue Mitte published by Tony Blair and Gerhard Schröder 1999

"tax and spend" force radical modernisation of the public sector and reform of public services.

The third way wants to solve problems where they can best be solved. Some problems can now only be tackled at European level: others, such as the recent financial crisis, require increased international co-operation. But, as a general principle, power should be devolved on the lowest possible level.

The key role of an "active government" must be investment in human and social capital. That means education must not be a "one-off" opportunity.

Lifetime access to education and training and lifelong utilisation of the opportunities represent the most important security available in the global world. Therefore, governments have a responsibility to put in place a framework that enables individuals to enhance their qualifications and to fulfil their potential.

The third way believes that a modern and efficient public infrastructure including a strong scientific base is also an essential feature of a job-generating economy. It's important for an active government to ensure that the composition of public expenditure is being directed at activities most beneficial to growth and that foster necessary structural change.

2. Principles and some developments of the current Hungarian Public Administration Reform

2.1. The current reforms of the public administration in the Candidate Countries must be based on at least two basic principles:

a) the Quality Governance;

b) the Europeanisation of Public Administration.

a) Quality Governance can be used as a special term for reform efforts; it is not a feasible aim (or final output) of any capacity-building. It indicates the permanent efforts to improve the capabilities and skills of civil servants; it also claims transparency and openness in basic institutions, and professionalism in preparation of decisions, as well as effective monitoring and enforcement authorities.

b) The Europeanisation of Public Administrations is an important principle of administrative capacity-building in the Candidate Countries to apply the acquis. As the most recent Regular Report on Hungary says: "The administrative capacity has become a central issue in the negotiation process".

If we study the Regular Report carefully we can conclude that the real EU-requirement is more complex than a simple extension of the administrative capacities, setting up new enforcement agencies, staffing them properly or providing the budget resources. Even the Regular Report formulates that there is no "ideal" level of staffing, and numbers alone are no indication of capacity to implement the acquis effectively.

The process of "Europeanisation" has to go further. The candidate countries must deal not only with the staff members but with the detailed structures of governance as well. They have to utilise the experience and expertise of the Member States building in the most sophisticated fine-tuning techniques.

2.2. The Hungarian Government approved a Resolution [No. 1052/1999. (V. 21.)] in May 1999 on a comprehensive reform program for the Public Administration. This resolution covers four main areas: development of central administration; reform of local and territorial administration including the public administration offices; modernisation of the information system in order to increase transparency and efficiency; formulation of a policy to increase the overall quality of civil servants.

The final conclusion of this Resolution is that by 2002 Hungary will be able to meet the EU requirements pertaining to the public administration and will be capable of applying the acquis communautaire. This ambitious plan is based on the outlined schedule in the Government's Resolution as well as relying on the achievements so far.

The key objective of the Central Administration Reform is the creation of a smaller organisation that can perform its function more efficiently. To achieve this, the permanent review of the tasks and competencies of line ministries and central agencies must be continued.

As far as the reform of ministries is concerned, the declared strategic aim of the reform is that ministries should be relieved of specific public administration cases (the daily routine cases). Instead, more emphasis must be placed on strategic planning, on horizontal co-ordination, on supervision (transparency and openness), and on the legal regulatory tasks.

Most of the former soviet-block countries (even Hungary) are in a very delicate situation concerning strategic planning and long-term programming. After the decades of rigid state owned, planned economy the pendulum swung to the opposite extreme. The horizon of our economic thinkers became limited to the fiscal year approach. This restrictive approach needs

to be changed and indeed it has to be, as it is a legal requirement of EU-programming.

Another key issue of the Central Administration Reform is how to co-ordinate horizontally, in a more transparent way, the extremely fragmented branches of the community law.

For the time being, the line ministries and the enforcement bodies (Patent Office, Public Procurement Council etc.) are responsible for the special chapters of the *acquis*. Hundreds of well-trained, highly dedicated professionals prepared the screening process. They provide the professional expertise for the negotiations and accumulate the relevant EU-related information and expertise.

It is a very important, but at the same time an extremely difficult, task to control this type of information to make it available for the wider public, the business community and for all who will deal with it in the future.

The Hungarian Government tried to use institutional means to set up a special horizontal co-ordination unit in the Office of the Prime Minister. It utilised the experience of comitology involving well-known independent experts in the preparatory process. The Strategic Task Force for European integration is a non-governmental organisation (NGO) pooling together more than a hundred Hungarian experts. It is organised into 20 working groups each dealing with the main chapters of the acquis. The STF deals particularly with strategic EU-related issues and regularly publishes its main findings. It formulated its recommendations by the end of 1997 and it serves as a long-term basis for Hungary's negotiating positions.

Another important priority of the Central Administration Reform is to find the appropriate, transparent structures for the Public Finance System.

The task is urgent partly because of the accessibility of the pre-accession instruments (ISPA, SAPARD). We also have to restructure the state aid regulation with special attention to the Monitoring System. As we have learnt from our Regular Report the existence of well-equipped monitoring and accounting institutions are the most important pre-conditions for the public administration "absorption" capacities.

The expectations of the Candidate Countries are very high. They want more than just to be in a net receiver position for EU-funds. They would like to set up a professional and transparent quality governance.

The Public Administration Reforms also have to change the negative attitudes towards public administration and the sometimes low profile of the civil service. However they must be as realistic as possible. The reforms are a bit similar to any type of prescribed medicine. They are the combination of effects and non-intended side-effects as well. If they set up a new monitoring authority, it increases the bureaucratic burdens and needs more co-ordination. If they regulate more extensively, they have to harmonise with the previous laws more closely.

Despite this seemingly sceptical approach the Candidate Countries nevertheless have to go ahead step by step toward a more professional and more transparent EU-compatible public administration.

WORKSHOP I – Governnment / Citizen Relationship

EFFECTIVE APPROACHES TO REFORM OF THE GOVERNMENT/CITIZEN RELATIONSHIP

(From 'standing in line' to on-line)

*Mirko Vintar**

Introduction

Explosive use of modern network technologies offers tremendous potentials in development of new communication ways and services between government and citizens. However, it also provides grounds for some fears that we are heading towards 'wired society' in Orwellian sense. A few years ago a very interesting book titled 'Orwell in Athens'; A Perspective on Informatization and Democracy (see: Donk, 1995) was published which was trying to highlight possible positive and negative effects of networked or wired societies; on the one hand new opportunities in communication between the authorities and the citizens on the other hand gloomy scenarios of development of new surveillance mechanisms for exerting total control over the people. We will not follow the gloomy scenarios, rather, we will try to take an optimistic perspective on the development of new opportunities to enhance communication between the two parties under consideration. However, we shouldn't forget that important part of government-citizen communication involves the transmission of sensitive personal information, which can be mis-used in many cases, therefore some moderate caution is not altogether out of place.

The technology to develop new e-services and efficient government-citizens communication channels already exists. The main information infrastructure necessary to provide new services also exists or is being built and will be available in the near future. Even more, according to the results of the recent survey made in Slovenia, more than 40% of government authorities at the state and the local level are already on the web and are accessible via Internet. This percentage of availability and accessibility of government bodies via Internet is even higher in the EU member states.

What is urgently missing is an *organisational, institutional and legal or administrative* framework to support development of secure and binding

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communication between government authorities and their customers. Furthermore, it is easy to provide citizens with the most government information which is in character or text form like different reports, bulletins, laws. This information is suitable in more or less the same form for all users and it involves essentially one-way communication.

Much more demanding will be development of individualised transactional e-services for individual citizens through which the citizens will be, for example, in a position to declare their tax liabilities, apply for various licences and permits, communicate with health and welfare offices etc. We are speaking about millions of everyday transactions between government and citizens, which represent probably 90% of all transactions between them. The problem lies in the fact that most of the procedural knowledge about administrative procedures is not yet in the digital form. It is written in hundreds of different legal and other organisational documents. Even more, considerable amounts of operational knowledge about administrative processes and procedures often exist only in the heads of civil servants who perform those procedures. In order to convert these types of services to e-services and gradually introduce so called 'electronic government' we will need a complete **re-engineering of public services.**

Let us cite Objective Two of Vienna Declaration:

> *'Public services must be provided by electronic means and public information made universally available to the citizen.*
>
> *Preparing public administrations for an Informed Democracy requires them to re-engineer their organisations and functions so that they can fully exploit the new information technologies to provide better public services to the citizen. The objective for administrations at all levels (local, regional, national, European) is to transform themselves into efficient and integrated networks able to present a single interface to the user of public information and public services. Clearly, this implies a major task in removing existing political and technical obstacles to communication and co-operation between them.'*

This paper is aiming to analyse the key factors which will influence the speed of changes on the one hand and the quality, friendliness and safety of new e-services on the other.

1. New paradigm in designing communication ways between the state and its customers

Communication means between the governments and the citizens have been developed over decades, even centuries. The process was from the very beginning and for the most of the period driven by the intrinsic need of the governments to collect taxes. Later on many new information needs of the governments were developed and citizens became gradually more and more an important source of information. However we should point out that through all this history of developing communications between the state and its citizens, communication channels had two significant characteristics, viz:

1. they were predominantly one-way;
2. citizens were regarded merely as an object and source of information (subordinate role).

In the past there was no interest among the ruling parties in having well informed citizens. Citizens were not regarded as a partner in the communication process with the government. Hence all governmental information systems built in the past were designed to supply the necessary information for the ministries and their bodies. The consequence of that approach was that governmental agencies have reasonably good access to necessary information about the citizens and organisations, while the other side has been constantly very purely informed about the government and its activities. Although it would be currently technologically feasible for citizens to access much of the public sector information, this is not possible since the contemporary information systems were not designed to function that way. Thus mere technology is not sufficient in order to change this situation. We need to change the general paradigm in designing communications between the government and the citizens. New information systems should be citizen-centred instead of governmental needs oriented. This new paradigm should be based on the following new principles:

1. citizens and organisations should be regarded as subjects of the new information systems, with their own information needs (partnership role),
2. predominantly two-way communication channels are needed in order to improve relationships between the partners,
3. Citizens and organisations should be regarded as customers of governmental services.

The idea of citizens as customers to the government is around for some time, however, very little has been done so far to materialise it. With

development of new e-services for the citizens we have an ideal opportunity to do it.

3. Typology of new government e-services

According to the Green Paper (1) we can distinguish governmental e-services by the three main functions they serve:

1. Information services to retrieve sorted and classified information on demand (e.g. WWW),
2. Communication services to interact with individuals (private or corporate) or groups of people (e.g. via e-mail or discussion fora),
3. Transaction services to acquire products or services on line or to submit data (e.g. government forms, voting).

Table 1 gives an overview of possible services and potential application areas.

Table 1
Typology of new government e-services

	Information services	Communication services	Transaction services
Everyday life	Information on work, Housing, education, health, culture, transport, environment, etc.	Discussion for a dedicated to questions of everyday life; Jobs or housing bulletin boards	e.g. ticket reservation, course registration
Tele-administration	Public service directory Guide to administrative procedures Public registers and databases	e-mail contact with public servants	Electronic submission of forms, applications, tax declarations etc
Political participation	Laws, parliamentary papers, political programmes, consultation documents Background information in decision making processes	Discussion for a dedicated to political issues e-mail contact with politicians	Referenda Elections Opinion polls petitions

Information services

Information services are those that are the most easy to implement. The technology which is needed is generally available on both sides (or will be in the few years), i.e. on government as well as citizens side. According to the newest data, between one third to one half of population in the

developed countries of Western Europe already have personal computers at their home (or in their working place) and roughly half of them have access to Internet. In Eastern Europe number of computers and access to Internet varies much more from a country to the country and on average the number of computers per inhabitant as well as the number of connections to Internet is approximately half of that in Western Europe. Nevertheless these numbers are growing very rapidly in all countries and we can count on the availability of technology.

Information e-services can be seen as an excellent addition and tremendous extension to all sorts of classical communication means between governments and citizens which were in most countries rather pure in the past. Only a few years ago common citizens had great troubles getting access to very basic information about the competencies of different institutions and persons within those institutions, institutional setting, legal acts, administrative procedures and requirements referring to execution of every day administrative acts etc. This situation has been changed indeed. Today, all major governmental authorities are already accessible on the web and customers can get via Internet easily at least the most vital information about their competencies and their work. This service will considerably contribute to the transparency of work of governmental agencies, friendliness of public administration and increase the level of participation of the citizens.

However information e-services alone will not change considerably the internal structures of authorities, speed up their work or make them more efficient. If we may use the metaphor 'The dirty linen will be better seen through the window but washing machine will work with the same speed'.

Transaction services – from 'standing in line' to online

Among the experts the transaction e-services are generally seen as the core of the future 'electronic government'. Millions of administrative cases which represent the bulk of working load of governmental agencies will, according to current estimates, be transferred to Internet and executed via electronic means in the next five to ten years. These are the services, which will in the near future revolutionise the organisation and administrative culture of operational level of all governmental agencies.

Under transaction e-services we understand interactive communication between the agencies and citizens in both directions. It will enable citizens to submit official forms and applications, to make interactive enquiries

about the progress of their applications and administrative cases and to make direct contact with the public servant who is responsible for each individual case. On the other hand authorities will be able to be in interactive contact with the citizens when additional information or documents are needed, which will speed up the administrative processes. Most of the solutions, permits and licences will be delivered electronically to the applicants.

All these develpments will fundamentally change communication between government and its customers and as a consequence the nature of administrative work at the operational level.

As a result of introduction of transactional e-services, we can expect the following changes:

- Transparency of work of government and its agencies will be improved and so will the control of public over performance of public administration.
- Better and faster communication can tremendously speed up the administrative processes and shorten the times needed for solving administrative cases.
- New ways of dealing with government can considerably lower the administrative burden for citizens and businesses.
- The new technologies will enable the provision of information to the citizens in much more integrated form. This become especially desirable where a specific information need necessitates contacts with a number of different administrative bodies and agencies. The concept of so called 'one stop shops' which provides citizens with single access point for information will be widely implemented.
- There are well grounded expectations that efficiency of governmental agencies will increase and costs will be significantly reduced. According to some sources (see: Caldow, 1999) savings up to 70%, depending on the type of service, number of population etc, can be expected from moving services online, compared to the costs of providing the same services over the counter.

We already stated that technology needed to implement new e-services is here. However we are still very far from full implementation of these services. First of all governmental agencies are by and large totally unprepared for technological revolution. Fundamental re-engineering of all administrative processes and procedures is needed in order to start with implementation of e-services. Furthermore in most countries, including the EU Member

States, new legal, institutional and organisational frameworks will have to be set up in order to start with this transition.

4. The basic principles in designing new government/citizens relationships

Communication between government bodies and individual citizens is related to transmission of sensitive information; personal data, tax information, health records etc. In many cases transfer of data or official documents is legally binding, tax declarations for example. It means that security of communication between the two parties will have to be highly secure. Furthermore we are within the process of fundamental reengineering and informatization of the functions and processes in governmental agencies and organisations. This is an ideal opportunity for transformation of public administration according to the principles, which have been for many years on the agenda of public administration reforms. Let us try to identify and analyse some of the principles, which should be followed by the introduction of new e-services.

Openness/transparency

For decades the issue of openness and transparency of governmental work, public policy and decision-making has been at the centre of the debate about the nature of democratic societies. Today, with the introduction of new information services via Internet, we can fundamentally change the situation from the past and make accessible most of the 'secret' public sector information. This will be definitely a big step towards more democratic society in which citizens will be in a much more equal position in terms of access to information pertinent to all public affairs. This is in particular important for citizens in CE European countries which lived for decades under the regimes which were systematically concealing most of the relevant public and political information from the public.

Yet the debate about restricted or unrestricted access to public information is still not exhausted.

Referring to openness of public information there are, according to Seipel (see: Seipel, 1999), four categories of related rules which must be taken into consideration:

- create public information resources and possibilities to make use of them,
- regulate access in particular situations and, thus, further contribute to openness,

- regulate rights to information and the use of information which has been obtained,
- regulate the activities of public and private parties on the information market.

Some examples of regulations in each of the four categories are:

- rules on obligations to register documents, rules on the collection of data from private and public sector firms and rules on deposit in public archives,
- rules on the rights of registered persons to gain access to their own data,
- rules on copyright in government materials,
- rules on information services performed by public authorities and fees and prices for such services.

Introduction of information and transaction e-services can definitely improve openness and transparency of public administration towards consumers of their services, however the unified rules according to which public sector information can be accessed and used are still missing in most countries (see: Green Paper; Appendix 1).

Privacy

The emergence of the Information Society is bringing new risks for the privacy of the individual if public registers become accessible in electronic format. Traditional transactions between the government and citizens based on the exchange of paper documents and using classical communication means were much less vulnerable to the misuse of personal information on a greater scale. But in the future when databases with sensitive information referring to millions of people become accessible on-line, possible security failures may affect thousands of individuals.

A considerable part of the information collected by the public sector is commercially very interesting. This is the information of a personal nature which allows identification of individual persons and their employment, medical or social welfare data. We have to establish a balance between the principle of a free access to public sector information and the protection of personal data.

There exist several arrangements for secure digital communication which were developed for commercial purposes of private enterprises. However there is no proof that these systems are adequate for government-related use. As we already pointed out we have to match two naturally conflicting

requirements. On the one hand we should make public sector information as universally accessible as possible to different groups of users; on the other hand we should minimise the risk of misuse of confidential personal information.

Most countries are already working on preparation of a special law on electronic commerce and electronic signatures which will represent the central pillar of a safe e-services.

Integrity

Integrity of information and e-services should be one of the most important guidelines and aims in the development of new services. The notion of integrity has two meanings. One is that the meaning and form of information shouldn't be changed during the transmission process between the two parties. This is in a domain of technology. But we would like to point out the other meaning of integrity which is dealing with wholeness of information or service delivered and tailored on customers demand.

Everybody knows that form and content of conventional services provided by governmental bodies was not tailored around the real customers needs, in the contrary, they were subordinated to the needs of local authorities and governmental bodies. This has been main cause of great dispersion of information, competencies and thus poor administrative services in many countries. It was typical that citizens needed to stand in many lines and queue in front of many counters in order to solve a simple administrative case, for example get building permit or establish a new business. It is not true that development of e-services will solve these problems per se. We have numerous examples of very partial information systems in public administration which deliver the same type of incomplete information as did their manually maintained predecessors. In order to overcome this partiality, we should follow the route of integration of main information systems in public sector and implement concepts of 'one stop shops' or German ' Burgeramts' at the point of delivery of services to the citizens and organisations. However a fundamental re-engineering of administrative procedures and development of new, integrated information systems is needed in order to provide integral information and e-services to the customers.

Authentication

Citizens and governmental bodies must be sure that they are doing business and communicating with the intended party. Again there exist

several technical solutions to provide reasonably safe communication which provides instruments for verification of identity and authority of communicating parties. Most common solutions for secure communication are based on some form of public key encryption. This arrangement provides the possibility of usage of so called digital signature in all business transactions, which should be legally binding for both parties. In order to make digital signatures legally valid they have to be certified by special public authority. In most countries we are still missing organisational solutions and certification agencies for simple certification of digital signatures in order to make them possible to use in everyday e-transactions between governmental authorities and the citizens.

4. Where to start – Case study of Slovenian Administrative Districts

In table 1 we introduced three types of new e-services. Information and communication services are reasonably easy to implement. All we need is technology and good will. The most promising e-services, i.e. transaction services are also the most demanding for implementation. Development of transaction oriented e-services should be based on profound re-engineering of all administrative processes and procedures. There are several reasons for the necessity of re-engineering of processes and procedures:

- most of the processes and procedures through which services are delivered today were designed during the past decades when paper based document represented the main and only working and communication medium. Processes in the current form don't provide a platform for efficient use of modern technologies and new communication ways between the governmental bodies and the citizens,
- most of the procedural knowledge about the administrative processes is not in the structured form needed for formalisation and informatization of administrative services,
- processes in the present form don't provide the possibility to integrate services in order to reduce administrative burden.

Re-engineering of public services will require substantial investments at all levels of public administration. The Slovenian government decided in 1997 to start with re-engineering of most demanding and frequent processes, which are carried out at the local level administration, i.e. Administrative Districts. After a first survey it turned out that there are several hundreds of services, which are performed by the Administrative Districts. Fifty administrative procedures were selected and re-engineered during 1998 and the basis for further informatization and introduction of e-services was created.

We applied the following chain of steps in redesigning the processes:

- screening of the existing processes,
- critical analysis and redesign,
- optimisation,
- standardisation.

The redesign phase was focused on elimination of unnecessary activities, tasks, documents and transport delays while optimisation was dealing with the rational use of resources. During the standardisation step we were trying to develop recommendations for unification of working procedures and processes among all local authorities in the country and their informatization on the common platform (for detailed description of the whole project see: Vintar, 1999).

On the basis of the work completed so far the following information e-services will be provided to the citizens via Internet.

- public service directory,
- citizens guide to administrative procedures,
- civil servants guide to administrative procedures,
- standardised forms for administrative procedures.

During the next step transaction services will be developed gradually starting with the simple and most common procedures, for instance, extension of driving licence.

5. Conclusions

In all countries a great wave of new developments has begun. It is mostly driven by the commercial interests of private companies, and technology providers (hardware & software & solutions). In the present circumstances of absence of the legal, organisational and institutional framework for development of unified, standardised and commonly agreed, user friendly solutions, each individual institution is trying to find its own ways to implementation of e-services. If we take a closer look at the home pages of governmental bodies in different countries we will see a patchwork of approaches and solutions. Apart from very rich visual satisfaction, an ordinary citizen can easily get lost in the labyrinths of virtual government. I don't think that this is the final aim of what we would like to achieve with introduction of Internet as a main communication infrastructure between the governments and their citizens.

It is obvious that introduction of modern technologies presents tremendous opportunities and, at the same time, challenges to redefine

relationships between the governments and the citizens. Even more, it is probably a high time to start with redefinition of some fundamental aims and principles of public administration. For many years new technologies were regarded merely as a 'vehicle' for delivering services from service providers (government) to the customers. We will need to redefine not only services but also the roles of customers and service providers.

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OPENNESS AND TRANSPARENCY IN DESIGNING THE PUBLIC ADMINISTRATION REFORM IN THE CZECH REPUBLIC

*Jiří Marek**

There is no need to explain the reasons why the implementation of the reform in the post-communist countries has been of an extreme importance. Public administration ceased to be the tool of enforcing interests of one political party, therefore the mechanism including its personnel management has had to be revised and altered.

The former system of the so-called national committees, state power and administration bodies, had to be changed. The regional level of national committees was abolished since the regional tier could have represented an important powerful obstacle hindering the smooth transition of the society towards pluralistic democracy. District offices were established instead at the district level which have acted as state administration authorities.

The practical experience has, however, shown that, compared to the European Union member states, public administration in the Czech Republic has failed to reach the required parameters in many aspects. For example, we have to face the absence of a regional tier of public administration and, in particular, of self-government, which leads to an excessive centralisation and concentration of public administration at the central level; there have been insufficient opportunities for citizens to participate in public matters; the lack of trust between the central and local government on one side and non-governmental non-profit organisations on the other can also be seen; and, moreover, there has been insufficient public and civil control over the performance of public administration. In more abstract terms, the main insufficiency of public administration in the Czech Republic may be expressed as insufficient openness and transparency in the whole process.

Since 1989 there has been a fourth attempt to reform public administration in the Czech Republic. Considering the fact that the legislative arrangements with respect to the reform are reaching their peak in these days and weeks, my presentation should be understood as intentions and objectives from the point of view of the submitted public administration reform draft, and

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not as a real and existing situation and status of public administration in the Czech Republic.

The essential elements of the reform of public administration in the Czech Republic aimed at its *democratisation* are as follows:

Deconcentration – i.e. the delegation of the execution of state administration from the centre to vertically lower tiers of state administration;

Decentralisation – i.e. the delegation of the execution of public administration from state administration bodies to local government; and also

Professionalization – since the implementation of democratic mechanisms and the rule of law requires a professional performance of public administration.

The concept of democratisation of public administration is closely linked with the transformation of the understanding of public administration as such – the shift from public administration as a tool of coercion to public administration as a public service to citizens.

Let me try to specify more in detail some elements leading to an increased openness and transparency as they were included in the draft reform of public administration in the Czech Republic.

1. Bringing the decision-making processes closer to citizens

The delegation of decision making powers from ministries to regions or communities should have a double effect:

- citizens should be able to participate more intensively and directly in the administration of public matters;
- the centre, i.e. ministries, should get rid of the burden of making detailed decisions, thus being able to perform its principal role more effectively – to serve as the conceptual, coordinating, legislative, methodological and control centre.

2. Increasing the transparency of financial flows

The existing budgetary determination of tax revenues more or less corresponds to the existing system of taxation in the Czech Republic. The system has been considered unfair (with the exception of those who have gained most of it).

Example 1

Communities obtain yields from taxes levied from employees (taxed wages/salaries) within the district to which the communities belong. However,

the district yields are assessed according to the seat of the registered office of a company that pays wages/salaries to their employees and not according to the actual territory where the work, leading to a taxable income, is performed.

Consequences:

- Naturally, such a system has been appreciated by large cities, such as Prague in particular, where most larger firms tend to register their offices.
- A formal alteration of the registered office of a firm has led to substantial changes of tax revenues of a respective community.

Example 2

Taxes levied from business activities of natural persons still remain the revenue of the community where the respective person has his/her business registered. Newspapers have recently published a concrete example of a "tax paradise" in the Czech Republic: a town authority, in order to gain new revenues, declared that business persons registered with this town authority would be returned a half of their levies in a form of grants. The town authority has acted lawfully unless the Protection of Competition Agency declares such activities to be "unfair competition".

New rules of budgetary determination of taxes should solve the apparent unfairness of the existing system since each tier of public administration will have its exclusive income, the state revenues being divided according to the number of population living within each territorial level. For example, newly established regions will get their exclusive income from excise duties on beer, wine and spirits. Since these duties are paid by producers of these articles it would be unfair to keep them only within the territory where the duties are collected. The national yield of these duties will be redistributed among regions according to the number of population living in each of them regardless of whether or not there are breweries or distilleries physically present.

3. The building of an efficient system of the civil and institutional public control

The civil control is understood as a "lay" control implemented by the public over the performance of public administration. The control carried out by citizens should be substantially supported by the Free Access to Information Act. This Act requires public administration officers to provide non-secret information to citizens in a prescribed manner. Due to the fact

that the Act has been passed quite recently we cannot provide any practical experience of its operation. However, it has brought the first practical effect: as a consequence of lengthy criticism, the Prague Metropolitan Council has adopted a rule that all contracts entered into by the Council will be published. Therefore, contracts may be made only with such persons/entities who would agree with their contract being publicised.

There is another tool supporting the feasibility of civil control, namely the legislative provision for public access to meetings of local councils including a duty of the councils to adequately publicize their agenda beforehand. This would provide a framework and mechanisms enabling a citizen to participate in the meeting and/or directly take the floor in some limited cases. There have been some ideas of this kind included in relevant bills submitted to the Parliament. As soon as the bills are passed we will have an opportunity to see the respective provisions in detail.

The issue of an institutional public control, i.e. the control for the benefit of the public as the public funds would be spent for this purpose, seems to be more complex. At present, the control could and should be executed by respective ministries although some of them do not have a control department. In the case of local government and according to its option, an audit of financial management can be executed either by a respective District Office (as a state administration authority) or by a licensed auditor performing his duties on a commercial basis. The Supreme Audit Office can also be engaged with respect to the control of state administration institutions.

The recent experiences show that the performance of licensed auditors has failed to bring expected effects: they appear not to have been independent, in many cases just to the contrary, they were highly dependent on their effort to get their fees.

District Offices are able to review the financial management of smaller communities, however, the control over larger towns and cities goes beyond their potential since the District Offices do not have sufficient numbers of competent professionals.

The middle-term prospect of the reform suggests that the focus of the review of financial management should be extended from “pure” accounting to the assessment of efficiency and economy of spending including the property management within a respective level of public administration. A citizen should have sufficient information enabling him/her to evaluate activities of his/her representatives.

From the institutional point of view, the passage of the Control in Public Administration Act is related to compliance with the requirements of the European Union. Such an Act should provide for the review of financial management to be performed by a special independent institution, or by the Supreme Audit Office with changed responsibilities.

4. A joint model of public administration in the Czech Republic

The Chamber of Deputies of the Parliament of the Czech Republic practically overrode the intention of the Government to establish special institutions executing state administration and special institutions for local government at individual levels of public administration. The Chamber has resolved that each level will be supplied with one body – a local government authority that will be vested with the execution of state administration within the scope provided for by legislation. One body performing duties of both local government and state administration may, to a certain extent, contribute to a higher transparency of state administration in the region in question, since the state administration can be supervised by local government. On the other hand, however, it is necessary to balance the whole model rather precisely and accurately: it is not permissible that any local council may influence the performance of state administration within the respective territory since the state administration should be uniform within the whole country. The presented model may maintain a feeling of co-existence and partnership between local government and state administration, may lead to better collaboration but also to more substantial problems. The extending decentralisation should be balanced in order to ensure the enforcement of rights of citizens. Paradoxically, the correct balance represents a higher risk for openness and transparency from the point of view of the draft reform of public administration in the Czech Republic.

RELATIONSHIP BETWEEN THE ADMINISTRATION AND THE PUBLIC IN LATVIA

Armands Kalnins *

1. Public Administration Reform (1993-1998)

After the elections of the Parliament in 1993 the new Latvian Government pointed out three main directions in state reform – **economic reform**, **reform of the legal system** and **Public Administration Reform**. Posts of Deputy Prime Minister were established in the government. For the co-ordination of public administration reform a Ministry of State Reform, Civil Service Administration and Latvian School of Public Administration were established.

Several regulations and laws were accepted: the Law on Structure of Ministries, Law on State Civil Service, etc. The most important should be considered the Concept on Latvian Public Administration Reform accepted in March 1995. The document envisaged reforming the public administration system. The aim of the Concept of Public Administration Reform is to develop the state administration that is effective and able to undertake changes.

The Concept envisages the **reform**:

- Relationship between the administration and the public;
- Functions of public administration;
- Structure of the public administration;
- Underlying principles of public administration;
- Main instruments in public administration: use of financial and personnel resources, development of normative documents and their adaptation in public administration.

I will describe particularly the development of relationships between the administration and the public.

It was foreseen to use following **means** in order to reach the objectives of reform:

- **To involve of the society into the administration of the state**, for example, Non-governmental Organisations' (NGOs) point of view should

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be consulted before the decision making, there is a necessity to form Consultative Boards with the presence of representatives from the professional organisations, to promote development of NGOs. The Concept foresaw that the role of public in administration of state is going to expand, encouraging people to take part in the development of the state more actively. It is important to have an understanding that everybody has not only the right but also the duty to participate in the development of state.

- **To explain the decisions made**, developing a programme "The Link with a Citizen". The programme involved brochures that explained the rights and duties of people, information days in The Cabinet of Ministers, and other measures. One of the most important precondition in order to involve public into administration of state is to inform people and information should be precise and available.
- **To delegate some state functions to non-governmental organisations**

  From 1993 to 1995 was a phase of consequent reforms. The main objectives of the public administration reforms were achieved. In the middle of 1995 the Ministry of State Reform was abolished and after that the reform process was not co-ordinated well enough. That is why the period of time till 1997 can be called the period of partial success. As a result the Latvian government established the Bureau of Public Administration Reform in the middle of 1997. The main task of the Bureau was to co-ordinate the Public Administration Reform in Latvia and to continue the fulfilment of the tasks set in the Concept.

As one of the main tasks we may consider is delegation of some state functions to the non-governmental sector. In order to carry out the delegation process successfully it was very important to establish a proper legislation.

From the beginning of the 90s there was a rapid development of NGOs in Latvia. Some of them were established already before the World War II and now they were re-established. Some of organisations, established in the soviet period, changed the content of the activities. There also were new types of organisations to satisfy people's social, professional and leisure time interests. The crucial turn was the establishment of the NGO centres. At present there are 13 NGO centres in Latvia.

The first national NGO forum was held in 1997. The main issue was the relationship between the public administration and non-governmental sector. In 1998 and 1999 there were 5 regional forums held in Latvia. The panel

discussions were organised to discuss the possibilities for the NGO to fulfil some functions of the state institutions. Encouraging and preventing factors and the most successful examples how to delegate state functions to NGO in social work, education and environment protection were discussed.

The discussion with the public detected the deficiency of information about the activities, objectives and tasks of public administration institutions. This does not allow people to use the rights given by the legislation.

All these matters let us propose necessary reforms for the future. At present several **models of relationships between the administration and the public** have been developed:

- The delegation of public administration competencies to the entitled institutions;
- The introduction of annual reports in the public institutions;
- The improvement of the public service (the implementation of One Stop Shop principle);
- The introduction of the quality management systems in the state institutions.

2. Delegation of the public administration competencies to the entitled institutions.

One of the most effective means to involve the public in administration of the state is to delegate the public administration competence (rights, obligations and tasks) to the entitled institutions. It is possible that some years ago the Latvian institutions were too cautious to delegate state functions. At the very beginning of formation of non-governmental organisations they were inexperienced and earned criticism from state institutions.

Delegation of competence should proceed taking into account qualification, experience, reputation, financial means and resources of the institution, possible social and economic consequences, and desirable result.

In September 1998 the Cabinet of Ministers accepted regulations on the procedure of delegation of competencies. The regulations will allow the entitled institutions to facilitate the procedure. The rules foresee that the delegation of competencies can happen at the initiative of either a public or a private institution. It means that a non-governmental organisation after evaluation of its possibilities can prepare a proposal about delegation of particular competence and submit it to the governmental institution. The solution can be found in the way of dialogue. In the Regulations there are

only some restrictions. It is said that approval of branch policy, approval of regulations, co-ordination and supervision of the branch work, development of State budget, distribution of resources and control over it cannot be delegated.

One of the most important tasks is **to inform** NGOs about the possibilities of delegation, popularisation of good examples of delegation the competence. We should use the existing means of delegation and introduce new ones. The delegation of competence will allow for improving of public involvement into governance and therefore improving the work of the government as a whole.

One of the activities mentioned in the conception of the Public Administration Reform is **monitoring** of the public administration decisions. It would be highly beneficial to introduce the monitoring into the process of delegation of public administration competencies. We have plans to analyse the changes facilitated by the adoption of regulations on delegation of the competencies: whether the legislation facilitates the delegation of functions, what are the difficulties etc.

At present we have not made much progress in strengthening the co-operation among the public administration, private sector and NGOs in the competencies delegation field. Still we have some good examples: the Ministry of Education and Science has partly delegated its competence in the adult education area to the Latvian Union of Adult Education, the Ministry of Welfare has delegated its competence to the Latvian Association of Doctors etc.

3. Introduction of public annual reports in Public Administration.

The Cabinet of Ministers accepted the implementation plan of the Concept "Public Administration Development Strategy till Year 2000". The Plan foresees that line Ministries together with the Ministry of Finance should develop and introduce a new annual report on performance and expenditure. This task is related with the improvement of the quality of public service.

The main task of the annual reports is to make available the information on the work done by the state institutions to the public. Hopefully, the introduction of the annual reports will evoke feedback from the community. It could allow for improvement in setting of objectives, to identify the public interests more precisely, to improve the process of budget development, to rationalise the expenditure.

In December 1998 the Cabinet of Ministers accepted the Instruction "On Public Annual Reports". It provides a possibility for the Ministries to prepare their annual reports according to the unified principles. The advantage is that the same standards will be observed (reports will be the elements of the same system), public interests will be observed on the larger scale and an overview on expenditure of budget resources will be made public.

The Ministries in Latvia have prepared and published the annual reports by July 1, 1999. A public information campaign is being planned drawing attention to the published annual reports. Monitoring for the preparation phase is being implemented: methodological guidelines are developed. At the end of the year it is planned to evaluate the necessity for Regulations of the Cabinet of Ministers to facilitate the development of the annual reports. One of the development directions could be to stress the public service quality activities. It would allow focusing Ministries on inclusion of these activities into their work.

4. Improvement of the Public Service in Public Administration (the introduction of the principle of One Stop Shops).

One of the tasks of the public administration reform is to improve the public service or to introduce the principles of One Stop Shops (OSS) (as they are called in Latvia, Centres of Information and Service) into the public administration. The objective of the activity is to change the priorities of the public administration so that the priority would be the intention to serve the people and anyone could receive the necessary service attending the competent institution only once.

There are different opinions on the content of OSS. Only the understanding about the objective of the OSS is the same: to improve the service of public institutions. The quality of service depends on information technologies and qualification of the staff. The co-ordination of activities among public institutions is also very important. We have now prepared the conception on OSS, stating the content and the implementation program. An important keynote of the programme is development of information technology systems, for example, open Internet access points, publishing of the government information etc.

It is planned to design the programme on OSS by the end of 2000. OSS program envisages the simplification of public procedures in state and self-governmental institutions. The realisation of the OSS program has already

been started in several local governments of Latvia – Liepaja, Jelgava etc., as well as in the Social Insurance Agency, Road Safety Directorate etc.

5. Introduction of quality management systems in public administration and other activities in order to facilitate the public service.

We can forecast that one of the most important issues of the relationships between the administration and the public is going to be the quality and availability of public service. Our further activities will be focused upon the improvement of the public service quality. The most important activities should be the introduction of the quality management models for the state institutions, the implementation of the personnel management development strategy in order to improve the capacity of personnel to achieve objectives of the institution.

Using the experience from other countries we have offered several conceptual ways how to solve the problem:

- introduction of ISO 9001 standards;
- introduction of Business Excellence Model in the public administration institutions;
- foundation of Charter Mark in public administration, etc.

GOVERNMENT/CITIZEN RELATIONSHIP IN UKRAINE

*Juri Polianski**

Ukrainian context

Ukraine gained its independence in 1991 and has been establishing new governmental structures and mechanisms since then. The state/citizen relations today are governed by the Constitution of Ukraine that was adopted by the Verkhovna Rada (The Supreme Council – Parliament) on June 28, 1996. The Constitution provides that human rights and freedoms, as well as their guarantees, dictate content and direction of state functions. The state is responsible for its functions before citizens. Human rights assurance is the basic task of the state.

Since 1991 the government has been struggling to create an improved civil service that would be responsible to the needs of the public to which it should serve. The Law of Ukraine on the Civil Service was enacted with changes introduced in 1995 and 1996.

Public opinion

Most of government/citizen relationship can be studied in the light of public opinion and state power.

Public opinion and state power are the most important social institutions. They are interconnected and include the following components:

- attitude of the public to the state power, and
- attitude of the state power to public opinion.

In Ukraine (as elsewhere) there are peculiarities in this relationship.

Three factors

The "public" opinion in the former soviet totalitarian society used to be formulated at the upper echelons of power and imposed downwards on the population. This opinion was used as an instrument in struggle against the so-called "enemies of the country".

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Today three factors influence government/citizens relations. The most important factor for Ukraine now is the transformation from totalitarian state to a democratic one. This attempt gives rise to a contradictory combination of an authoritarian past with democratic future. New elements are imposed onto old systems. Strange as it may seem, they co-exist together though do not allow each other to fully develop their possibilities. As Surmin noted this creates "a feeling of time that stopped and system that is stagnating" (Yuriy Surmin. Public Opinion and Power (Features of Relationship). Collection of Research Papers. Issue #1. Kyiv, 1998).

The past and the present are tied together and can drag society to degradation. This leads to social crisis that manifests itself both in state power and public opinion. This is the second factor.

The third factor – mutation of social system. That is, we do not expect rapid transformation from old system to a new one, but there is a probability of emerging of a society in which both characteristics are combined.

History

In terms of governing the state, a so-called "manufacture theory" was created in the former Soviet Union. This theory did not prove itself, although is still alive. According to this theory the whole state was a big enterprise and the government was its manager. Thus work in state administration was seen as a certain technical process that was built up of routine procedures. Each servant of the state had to function as a small transmission wheel. Those who applied for public service positions in the government had to have only a certain amount of technical skills and technological knowledge.

Under the former political system the government performed its public character through total control not only over traditional instruments of state power like army and police force, but all social spheres. It exercised control over all forms of education, mass media and administered centrally planned economy. The public character of power was put into life in line with the so called "democratic centralism" principle. Each level of government hierarchy was heavily controlled by the higher level. The representatives of higher level administration controlled each detail of work and instructed with concrete tasks every governmental organization directly, in authoritarian and administrative manner. Very often those tasks were unreal. In order to protect themselves and to achieve success in career, as well as to please higher authorities, the bureaucrats of lower levels used to falsify the data

of their performance. As a result, a very powerful bureaucratic corps (called "aparat" in the CIS countries) was formed. Though the general powers of "aparat" were rather restricted, it gave birth to overwhelming clans and became alienated from the public. It is no surprise that the public in its turn treated the aparat with disbelief, apathy and alienation.

Having roots in this past, the present day attitude of the public to the government is still unenthusiastic, and in no way facilitates reforms. Given that there is no mechanism to defend the individual rights of a person in the transition period, the citizens think that the government "aparat" pursues its own interests exclusively.

Place and role of civil service. Status of civil servants

Harmony in the relationship between government and citizens to a large extent depends upon staff performance. The citizens make their judgements on the basis of their opinion about each individual civil servant.

The government in its relations with the public is represented not by anonymous legal entities but by human beings that are charged with public and moral responsibilities. The big task is to raise the awareness of civil servants about their role and mission to serve the public.

This change is an even more challenging task for civil servants who work for central government. They never or quite seldom encounter citizens and work mostly with papers, not people. As Bezsmertnyi claims, "a civil servant who works with papers is different from a civil servant who works with people" (Bezsmertnyi R. Way of Finding Compromises. Visnyk of the Program for Support of Parliament of Ukraine, #4(35) 17.12.98. p10)

In Ukraine, servants who work for central government and those servants who work for local government both have status of civil servants, or more precisely – state servants.

The Parliament of Ukraine "Verkhovna Rada" expanded the law "On the Civil Service of Ukraine" on the staff of local and regional government. Positions in those organizations were equated with the respective categories of positions in central government organizations.

But the Constitution of Ukraine differentiates between state power organizations and local government organizations. So service in local government organizations is different from the public service and should have its own legal foundations.

Culture

Ukrainian civil service continues to be handicapped by a culture, which emphasized loyalty to one's boss as opposed to a professional ethic of service to citizens.

Civil servants in Ukraine, unlike their counterparts in the West, do not advise the political administrator. Instead their role is to serve the head of organization. The notion of serving the public with the competent delivery of services has yet to penetrate very deeply into the culture of civil service in Ukraine. Moreover, the perception of the role of civil servants is widely shared by Ukrainian citizens, who not surprisingly find it difficult to conceive of government officials as acting in their benefit.

In the former Soviet Union, civil servants that occupied senior positions had a number of privileges. Those servants were not named civil servants but were regarded as soviet "aparat" employees. This status was a watershed from the people. Decisions were made in secret. The activities of soviet personnel were aimed more at the state than the public. Such staff was an integral part of totalitarian "aparat" of the state. Public opinion was rather hostile than friendly.

Administrative reform demands reorganization of the present day structures of "aparat" that got used to central planning and guidance.

While doing this it should be taken into account that almost two thirds of civil service personnel has been inherited by the government from the old totalitarian system. Transformation of civil service personnel is the most challenging task for Ukraine.

Public opinion about the government

Many surveys conducted across the country provide evidence that there is a low degree of trust in relation to different branches and governmental organizations. When asked to choose between "support"- "hard to say" – "no difference" - and "do not support", people in each region express negative attitude, indifference and difficulties in evaluation of state power institutions.

The UAPA researchers have conducted a survey of public opinion of civil servants activities in the capital of Ukraine – city of Kyiv. The findings prove that there is still serious "perversions" in civil servants' values. As the Kievites see it, the most numerous is civil servants' orientation towards satisfaction of their personal needs, interests and remote from public

interests –57%, professional incompetence –32,9%; inefficient performance-39,5%; elements of bureaucracy – 32,3%. Typically civil servants lack: tact 68%; responsibility 63%, decisiveness and brevity 61%. professionalism and business-like approach – 61.2%.

As Surmin claims there are myths which affect the citizen/state relationship (Surmin Y. Public Opinion and Power (Features of Relationship). Collection of Research Papers. Issue #1. Kyiv. 1998). Today communist myths co-exist with capitalist myths. Positive affirmative myths co-exist with negative destructive myths. This gives origin to such features of public opinion as non-stability and non-predictability. Very often mutual penetration of myths happens: market myths look like socialist myths; a myth about private property inherent to an individual looks like a myth about common property.

Peculiar contradictions of public opinion in Ukraine are: confrontation that reflects different ideas about ways of future development of the state and society, weight of different languages and cultures. Government's neglect of these contradictions in decision making might obstruct or slow down the pace of reforms.

Regional specifics in public opinion are essential. Major parts of Ukrainian space differ from each other. Public opinion in Ukraine originates first in regions and only afterwards transforms into a pan – Ukrainian opinion.

Some citizens' stereotypes should be destroyed. Most people still believe in the paternalistic type of the state. Thus many citizens failed to learn how to become responsible for their individual decisions, activities and their implications, how to defend their interests even in the face of hostile attitudes and resistance on the part of the government.

Government according to public opinion

An important proportion of government officials can hardly understand what public opinion is, what its role is, how it should be taken into consideration in decision making and what possible implications might be.

It is very important that subjective, utilitarian approach should be changed for partnership and cooperation between power and public.

Today almost all civil servants activities are directed at preparation of administrative decisions. At the same time, control of implementation of those decisions is rather weak. Thus the ratio between civil servants that serve political leaders and civil servants that serve the public should be

changed. The overwhelming majority of civil servants should be engaged in service delivery to the public.

The training and re-training of public servants should be significantly improved. The senior management of state organizations should be trained in the area of relationship with the public. They should know how to utilize findings of social research, use public relations technologies, and contact leaders of interest groups. The training programs should include Theory of Public Opinion, Methods and Techniques of Public Opinion Study, Public Relations and Theory of Communication. Civil servants should have skills in conflict solving, and know the basics of social psychology and law.

Legal foundations of government/citizen relations

There is still little legal space for public opinion. There is no responsibility for deceiving or ignoring public opinion. So far the concept of administrative justice has not been introduced into practice. The whole area of government/citizen relationship is not legally regulated. To solve this the government should understand that the executive power should ensure the following state functions:

- creation of conditions for realization of citizens' rights and freedoms
- provision of a wide range of services to the public
- conduct a specific "internal" control over officials concerning assurance of citizens rights and freedoms
- introduction of administrative procedures to tackle citizens' complaints on violation of their rights.

The most fundamental legal principles for this are provided by the Constitution. On this basis the new quality of legal regulations should be achieved with the purpose to fix precise and clear functions of governmental organizations, as well as to elaborate their relation with citizens. This is a very complicated task since the so-called "democratic principle" in governance is still alive. Actually, it proved to be not democratic, but bureaucratic. Under extremely centralized system of governance the main indicator of success is replication of command, but not effective performance of functions and competencies. This is the reason why the very concept of "competency" lost its weight. Thus officials' responsibilities are very often described in rather vague and unclear way.

In terms of legal regulation of government/citizens' relations, one should not underestimate the weight of laws. It happened so that any official act

of any governmental organization is accepted as a legal act. This means that any governmental organization is "above" law in its relations with citizens. The way to put it right is to deprive most of governmental organizations of the power of issuing regulations governing government/ citizens relations and concerning citizens rights and freedoms. The draft law On Ministry and Other Central Agency should reflect this approach.

Interests and corruption

The Ukrainian social organism is built of a wide variety of social groups – associations and groupings set up on ethnic, religious, business, civic principles etc. Their interests are represented by political parties or specially created interest groups. The experience of western democracies proves that there should be lobbyists to represent interests of such groups and work for the goals of those groups. In Ukraine the general public takes the notion "lobbyist" as similar to "corruption" and regards these activities with suspicion.

In Ukraine the interests of social groups are also represented, but - as against the democracies - by civil servants. That is, civil servants are those actors who exercise lobbyists' functions. This approach fertilizes the soil for flourishing territorial and sector clans and corruption.

It is officially recognized that, in spite of anti-corruption measures, the cases of corruption are not reducing in numbers. The slow pace of democratic and economic reform favours corruption. The anti-corruption efforts are uncoordinated and ineffective.

The bureaucracy is subject to corruption everywhere. No social and political system is immune to corruption, though there are peculiarities in Ukraine. Most reform measures are announced but not implemented. Imperfect fiscal and taxation policy leads to a shadow economy. The approach of legal institutions and the police force is sometimes indifferent. Public opinion sees corruption in government as a common case. Progress in the implementation of democratic measures aimed at transparency and openness of government is slow. The lack of transparency in privatization, income assessment, taxation and assessment of all sorts of privileges create an environment in which the natural recourse for solving these problems is through offering bribes.

To tie together all anti-corruption measures the President of Ukraine issued a Decree with which he launched the Anti-corruption Program,

called “Clean Hands Program”. The program incorporates political, economic, legal, organizational, and social initiatives in order to prevent corruption.

Civil service image needs support

Under the current transitions, civil servants find themselves in the situation when, on one hand, the government, and on the other hand the public, have a poor opinion of their performance. Definitely the performance of civil service needs drastic improvement, but there are reasons why civil service needs support, not only criticism.

The Ukrainian civil service is poorly paid and grossly understaffed in comparison with other countries of the region. Ukrainian civil servants constitute 1.1 per cent of the population compared an average of 1.9 per cent for all other Central and East European countries. The civil service in the OECD countries employs at average of 4.3 per cent of their population. Thus despite a public image which sees it as a bloated bureaucracy, the Ukrainian civil service is actually smaller than comparative services in neighboring and developed countries.

It is very important that public servants have political support under circumstances of low level of employment, delay in paying salaries and pensions etc. Not all civil servants are aware of functions of a political figure – to inform the public and form public opinion.

The surveys provide evidence of low public esteem of public service. Citizens believe in public servants’ incompetence and low effectiveness. This can not be totally true because civil servants still do not develop policies and do not advise politicians. From its side the government accompanies many of its programs with requirements for staff reduction, through fixed percentage across Ukraine.

What to do to lessen skepticism and disbelief

In the realm of government/citizen relationship the following group of issues must be tackled:

- to remove step-by-step public disbelief in the government
- gradually move to the establishment of a transparent system in which government personnel would be responsible for the final results of its team and individual work under control of the public
- to strengthen public control over government personnel and to increase influence of the public on its performance.

In order to tackle these problems we need to find a mechanism which leads to solving all above mentioned problems together – with a single goal to turn the face of government staff to the needs of people in line with democratic principles of public administration all over the country.

With some degree of optimism we can say that the experiments are going on and elements of such mechanism has been found already. A survey was conducted on how people evaluate the outcome of local government activities and how satisfied the people are with the services. The findings made in town of Vyshneve in Kyiv region proved that there are possibilities to start solving problem of democratization of local government.

The people were asked to express their opinion in 9 areas:

- public utilities
- health care
- public transportation
- safety of life
- trade
- environment
- support of the poor
- quality of education
- material resources for education

The hostile attitude of people lessened when they commented the questionnaire. "Thank you for asking about our life"; "we are grateful that at last you ask for our advice"; "thank you for the chance to articulate our opinion" – those were the most typical citizens' comments.

One more very important outcome of this dialogue: the city council personnel pay more attention to public opinion now - "what people think and how the decision made will improve conditions of life".

Though public opinion started to penetrate into the consciousness of leaders of governmental organizations, new institutional democratic attitude to public opinion has not shaped yet.

A significant time is necessary for this. Mutual penetration of social freedom and moral responsibility to people needs time.

Future reform

One of the current administrative reform priorities is achieving new government/citizen relationship. The concept paper of administrative reform

in Ukraine states that relevant improvement and development of civil service should accompany the building of Ukrainian state. Development of a truly professional, efficient, stable and reliable civil service should be the core objective.

Administrative reform aims at the development of a civil service that will be based at the following fundamental principles:

- supremacy of the Constitution and law
- priority of human and citizens 'rights and freedoms
- professionalism and competence
- optimal combination of authority and responsibility
- political neutrality
- openness and transparency

To achieve that, it is crucial that recruitment of civil servants be based on competition, fairness, transparency and openness. It is vital that citizens and citizens' associations should obtain access to all general regulations and normative documents governing the activities of the governmental organizations.

It is necessary to set qualitative standards to assess the performance of civil servants and their behavior towards citizens. The priority of individual rights and freedoms shall become a key determinant of civil servants activities.

The civil service reform agenda includes the issue of creating a different administration philosophy and re-modeling the administrative culture so that civil servants could act under conditions of wider freedom and stricter individual responsibility for addressing citizens' needs.

It is critical to reform the compensation system in the civil service to ensure competitiveness of civil service in the labor market, prevent corruption, increase commitment of civil service to effective and responsible work, and strengthen prestige of civil service.

It is necessary to put in place a fair, transparent and unbiased service career mechanisms, develop ethic requirements to be met by civil servants in their activities and to put together those requirements on the Civil Service Code.

In summary, the outcome of administrative reform measures should include various mechanisms for control over "aparat" and for development of relations with citizens, citizens' associations, political parties and civil society at large.

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FREEDOM OF INFORMATION IN HUNGARY

László Majtényi *

1. The notion of freedom of information means that we have the right to get to know information of public interest, that we have the right to inspect official documents. The State, sustained on our own taxes, cannot hide its operations from society. *The shared purpose of data protection and freedom of information is to continue maintaining the non-transparency of citizens in a world that has undergone the information revolution while rendering transparent of the state.*

The principles of freedom of information habitually have their origins ascribed to the ideas of the Enlightenment. However, its first legal source can be found not in the French or American Enlightenment but in Sweden, which was the first country in the world to recognize, in the *Act of Freedom of the Press of 1766*, that every citizen has the right to inform himself on official documents (undoubtedly, this became possible for the sole reason that between 1718 and 1772 Sweden was under parliamentary rule with rival parties).

The 14th point of the human rights declaration of the French Revolution announced the transparency of the state's economic management: *"citizens have the right, exercised in person or through representation, to inspect and consent to the necessity of spending public funds and to control the ways in which those funds are put to use..."* It is not difficult to hear the same maxim behind the famous demand of the citizens of the British colonies in North America: *"No taxation without representation."One may perhaps reasonably paraphrase this as "No taxation without information on how those taxes are used."*

2. One of the most important purpose of the rule of law revolution is to guarantee the right of everyone to exercise control over his personal data and to have access to data of public interest in Hungary.

I believe that either and each of these two rights in itself may easily lead to a curtailment of freedom and that it is not only preferable to combine them as such in one Act but even that we place ourselves in the care of a joint protector. Besides general considerations, as we make the transition

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* Parliamentary Commissioner for Data Protection and Freedom of Information, Hungary

from a totalitarianism to a constitutional state founded on the principles of liberty, we have an especially good reason to grant equal and concurrent representation to freedom of information and informational self-determination founded on the notion of inviolability of privacy – if we do not, we will make it all the more difficult to face the past. But if we do, society will have a chance not only to get the informational redress that it rightfully demands but also to avoid a tyranny of freedom.

The model of informational rights in Hungary can be best appreciated as a follower of the Canadian model. Beside Canada, Hungary is unique in the degree to which the protection of personal data within its borders is linked with the constitutional values of freedom of information (see DP&FOI Act No. LXIII of 1992). In Europe, Hungarian legislation stands alone in having opted for the rather common-sense solution to enact a single law to regulate freedom of information in conjunction with the protection of personal data. Here it must be pointed out that exemplary European democracies, such as Great Britain and Germany, are still merely planning to pass their own comprehensive freedom of information laws. Again pioneering in Europe, the Hungarian Act has assigned the protection of freedom of information and of personal data to the very same specialized ombudsman. This apparently sensible solution has been featured in a number of countries' legislation in the draft form, but it has not, to the best of my knowledge, been put into practice anywhere except in Hungary and Canada, where it is employed on both the provincial and federal levels– despite the fact that demarcating the narrow path between mutually restrictive constitutional values that often seem to be in conflict is one of the most exciting tasks for those entrusted with the practical work of upholding the constitution. While privacy and freedom of information are complementary imperatives, they also impose limits upon each other. Suffice it to mention the limited privacy protection enjoyed by those who hold public office or assume a public role.

The Hungarian freedom of information law can be described as radically liberal legislation, a fruit ripened by the 1989 revolution in rule of law which created the constitutional state. As such, the Act is a firm refutation of the single-party power structure which for decades used secrecy as the very foundation it was erected upon. Since the adoption of the law in 1992, a long enough period has passed for us to discern the social limits of its enforcement and application. We must therefore exercise self-criticism and hasten to add that the Act promises more freedom than it has in fact enabled us to achieve.

The obligation to safeguard freedom of information extends to cover the entire Hungarian state administration from the lowest ranks to the highest levels of state power – both horizontally and vertically. Each state-wide or local governmental body, public organization or person is under legal obligation to provide appropriate access to data of public interest in its possession. Freedom of information is a human rather than a civil right, and therefore it also accrues to other than Hungarian citizens. (It is an interesting but not widely known fact that the law of the United States – a nation justly regarded as the yardstick of freedom of information – makes only *government agencies* liable to supply information, which means that the freedom of information principle does not apply to documents controlled, say, by the President.)

Under Hungarian law, any information that is not personal in nature and is controlled by a state or local government authority must be considered data of public interest. Access to data of public interest is not subject to any restrictions except by legally defined categories of secrecy (e.g. bank or insurance secrets, or confidential health-related information).

3. Freedom of information is limited in several ways. Access to data of public interest is restricted by the data protection act itself as a means of protecting personal data. I will not discuss the conflict between personal data and data of public interest. Basically adopting the ruling of the Council of Europe's Convention, the Act on Data Protection (*DP&FOI Act*) permits the restriction of the right to access by order of the law for the following categories of data: restriction is allowed in the interest of national defense, national security, criminal investigation and prevention of crimes, the monetary and currency policy of the State, foreign and international relations, and of judicial procedure. In the sphere between the protection of personal data and state secrets, several categories of secret information are identified and mostly regulated by law.

3.1. Both European law and national legislation such as the Hungarian Act on the protection of personal data and on the publicity of data of public interest grant an exception from the principle of open access to files for the category of draft documents used internally and in preparing decisions. The explanation for this lies in the fact that the restriction of access to documents used in the decision-making mechanism could be justified no matter how democratically it is run by the administration. Decision-making processes cannot be exposed to the pressure of public opinion at every step of the decision-making procedure.

Governments forced to make unpopular decisions have an appreciable interest in being able to consider undisclosed plans. The disclosure of preliminary drafts not yet given professional shape could make the office look ridiculous even if has not actually done anything worthy of such reaction. If contradictory alternatives come to light the official hierarchy could be undermined. For all these reasons, the restricted publicity of such documents represents a tolerable limitation. Hungarian law declares that *"Unless otherwise provided by law, working documents and other data prepared for the authority's own use or for the purpose of decision making are not public within 30 years of their creation. Upon request the head of the authority may permit access to these documents or data."* By contrast, we have good reason to object to the time period established for the restriction of disclosure of documents used internally and in preparing decisions, which is *thirty years* by effective Hungarian law. This is too long, especially when one considers that the longest expiration period of official secrets is only *twenty years* despite the fact that an official secret, as opposed to a document used in decision making, constitutes a "true" secret.

3.2. Enjoying the highest level of protection are the secrets of the State, which have been subjected to rigorous–but arguably not the most stringent – legal limitations in terms of procedure and substance (Act No. LXV of 1995). The Secrecy Act provides for two cases of secrecy law.

Data constitute a state secret when they belong to a category of data defined within the range of state secrets, and when, as a result of the classification procedure, the classifier has determined beyond doubt that their *"disclosure before the end of the effective period, their unrightful acquisition or use, their revelation to an unauthorized person, or their withholding from a person entitled to them would violate or threaten the interests of the Republic of Hungary in terms of national defense, national security, criminal investigation and prevention of crimes, the monetary and currency policy of the State, foreign and international relations, or in terms of jurisdiction."* The effective period for the category of state secrets is maximum 90 years.

3.3. Official secret means any data whose *"disclosure before the end of the effective period, unrightful acquisition or use, or access by an unauthorized person would interfere with the orderly operation of a body fulfilling a state or public function and would prevent it from exercising its official function and authority free from influence."*

After requesting the Data Protection Commissioner for an opinion, the person authorized for the classification will publish the register of official secret categories in the *Magyar Közlöny ("Hungarian Bulletin")*. Data qualifying as a state secret or an official secret have to be classified. If the data meet substantive requirements but for some reason have not been classified, they cannot be considered a state or official secret.

Upon request, the classifier controlling the secret may grant permission to access the data. The petition to access is governed by the same rules and are subject to the same restriction periods that we have already explained in the context of data of public interest. If the request is refused, the classifier can also be sued as provided by *DP&FOI Act*.

4. Requests for data of public interest must be complied with in 15 days, and any refusal to supply such information must be communicated to the applicant within eight days, together with an explanation. Controllers of data of public interest are under obligation to inform the public periodically anyway. Whenever a request for information is denied, the applicant has the option to file for a review by the Commissioner for data protection and freedom of information, or to bring a court case. Such cases will be heard by the court with special dispatch, and the grounds for withholding information must be proved by the party refusing to give out the data.

Should the same plaintiff seek help from the DP&FOI ombudsman, he can count on a procedure that is substantially speedier and definitely free of charge. The ombudsman will issue a recommendation in the case, which is not officially binding, but will be complied with as a rule.

These considerations notwithstanding, Hungarian law provides for an exception that is unheard of in other countries. Whenever the Commissioner for DP&FOI finds that a classification as state or official secret is without grounds, he is entitled in his recommendation to call on the classifier to alter the classification or to abolish it altogether. Such a decision empowers the "recommendation" with administrative force, leaving the addressee with the option to concede or to file a lawsuit against the Commissioner, requesting the court to uphold the classification. Such cases will be heard by the County Court with special dispatch. It is noteworthy that to this date we haven't had a classifier risk a court procedure instead of bowing to the Commissioner's judgment.

And yet, law is not just mere normative form but also social reality. The Commissioner not only watches over freedom of information, but also

lobbies for its recognition. To some extent, the institutions created to safeguard constitutional rights have the power to generate the very social demand to have these rights enforced. Legislators are mandated to submit bills with an impact on informational freedom rights to the DP&FOI Commissioner for evaluation, although they are not bound by law to accept the Commissioner's recommendation. This authority is an important tool in the hands of the Freedom of Information Commissioner, enabling him to shape the legal environment. And yet, we must give some credit to the voices which claim that freedom of information in Hungary – as in many other places of the world – generates more smokescreen than real flame. The statistics in the Commissioner's reports, submitted annually to Parliament, lend themselves to forming a social diagnosis. Hungarians – certainly like other peoples in East Central Europe – have traveled a unique road to civil society, and age-old habits and traditions are not easy to change. Staunch believers in the aphorism "*My house is my castle*," Hungarians tend to be much more sensitive to violations of their privacy than to secrecy over data of public interest. The ancient Latins who grew indifferent to an increasingly corrupt public sphere summed up their wisdom in the advice *"Go not to the Forum, for truth resides in your own soul."* Many in Hungary today subscribe to this view; we can draw a measure of comfort from the exceptions. At any rate, the Commissioner's case statistics provide valuable lessons. While the number of cases investigated by the Commissioner has been changing dramatically, the respective representation of the various informational branches show great consistency. Since 1995, when the Bureau was set up, the number of investigations has multiplied to reach a thousand in a single year. Most of them pertain to data protection, with only 10 percent concerning freedom of information issues. In terms of complaints filed, the share of freedom of information cases is only 7 percent. True enough, statistical figures add their own distortion. Matters involving freedom of information are typically high-profile cases receiving keen social attention and wide publicity. As such, their significance far outstrips their share in the total number of cases investigated.

As I have suggested before, one can point to a number of long-standing great democracies whose constitution and law do not spell out the constitutional right to freedom of information. Ours in Hungary do – but we have our own weaknesses to face in this area.

THE ROLE OF GOVERNMENT INFORMATION OFFICERS

Bart W. Édes *

It is a fundamental right of citizens in a well-functioning democracy to know what public officials are doing. What policies they are pursuing, what laws and regulations they are preparing, what programmes they are running, how they are raising and spending money and what international agreements they are negotiating. Such information helps to curtail arbitrary use of government power, increases accountability of public officials, and helps citizens to formulate their own opinions on issues affecting their lives. Yet even the most open and well-intentioned of governments may hesitate about *how much* and *what kind of* information to share with the press and population. [1]

It is no surprise, then, that governments of countries which until a decade ago were under communist rule are having a tough time coming to terms with heightened demands for information. [2] Journalists in transition countries

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* Principal Administrator, for communications at SIGMA/OECD, France, a joint initiative of the OECD and the European Union, principally financed by the EU's Phare Programme. The views expressed here are his own.

[1] In Norway, which has long enjoyed a reputation for liberal public access to official documents, growing concern among journalists, lawyers and some politicians that existing rules were not being fully respected by the government and the administration, led to the adoption, in 1998, of a White Paper on public access. The document identifies 14 specific problems of openness for debate and possible reforms, which may be adopted in 2000. See: Fredrik Sejested, "The Act on Public Access to Documents: Current Frustrations and Proposals for Reform", *European Public Law*, Volume 5, Issue 1, 1999, pp 12-21.

[2] In Estonia, for example, journalists and other citizens are sometimes thwarted by public officials when searching for information. Tarmu Tammerk, Managing Director of the Estonian Newspaper Association, asserts that, "all too often politicians and officials say the information that the journalist or an ordinary person wants to get is only meant for the knowledge of certain departments. Everyone is hiding behind the fact that there is no specific law on access to information. A lot of arbitrary decisions are being made". (Denise Albrighton, "Estonia to Clarify Freedom of Information Laws," *The Baltic Times*, 24-30 September, 1998). Commenting on a proposed freedom of information law in Slovakia, Kurt Wimmer, a legal analyst with the Washington, D.C.-based law firm Covington and Burling, argued that "the overall mind-set of the post-communist authorities has been that information should be kept secret, and the law needs to turn that into a presumption that information should be public" (Ivan Remias, "Law on Free Access to Information in Works," *The Slovak Spectator*, 21-27 June, 1999)."Similar thoughts were expressed by Alena Slezáková, an editor with the Czech weekly *Týden*, when the Czech Parliament was debating freedom of information legislation (since adopted):"Any public official can refuse to give you information. It's a remnant of our past. They behave as if they are above us."(Michele Legge,"Freedom of Information Law on the Horizon, "*The Prague Post*, 24-30 September 1997)."

often complain that they lack access to even the most basic information from public offices, including budgetary and government financial data, court rulings, official statistics on social conditions, and public procurement results. Businesspersons, too, chafe at the difficulties encountered in obtaining financial and economic information that is readily available in much of Western Europe. Without this kind of information, they are less likely to invest in a country.

In most countries a key figure in the provision of public information is the government information officer (GIO). His or her title varies from place to place, as do the specific tasks carried out. For the present purposes, "GIOs" are considered to include public sector employees who spend the majority of their time facilitating the flow of information between state bodies, on the one hand, and the media and public, on the other. These individuals may be known as a spokespersons, press officers, press attachés, public affairs officers, or public information officers. Since much of a GIO's time is typically spent working on media-related matters, particular attention is given here to the information officer's relations with journalists.

No distinction is made here between those who hold civil service positions and who work on behalf of their *institution*, and those who are political appointees serving the *person* of their minister or other senior official. The distinction is often blurred in Central and Eastern Europe, where many countries have yet to establish non-partisan, legally-regulated civil services which clearly differentiate between the two roles. In Western Europe, on the other hand, countries often go to great lengths to keep the provision of political information and non-political information separated (by regulations, policies, informal monitoring). For example, in Belgium, a press attaché is part of the minister's personal staff, and speaks on the political aspects of the minister's policies. In contrast, information officers of the country's *Service Fédéral d'Information* are civil servants charged with providing neutral, objective information.

The GIO is frequently the first point of contact for a journalist, and on occasion other information-seekers. Requests under freedom of information laws, which are being enacted across Europe, may be directed through or otherwise involve a GIO. The tone and accuracy of reporting on a ministry and its decisions, and a citizen's perception of the public sector, are greatly influenced by the accessibility and responsiveness of an information officer.

Raising Awareness

A GIO contributes to public understanding of government policies. He or she raises awareness of the different roles of decision makers and purview of state institutions, the availability of social services, noteworthy trends, and risks of which everyone should be aware. In short, the GIO is a visible figure at the interface between "the bureaucracy" and "society", and can make a valuable contribution to societal well-being and public support for democratic institutions.

Transparency Gains Momentum

The role of GIOs in transition countries will become more important as public pressure grows to open up state institutions. Citizen intolerance of unethical behaviour in government and in government-financed international bodies has given strength to movements advocating greater integrity and transparency Witness the rapid growth of the anti-corruption group, Transparency International. Such principles have also been taken to heart by the new European Commission, following the independent investigation into alleged ethical lapses and mismanagement by previous Commissioners brought to light by a whistle-blower.

New constitutions in Central and Eastern European countries often include rights of access to public information. This is not the case for Western European constitutions. These provisions reflect a reaction against the secrecy of the communist regimes. The provisions contain exceptions for protection of "the rights of others" or "state secrets." They usually require implementing legislation setting forth the procedures for availability of information and/or defining the scope of exemptions.[3] Although few transition countries have adopted such legislation, several are considering doing so (see below).

In this year alone, the new European Commission implemented significant organisational and procedural reforms to improve accountability and

[3] Kenneth K. Barr, "Public Service Through 'Private' Contracts – Transparency Issues," March 1999, pp 2-4. At the time of publishing, the author was a visiting professor at the Center for Public Affairs Studies, Budapest University of Economic Sciences (kenbaar@aol.com). Barr cites examples of constitutional provisions on access to information, including Article 44, Section 2 of Estonia's Constitution: "At the request of Estonian citizens, and to the extent and in accordance with procedures determined by law, all state and local government authorities and their officials shall be obligated to provide information on their work, with the exception of information which is forbidden by law to be divulged, and information which is intended for internal use only."

openness;[4] the Interim Committee of the International Monetary Fund adopted a code of good conduct as a guide for countries to increase transparency in the conduct of monetary and financial policies;[5] and several European countries have considered the merits of legislation on freedom of information (e.g. the Czech Republic, Estonia, Moldova, Slovakia, and the United Kingdom).

Highly publicised scandals over alleged misuse of foreign financial assistance in Bosnia-Herzegovina and Russia, and conditions attached to the provision of EU pre-accession aid to candidate countries, will only increase pressure on governments of transition countries to report and justify how they use public monies. Further, as the Internet continues to gain popularity, and citizens become accustomed to accessing great amounts of information on a range of subjects from many sources, they will come to expect their government to make more extensive use of this technology. This development will require central and eastern European administrations to assemble and quickly make available detailed information on the Internet. GIOs will have to adapt to this era of heightened expectations of openness and accountability. They also will need to learn new behaviours and skills.

Functions of the Information Officer

As democratic, market and media practices in Central and Eastern Europe have come to increasingly resemble those in Western Europe, the activities and attitudes of GIOs in the former region have also become more like their counterparts in the latter. This trend has been reinforced by technical assistance projects bringing together GIOs of different European nations.

The typical functions of a GIO in the central government of a transition country today include: *monitoring media coverage of public affairs*; *briefing & advising political officials*; *managing media relations; informing the*

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[4] Neil Kinnock, new Vice-President of the European Commission, has stated that, "I have committed myself, together with my fellow Commissioners, to working for a Commission that provides efficient, accountable and transparency public service" (http://europa.eu.int/comm/reform/index_en.htm). The EC Treaty, as amended at the 1996 intergovernmental conference, requires the Council of Ministers to determine general principles and limits on grounds of public or private interests governing a right of access to European Parliament, Council and Commission documents. This must be done before 1 May 2001. The Commission is expected to submit a proposal to the Council and Parliament in December 1999.

[5] "Code of Good Practices on Transparency in Monetary and Financial Policies: Declaration of Principles," Communiqué of the Interim Committee of the Board of Governors of the International Monetary Fund, 26 September 1999, http://www.imf.org/external/np/sec/pr/1999/PR9946.htm.

public directly; *sharing information across the administration*; *formulating communication strategies and campaigns*; and *researching & assessing public opinion*. Not all GIOs perform each of these functions, and in the areas where they are active they often share responsibilities with others in the public service.

1. Monitoring Media Coverage

Tracking the print and broadcast media is a key part of a GIO's job. It is only through daily monitoring of newspapers, radio and TV that the GIO learns what topics the media is interested in, the political slant and bias in reporting, and the particular journalists and editors involved. Knowing the nuances of a newspaper or TV news programme's coverage is essential to be able to target journalists that may be interested in a planned activity of the GIO's ministry, and to frame issues in a way that will make an issue as attractive as possible to the media. A GIO cannot work effectively without knowing what journalists are writing and how they present the topics they cover. Reading through the morning papers is often the first thing that an information officer does at the office.

2. Briefing & Advising Political Officials

Ministers and other senior officials of government rely on GIOs to inform them of media reporting upon which they may be expected to act. Both politically appointed GIOs and career civil servants perform this task. GIOs also provide counsel on the communications component of policy proposals. This includes providing advice on how to address different topics (e.g. how to frame an issue, when and where to raise it, with what journalists to speak about it, and on what terms). Information officers help ministers to face the media in awkward or uncomfortable situations, when they might prefer not to answer questions, and attempt to judge how possible communication approaches would be perceived by the public.

GIOs often find themselves in the position of encouraging their ministers to have greater contact with the media. Although such contact is never free of risks, it does diminish the threat of journalists turning more aggressive in their investigations and negative in their reporting when denied access to officialdom. It is important for senior information officers to be in regular contact with the top officials of their ministries, and to be recognised as trusted, knowledgeable advisers on communications matters. Where this is the case, they are more likely to have influence on such matters, and to enjoy the co-operation and support of other public servants.

3. Managing Media Relations

Although new technologies are beginning to weaken its intermediary role, the media remains a leading vehicle through which Central and Eastern European GIOs communicate with the public.[6] Many GIOs spend the bulk of their working day on the telephone or in meetings with journalists, nurturing positive relations with them, learning their interests, and describing government activities. It is only natural that in a well-functioning democracy, where the media plays a vital oversight role, there will be tension between reporters and public officials responsible for providing information. GIOs need to work continuously at building a relationship of trust between the two parties, in part by promoting mutual appreciation of the fact that reporters need GIOs and vice versa. Information officers also need to be aware of the range of media entities, including not only daily papers and the broadcast media, but also, for example, weekly news magazines and special-interest newsletters and other publications.

GIOs use a variety of techniques to transmit information to reporters, including telephone calls, news conferences, interviews with specialists and senior officials, letters to the editor, press releases and briefings (both formal and informal in nature). Increasingly, they are making use of new or improved technologies, including multiple faxing, email, and the Internet.

Naturally, GIOs must modify the way in which they approach the media depending on the urgency and importance of the information with which they are dealing. The release of census data, publication of a critical audit report, a declaration of war, hospital closures, new tax rules, a flu epidemic, road closures, and flooding cannot be treated in exactly the same way.

4. Informing the Public Directly

A former head of the Polish Government Press Office once wrote: "The task of the information services of the state administration is not only to inform the media about the administration's activities, but also to provide conditions for the fullest possible access to information."[7] Accomplishing the latter activity involves both passive measures (allowing individuals to

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[6] OECD Public Management Service, *Impact of the Emerging Information Society on the Policy Development Process and Democratic Quality*, Paris, France, 1998, pages 19 and 51.

[7] Jacek Kozlowski, Director of the Government Press Office under Prime Minister Jan Krzysztof Bielecki (1991-1992) and Prime Minister Hanna Suchocka (1992-1993) in József Katus and Karol Jakubowicz, editors, *Public Information in Post-Communist Countries*, 1994, p. 38.

see government documents) and active steps (preparing and widely disseminating descriptive materials on public services). One reason why GIOs go directly to the public with certain information is that the subject covered (or the detail in which it is reported) may not be of interest to journalists. Also, the GIO might want to avoid any confusion or misunderstanding that could results from the media's "filtering" of an important message (e.g. on a complicated health or safety issue).

Many Western European governments assign responsibilities for *press relations*, on the one hand, and for *providing information to the public*, on the other, to different persons or administrative units. For partly budgetary reasons, transition country GIOs often end up doing work for *both* the media and general audiences. Tools commonly used to respond to public inquiries and to convey information to the population include mailings, pamphlets, posters, printed and broadcast public service advertisements, the official gazette, lectures, community meetings, exhibitions, and special programming events. GIOs often find that efforts to reach a mass audience are more effective if intermediaries and communication partners — such as NGOs, professional associations, and trade unions — are drawn into the process. (This is especially true for public information campaigns — see below).

Governments in Central and Eastern Europe are using different techniques to reach the population. For example, some have experimented with well-publicised telephone lines, which offer the potential of nation-wide reach at little or no direct cost to callers.[8] In Latvia, a new law requires ministries to publish annual reports. In the same country, the Press and Public Affairs Department of the Ministry of Interior produces a weekly television show, *Kriminala Informacija* (Criminal Information), which seeks public assistance in solving crimes, and delivers crime-prevention advice.

5. Sharing Information Across the Administration

Many transition country GIOs have formal responsibilities not only to promote *external* communications, but also *internal* communications. For instance, the Albanian and Bulgarian administrations print daily bulletins

[8] For example, such lines have been used in transition countries to promote understanding of privatisation programmes and tax rules. In Western Europe, the Netherlands maintains a common telephone number for all Dutch ministries. Through this well-regarded and heavily used service, callers can access information from any ministry, and obtain speedy answers about where to obtain additional details if desired. Callers are charged for dialling the number, but information is provided at no cost.

filled with details on meetings, appointments, laws, services and proposed policies. These are typically prepared by individuals working at a central information office using text provided by GIOs in line ministries and other state bodies. The bulletins are distributed across the administration to keep public servants informed. They also may be made available to the media and opinion makers.

6. Formulating Communication Strategies and Campaigns

The GIO is often seen by political leaders as just some kind of a mailbox for delivering messages. This simplistic view overlooks the key role of communications in promoting public understanding of, and support for, public policies. GIOs should be involved throughout the decision making process to advise on the implementation and explanation of public policies to the media and to the population at large. In Bulgaria, for example, a communications expert participates in high-level meetings, and information officers submit draft press releases with decision documents destined for the Council of Ministers. Some Central and Eastern European countries have issued policy statements on government communication aims and principles.[9]

GIOs regularly contribute to the development of public information campaigns, which are used to raise citizen awareness of social issues and to change behaviours (e.g. preventing AIDs, curtailing smoking, promoting child vaccination), and to educate the public and encourage its backing for major government plans (e.g. Poland conducted a campaign on adoption of the value-added tax, and Hungary on plans to join NATO).

Public relations firms and advertising agencies are often recruited to assist in the formulation of communication strategies and public information campaigns.[10] Preparing campaigns involves several components, including not only identification of themes, principles, partners, target audiences, channels, and costs, but also testing campaign ideas and carrying out follow-up actions such as monitoring, fine-tuning, and evaluating.

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[9] See, for example, *Principles of Estonian Information Policy*, State Chancellery of Estonia/ Estonian Council of Informatics, 1998, 21 pages (in Estonian and English).

[10] For example, in 1998, a consortium of PR and advertising firms in Ljubljana, Paris and Brussels prepared the Slovene Government's strategy for communicating on European integration (*Doma v Evropi* – At Home in Europe).

While many EU Member States conduct extensive public information campaigns, Central and Eastern European countries have difficulty finding the resources to do so. EU information and promotion campaigns preceding referendums in Austria and Nordic applicant countries cost millions of dollars. Many campaigns in Central and Eastern Europe have been made possible by foreign grants provided by the European Union, United Nations agencies and other donors. Care must be taken when developing a public information campaign, especially on a controversial or divisive issue, to avoid exposing the government and administration to accusations of spouting propaganda.[11] This is especially true given the nature of "government information" in Central and Eastern Europe between the end of World War II and 1989.

7. *Researching & Assessing Public Opinion*

Another common function of GIOs is measuring and evaluating public opinion. Reviewing correspondence and comments received by telephone, conducting polls, distributing questionnaires, holding public hearings and roundtable discussions, and organising focus groups can yield useful information regarding public perceptions, needs and desires. Feedback generated through these various methods helps political leaders to shape public policies more in tune with the public's priorities, and aids GIOs in determining what kind of information is of interest to what groups of people, and how they would like to receive such information. Such feedback should not be seen as a substitute for formal consultation procedures on proposed legislation and policy ideas. These procedures are not normally managed by GIOs.

In early 1998, the polling firm, Baltic Surveys, carried out a national survey to determine opinions of Lithuania's general public and the country's elite on the privatisation process. The project, sponsored by the Phare Programme, identified the two groups' views on what sectors should be sold and which ones should remain in state hands. The survey results are being used by Lithuanian authorities to prepare and execute a public

[11] A recent public opinion poll in Estonia revealed a widespread perception that information being made available on European integration is one-sided (Saar Poll cited in Brooke Donald, "Estonia's Euro-Indifference," *The Baltic Times*, 14-20 October 1999, p. 1).

relations campaign to explain governmental policy towards the sell-off of state assets.[12]

Public Administration in Transition Countries

GIOs in transition countries complain of a range of problems, ranging from lack of interest by politicians in government communications to inadequate resources to uncooperative public servants. On the surface, these problems appear to be the same as those cited by their Western European counterparts. Yet the context in which they appear are quite different. This is due not only to different cultures and traditions, but also to decades of authoritarian rule in Central and Eastern Europe (and thus the shorter experience with democracy). Lingering influences of the communist era have burdened transition country administrations with many handicaps affecting all public servants — not just GIOs.

Although the situation varies significantly between administrations, public servants in transition countries have typically received little formal education in practices and standards important in a modern, market-oriented democracy (managerial techniques, computer programmes, inter-personal skills, service orientation, ethical norms, etc.). In addition, schools of public administration do not always have the curriculum and qualified staff to train students for public service.

Many countries have not implemented civil service laws — the Czech Republic, for example, does not expect to have one before the year 2002. The status, responsibilities and rights of civil servants remain unclear, and decision makers attempt to influence or coerce them politically. Recruitment and promotion of employees may or may not be done on the basis of merit, but often friendships or political views matter more. Compounding the uncertainty and lack of basic skills is an often demotivating work environment which does not nurture employees.

Many Central and Eastern European societies have a negative view of public servants, one shaped not only by the old role of the Party bureaucracy, but also by perceived widespread corruption and indifference to citizen needs. Lines of communication between public servants and their colleagues and supervisors are frayed and very compartmentalised. The opportunities

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[12] Rasa Alisauskiene, "Public Opinion Serves as Tools of Administrative Reform in Lithuania," *Public Opinion Surveys as Input to Administrative Reform* – SIGMA Paper No. 25, SIGMA/OECD, Paris, France, 1998, p. 97.

for those in public administration to contribute to decisions that affect their work and duties are limited. Those working for the administration are anxious about their future as agencies and ministries are regularly created, merged and dismantled. The concept of a professional and apolitical public service is slow in gaining acceptance around a region where for decades the dictates of a few powerful men pervaded every corner of society, beginning with government offices. Tight state budgets offer little hope for improving low pay scales, and workloads have increased exponentially. A damaging "brain drain" of bright public servants is more pronounced than in countries where the private-public sector pay gap is smaller and where the position of public servants is more secure.

The ability of GIOs to do their job well depends in large part on what happens to the public administrations in which they carry out their duties. An information officer will be in a much better position to work confidently and effectively in an administrative environment in which he or she is adequately remunerated, where civil servants are hired and promoted on the basis of merit under clear rules, where the legal and managerial expectation is that information should be made readily available to the public, and where adequate training and guidance are provided.

Of course, administrative reform is a slow and politically sensitive process. Systems and mentalities are not going to change overnight. Further, as mentioned before, Western European GIOs also suffer from imperfect working environments, a condition hardly limited to public servants responsible for communications. Nevertheless, it is in the interests of Central and Eastern European governments to intensify efforts to narrow the gap between the reliability of their public administrations and those in the European Union. This is necessary to prepare for EU membership, reinforce democratic institutions, sustain public support for democracy, nurture economic development, and integrate into the global economy.

The importance of administrative and related reforms explains why the EU's Phare Programme is contributing €1.5 billion a year to candidate countries to strengthen the administrative and judicial capacity to enforce and implement the *acquis communautaire* (the existing body of EU legislation), and to equip them with the infrastructure enabling implementation of the *acquis*.[13]

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[13] European Commission, *Composite Report from the Commission on Progress Towards Accession by Each of the Candidate Countries*, 13 October 1999, http://europa.eu.int/comm/enlargement/report_10_99/composite/20.htm.

Challenges Confronting GIOs

Immature Media

The transition environment has created a number of problems that particularly affect public servants responsible for communications. For example, compared to Western Europe, the media in Central and Eastern European countries tends to be less professional. This situation makes the daily work of GIOs quite difficult. The pressing financial situation of many transition country publications casts a cloud over reporters' job security, leaving them in a stressful situation and often willing to engage in behaviour that would be considered inappropriate in newsrooms in EU Member States.

Reporters are given little guidance on ethical or professional standards. They often do not check facts, and fail to solicit the views of the persons and institutions about which they write. "News" articles often comprise the opinions of the writer or editor, including unsubstantiated rumours and allegations. Some newspapers make little effort to report in a balanced, objective manner, and resort to sensationalism to attract readers. Unlike in many western countries, the press does not feel that it has any responsibility to promote civic values and understanding of the issues at stake in public policy debates.

Newspapers are often strongly attached to a particular political party or ideology, and may not give a fair hearing to information provided by a GIO. Media owners often pressure their staff to report in ways that suit their financial and political interests. In short, many in the media have abused the freedoms they now enjoy by acting irresponsibly.[14] On the bright side, there are numerous journalism training programmes in the region, and many serious publications and broadcast news programmes strive for objectivity, priding themselves on sound reporting practices.

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[14] In his paper, "Building Free and Independent Media," David Webster, Chairman of the Trans-Atlantic Dialogue on European Broadcasting, relates an anecdote about the arrival of modern democracy to Poland: "A distinguished Polish editor (who was formerly with an underground newspaper) bemoaned the difficulties of the new liberalised system. 'What's the problem?' he was asked. 'After years of repression you are now free to publish.' 'Yes,' he responded, 'but now we are supposed to find out whether it's true or not.'" Not all Central and Eastern European newspapers consider this an obligation (http://www.usia.gov/products/pubs/freedom/freedom1.htm).

Secrecy & Political Influence

The legislative and regulatory environment for providing government information in Central and Eastern Europe is underdeveloped, allowing considerable scope for political manipulation and bureaucratic whims. Even where legal steps have been taken to lift the communist-era curtain of secrecy surrounding government activities, implementation suffers due to the slow change in institutional mentality. National bodies regulating broadcasting on state-run radio and television do not always ensure independent operations, in part because the right of appointment to such bodies is often vested in a political body (usually parliament) bent on preserving its privileges and influence.

Senior officials sometimes resort to heavy-handed methods in an attempt to suppress or modify unflattering reporting. Even well-meaning GIOs may be caught in the middle of a struggle between political leaders and the media (e.g. by being instructed not to talk to certain publications). Weak or absent legislation regarding public access to official documents, and libel laws giving politicians great freedom to sue newspapers can be used to keep information from journalists and discourage investigative reporting of government activities, including allegations of misbehaviour.[15] While media conditions in much of Central and Eastern Europe are vastly better than before democracy, politicians have yet to shed all habits inherited from days of authoritarian rule. In Slovakia, for example, former Premier Vladimir Meciar cancelled press conferences and proposed hiking value-added taxes on newspapers.

Politicians also put pressure on GIOs to defend and promote their own standing or party positions, rather than factual information collected by state bodies and straight reporting of government activities. Such pressures are harder to resist than in western European countries where there tend to be clear lines between "political" and "non-political" roles in the communications field, job descriptions and civil service protections.

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[15] For example, Romanian journalist Cornel Sabou was ordered to pay 300 million lei (over $34,000 at the time) in damages and sentenced to 10 months in jail for libelling a local judge in a series of articles alleging forgery and peddling of influence (RFE/RL Newsline, 24 August 1998). More recently, the Czech Government has introduced legislation granting the right to reply to anyone whose "honour, dignity or privacy" has been infringed, even if the original report is true.

Central and Eastern European countries tend to be far behind their Western European counterparts in providing guides, films, briefings, brochures and other information products about the work of particular public institutions. Indeed, visitors to government buildings are commonly made to feel like intruders. Entrances and lobby areas are often foreboding and poorly labelled, contributing to the great distance that many citizens feel exists between them and public institutions.

As mentioned earlier, communication *within* the public administration also could benefit from change. GIOs often have trouble extracting information from public servants elsewhere in their ministries. The habits of secrecy and compartmentalisation inherited from the former era exacerbate this problem, as does the lack of job security (public servants see information as power to wield in defence of their positions). It is not unusual for GIOs to learn of important decisions and policies in their own institution from the newspaper or broadcast media. In many countries, GIOs have little to no regular contact with their counterparts at other ministries.

Lack of Training & Skills

Information officers are typically worked hard, paid little, and given little basic training or orientation. Indeed, systematic training programmes are virtually non-existent. It is hardly an exaggeration to say that a new GIO is shown a desk – in a small, crowded and ill-equipped office — and told to get on with the job. It is the rare information office that offers appropriate policy and procedural guidelines. These difficulties, and others described below, explain a flight of the most talented and ambitious GIOs to public affairs posts in private companies, and to jobs at public relations firms.

Educational opportunities directly relevant to a GIO's work are few and far between. Certain institutions of higher learning offer courses in public relations and communications, but these are usually tailored for those headed to more lucrative posts in the private sector. In most countries there is no professional association of government communicators, and few networking opportunities through which GIOs could have the chance to learn from, and share professional ideas with, their colleagues.

Journalists report a number of frustrations in their interactions with GIOs. These frustrations stem in part from the failure of information officers to carry out very basic tasks of their jobs (due to the lack of training, managerial guidance, time, etc.). Central and Eastern European journalists

offer the following advice to GIOs to improve relations with the media, and to deliver their message more effectively:

- treat all journalists the same (regardless of their organisation's political bias)
- remain sensitive to reporter's time limitations and deadlines (do not ramble on when speaking with a reporter, and send advance information about key events)
- accept that it is not the job of the media in a democratic state to print all official press releases verbatim
- be more pro-active with reporters (do not just sit back and wait for the telephone to ring)
- always return calls and e-mails promptly
- make more of an effort to find answers to questions posed by reporters
- provide information in a clear, succinct and easily digestible format (e.g. summarise long documents)
- call press conferences only when there is real news to report

While GIOs can act in most of the aforementioned areas, they also depend on others — especially those making budget decisions for their offices — to provide them with adequate resources. Information officers in transition countries often lack such basic supplies and tools as their own business (visit) cards, computers, and printers. As mentioned earlier, resources for public information campaigns are minimal. Inadequate staffing, too, is a serious problem affecting a GIO's performance. It is not unusual for a ministry in a transition country to employ one or two information officers, while the same ministry in an average western European country employs dozens to handle press relations and public affairs.[16]

Getting Connected – Some Trends

While the above litany of problems afflicting GIOs suggests that their situation is rather bleak, the reality is perhaps not quite so bad. Indeed, over the past ten years, there have been noticeable improvements in the way that government communications is managed in Central and Eastern Europe, and in the professionalism of information officers. The region's leaders seem to recognise the need to develop government communications

[16] József Katus, "Government Information in Poland and in the Netherlands from a Comparative Perspective," in József Katus and Karol Jakubowicz, editors, *Public Information in Post-Communist Countries*, 1994, p. 140.

capacities, and are strongly influenced by the international trend in favour of greater openness in government.

Although most GIOs are not sufficiently trained for their jobs, hundreds *have* benefited in the 1990s from short-term training and information-exchange events featuring the practices of OECD Member countries.[17] Some have gained useful experience working in other European countries. Many are former journalists who have been on "the other side," giving them good contacts and an awareness of what the media seeks from public institutions.[18]

Internet Boom

Looking ahead, the next decade will bring many changes to the way in which transition country GIOs conduct their work. Many of these changes will be driven by technology. The Internet is potentially the most potent and important of the new technologies to disseminate information, improving the speed, tailoring and targeting of messages. Although comparatively low household incomes have restrained ownership of computers and the number of Internet connections in Central and Eastern Europe, one can nonetheless see fast growth of both. Further, all countries in the region boast a government Internet site, and many individual ministries have their own homepages.

Western European governments are actively using the Internet to provide reporters and the public with detailed and regularly updated information of completed and planned government activities, guides to public services, office hours and locations, decisions of the government, legislation and regulations, forms and applications, and contact names and e-mail addresses (see, for example, Austrian government site at http://www.help.gv.at).

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[17] The United States Information Service, European Journalism Centre, Council of Europe, SIGMA and the European Union's TAIEX and Phare Programmes are among the organisations that have sponsored study missions, workshops or other forms of training on government communications in Central and Eastern Europe. Governments and foundations in The Netherlands and Germany have also been quite active in sharing Western European experience in the field of government communications.

[18] Antoni Styrczula, former Press Spokesman for Polish President Aleksander Kwasniewski, previously headed the Polish Radio Information Agency. Commenting on how his experience in journalism helped him as Spokesman, he said, "I know not only journalists' trade and needs, but also their mentality. For example, I know how sensitive they are to their reputations, and how vain they can be. I used to run around the *Sejm* [Polish Parliament] with many of them" (Kuba Spiewak, "A Question of Style," *Warsaw Voice*, 30 March 1997).

Similarly, governments in some EU candidate countries are beginning to follow suit (note the Estonian State Web Center at http://www.riik.ee/estno/index.html). More ambitiously, use of Extranets, like those which connect Finnish government offices directly with media outlets, will likely gain acceptance in Central and Eastern Europe in the coming years.

This "movement to the Net" will make life easier for GIOs by providing the public with an alternative source of information to requesters. On the other hand, setting up and maintaining well-designed, user-friendly Internet sites require substantial investments in equipment and personnel. It may be "cheaper" to post documents on to the Internet than to publish, store and mail copies, but savings quickly vanish when all of the costs are fully calculated.

Further, making more information available is likely to stimulate more questions from reporters who then will contact GIOs and other officials for answers. Indeed, the relative ease with which curious citizens and journalists can send messages over the Internet will add to the GIO's work burden. Careful planning and management will be required to ensure smooth adoption of Internet uses. For the time being, though, traditional instruments – press releases, telephone calls, letters, posters, etc. — are still the main ones used by GIOs to disseminate information on public sector decisions, programmes and services. This is true not only for Central and Eastern European countries, but also for more technologically advanced countries.

Although largely outside the purview of this paper, it is worth noting that new information and communication technologies may also represent part of the solution to problems of poor *internal communications,* and inadequate *public consultation* on policy proposals in Central and Eastern European countries. Yet experience in OECD countries suggests that increasing the frequency and quality of citizen participation in governance and the transparency of decision making is much less a function of technology than of political will and the structure of institutions.[19]

Technological changes as well as the intensifying process of European integration will also spur changes in the relevant qualifications of GIOs. For example, with the growing influence of European Union institutions, GIOs will not only have to be aware of the work of their domestic ministries, but

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[19] OECD Public Management Service, *Impact of the Emerging Information Society on the Policy Development Process and Democratic Quality*, Paris, France, 1998, page 46.

also of the related activities undertaken at the European level. Increased contacts with foreign public servants and reporters will make international language requirements more important, and not just at major ministries such as foreign affairs and finance.

Governments in Central and Eastern Europe will continue to struggle with the messy details of what information to make available to the public. As they do so, they will contend with meshing the sometimes conflicting demands of journalists, NGOs and professional groups (who advocate liberal access to official information), with demands of public officials (who require a bit of breathing space and confidentiality to carry out their work). Issues of national security, business confidentiality and personal privacy all arise in the deliberations over what and how much government-held information to make publicly available.

In developing workable information policies suited to the country's political climate, administrative context, and cultural and legal traditions, decision makers should keep in mind that greater openness of the administration can contribute to democratic legitimacy and to societal support for democratic institutions. As the first contact point for many seeking information from public bodies, the government information officer has the opportunity to contribute to such openness and the benefits it yields. [20]

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[20] Carsten Gronbech-Jensen argues that the Scandinavia's liberal rules regarding public access to official documents to promote politco-administrative accountability offer a possible solution to the European Community's perceived legitimacy deficit in "The Scandinavian Tradition of Open Government and the European Union: Problems of Compatibility," *Journal of European Public Policy,* 5:1 March 1998, pp 185-199.

TRANSPARENCY AND OPENNESS IN GOVERNANCE: CHALLENGES AND OPPORTUNITIES [1]

*Emília Sičáková**

For a couple of centuries, economists have, by a social order, been consciously and purposefully analyzing barriers to economic growth and ways of their removal. Many of them came to different conclusions and various theories have been, to a various extent, confirmed in an everyday practice. It seems that as the twentieth century draws to the close, the so-called new-institutional economy (NIE) represented by Douglass C. North, Nobel Prize winner, begins to prevail. This theory sees as a decisive factor influencing generation of wealth the total costs that a society has to permanently bear in order to create and adhere to, "the rules of the game" based on which it functions. [2] According to the theory of new institutional economy, societies that manage to minimize transaction costs are much more successful: in some countries, transaction costs are estimated to represent nearly half of the GDP; moreover, transaction sector influences wealth distribution significantly. NIE also holds that high-priced information and poor or asymmetric access to information sources contribute visibly to increasing transaction costs. Part of economic information can be viewed as a commercial item being bought and sold on a daily basis. The other part, the part that lies at the very center of this material, is a public good or at least, should be.

> "... many – indeed most – participants in an economy do not produce anything that individuals consume. But lawyers, bankers, accountants, clerks, foremen, managers, and politicians..., ...that are largely or wholly engaged in transacting, are essential parts of the operation of an economic system."
>
> Douglass C. North

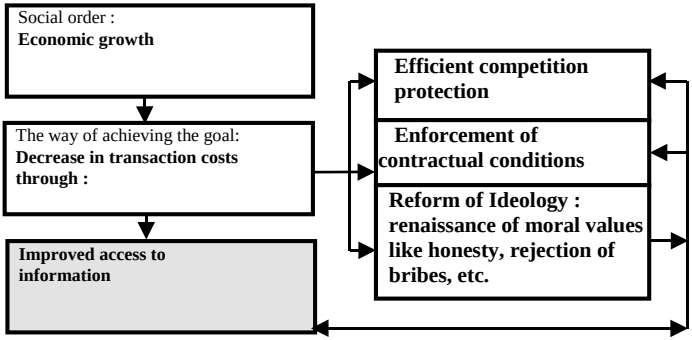
* President of Transparency International Slovakia, Center for Economic Development, Slovak Republic

[1] Based on the following studies: E.Sičáková, E.Jurzyca, P.Švec: Transparency in the Slovak Economy, CED,September 1998 and E.Sičáková: Transparency and hidden economy mutually contradicting phenomena, CED, September 1999

[2] North, Douglass, C.: Transaction Costs, Institutions, And Economic Performance, International Center for Economic Growth, San Francisco, 1992.

Information of such nature should be provided by the public administration to the citizens completely free, or at a price covering only administration costs. The following picture displays relations between economic growth, transaction costs and transparency:

Scheme No. 1
Increase in transparency of economic processes is one of the basic preconditions of economic growth [3]



Lack of timely and objective information causes a deterioration of economic performance in several ways:

- asymmetric access to information has increasingly distorted competition through strengthening dominance of the advantaged firms. The consequences are similar to those resulting from other forms of competition failures. To show only a few examples of a discriminatory provision of information by state administration, we can mention the unclear system of license granting (only 10% of entrepreneurs-respondents consider the current licensing system in Slovakia to be an optimum one [4]), insufficient information about public procurement (only 10% of Slovak entrepreneurs view the public procurement sector as fair), mismanagement of public funds, refusal to provide information to

[3] Transparency shows significant influence on many non-economic phenomena that are not examined by this study (criminality, democracy, security, etc.).

[4] Research conducted by the Center for Economic Development.

certain media, foreign "business trips" of public officials aimed at deepening international cooperation but never mentioned in a form of official report, etc. Sometimes, information collected during such trips are only handed over to a selected group of businessmen. It is clear from the research completed by the Center for Economic Development that almost 96% of entrepreneurs or businessmen consider information sharing on the part of public administration to be insufficient. (see Annex No.3 - results of the research).

- keeping secret the names of real owners of enterprises is another negative consequence of non-transparency that is directly linked to privatization process and possible distortion of competitive environment. One of the main goals of competition protection is to prevent excessive ownership concentration in companies which should be potential competitors on the market. However, if the office responsible for enforcement of competition rules does not have legal access to relevant ownership information, the process of concentration gets out of control in the whole economy. To provide an example, it is enough to mention the lack of information about some media ownership structures or unknown owners of major strategic enterprises.
- ambiguous criteria used in appointing key public officers lead to deteriorating efficiency and credibility of public administration;
- every entity (company) operating in the economy needs information to make new decisions or correct the old ones. The quality of decision making depends in fact on quality and timeliness of relevant information. In the event that public administration poorly performs its informational role, decision making and functioning of the whole economy is threatened. For the purposes of illustration, frequent methodology changes in calculation of macroeconomic indicators may serve as a good example. Incorrect decisions taken as a result of an informational vacuum make it possible to engage in asset-stripping, may lead to inappropriate sale of dubious state assets, or cause capital markets to lag behind, possibly causing incorrect regulation of natural monopolies, etc.
- a non-transparent economy establishes the best conditions for constant or even gradually increasing corruption,[5] abuse of power over somebody

[5] Corruption - from Latin word "rumpere" - to break.

else's assets, or over rights in order to obtain private benefits.[6] The extent (and especially the low predictability) of corruption causes[7, 8] misallocation of resources and gradual diminishing of country's wealth[9, 10] and may, in extreme cases, lead to the rent-seeking gap - a trap to which a society can fall as a result of the rules that allow for distribution of wealth through lobbyism and corruption. If, for example, beer imports are restricted, domestic producers get extra rent - profits that do not stem from their special contribution to the country's wealth but are rather a sign of their ability to make the government pass such a restrictive measure. Of course, the result of extra rent going to the domestic breweries is not the only consequence of such a situation: the reduction of overall wealth-generation in the country is much more important. This leads to a "smaller cake" to be shared, which in turn means more aggressive lobbying[11] - rent-seeking which brings about further deterioration of country's economy. Corruption often worsens economic parameters through general destabilization of political conditions in the country. According to various foreign studies, corruption is linked with reduced economic growth,[12, 13] investment decrease and investment misallocation, redirection of activities from productive work to rent-seeking, serious deformations in social care system, worsening

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[6] Unlike the generally used description (corruption as an abuse of public funds for personal benefits), this definition also covers the so-called "private corruption" seen, for instance, in provision of bank loans.

[7] According to World Economic Forum's Global Competitiveness Survey for 1997, intensive corruption also means that businessmen have to spend more time coping with the red tape in state office buildings. The survey also rejects arguments about optimum corruption being higher than zero (such corruption is sometimes seen as an element facilitating functioning of public administration).

[8] Gray, Cheryl, W., Kaufman, D.: Corruption and Development, Finance and Development, March 1998.

[9] If the corruption predictability index (measured by standard deviation) lowers, GDP goes down.

[10] Mauro, P.: Corruption and Growth, The Quarterly Journal of Economic, August 1995, p.688.

[11] Meaning often rocketing crime rates.

[12] Countries that improved their corruption index from 6th to 8th degree also recorded 0.5% GDP growth.

[13] Sedláček, P.: Worse than Seven-Headed Dragon, Ekonom 29, 1998.

status of small and medium-sized enterprises,[14] smaller state budget revenues (and increase in nominal tax burden), lower quality and higher price of infrastructure projects[15, 16] that are run and selected by managers without scruples.

As for the reasons underlying the growth of corruption, the following factors should be mentioned:

- demand prevailing over supply which was traditionally the case in the Slovak Republic and which has been artificially maintained through import or export restrictions;
- non-transparent organization of privatization process;
- size of potential profit in a form of bribe;
- high share of public finances (or finances controlled by public administration) in the gross domestic product;
- the fact that corruption protects well-established firms from potential competitors because bribe giving/taking usually requires a long lasting informal relations between the concerned parties;
- tolerance towards bribery - informal structures within an institution which do not militate against corruption;
- low risk related to bribe giving/taking[17]
- realization of huge state-financed projects;
- speed at which a bribe can be given/taken.

According to **institutional economics** the existence and size of the corruption[18] is directly conditioned by the environment or framework in which the economy operates – the "rules of the game" present on the market.

They divide into two categories- formal and informal.

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[14] Not only through limited access to resources, but also by increasing costs of doing business.

[15] Bribes may increase costs and deteriorate quality of public works by 30 to 50%.

[16] Ackerman, Susan, Rose : The Political Economy of Corruption - Causes and Consequences, Private Sector, Note No.74

[17] For the purposes of this examination, by bribery we mean any form of bribe, not only financial form (cash). This includes : job offer made to relatives, appointment to a public administration position, coverage of costs linked with business trips, extending an advantageous bank loan, etc.

[18] In order to assess the extent of corruption, the Corruption Perception Index published by Transparency International is used.

The formal framework comprises the laws and lower forms of regulation (including contracts) which regulate or restrict activities by individuals and organizations in public sector as well as organizations in the private sector. These rules are adopted by legislative bodies and lower-ranking state power bodies. Amongst the main principles or characteristics on which formal rules should be based on in order to secure sustainable growth, we can mention **transparency, accountability, equal chances,** and others. Unlike budgetary and monetary policies, the above mentioned characteristics, at the first glance, seem to influence economic performance in a less visible way; however, their presence has a long-term importance.

The informal framework mainly concerns conventions and personal standards of honesty. While formal rules can be changed "overnight", a change of informal rules is much more demanding.[19] Informal rules act gradually and often subconsciously, based on the fact that individuals accept alternative role models and behavioral patterns in line with the new evaluation of costs and benefits. That means that the creation of informal rules is influenced by the existing system of formal institutions. As was mentioned earlier in the text, formal rules, in order to secure sustainable growth, should be based on principles including **transparency, accountability and equity.** The result of applying formal rules based on these principles will most probably lead to a creation of informal rules that along with the formal ones, and being conditioned by them, establish grounds for a long term economic growth.[20] **Morality** is a typical example

> Morality is not a matter of taste. It is highly necessary, although unwelcome, restriction, that tells us which of the things we would like to do must not be done, if we are to maintain order upon which a survival of majority of us is dependent. The idea of morality being a tool to achieve what we wish is totally misleading.
>
> F.A. Hayek

[19] Sičáková, E., Jurzyca, E., Švec,P.: Transparency in the Slovak Republic's Economy, CPHR 1998.

[20] The combination of formal and informal institutions is not a product of intellect, rather is it a result of the cultural evolution based on the group selection that picks up the social groups that have accepted certain rules, thanks to which these groups have become adaptable, with a greater chance of survival in a given environment. Such rules equip us with the abilities surpassing possibilities of an individual reason and that is why their application brings about the effects. They go beyond individual's framework and in the end lead to social categorization on higher levels.

of informal framework necessary for securing sustainable growth and creation of a stable social system.[21] Since moral rules and norms tell us what we should, should not, or must not do, what should be avoided or prevented from happening, it is only natural that practical adherence to those rules is not something that would bring us an extra joy. Those norms tame our natural egoism, drives and desires which, if not restricted, can undermine order whose functioning and prosperity we depend upon. **Adherence to certain rules allows for mutual communication, life in peace and without violence, while in the absence of rules, conflicts arise that must be solved through force**.[22, 23]

As mentioned above, informal frameworks are constantly developing under the influence of current formal framework. In the economic system of any country, there are institutional units that should be subject to formal rules. **However, as long as the actual formal framework is, in a certain way, unnatural or inappropriate**[24], **harmful or inappropriate informal systems will evolve.** In such abnormal circumstances, institutional units begin to behave in an abnormal manner. This is so because normal behavior, under which bribes are not offered and laws are obeyed, has not paid off. In an abnormal environment, entrepreneurs begin to lose their feeling that if they stick to the rules and act in line with the laws, they will achieve entrepreneurial objectives, like business growth and development or profit.

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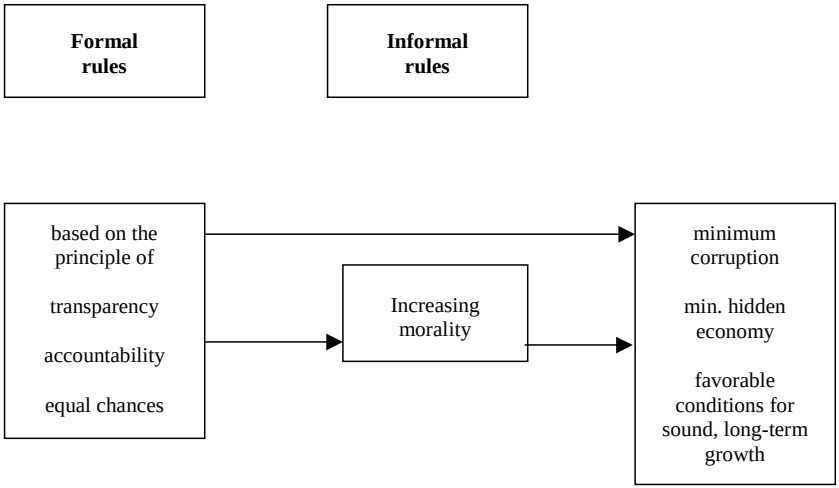
[21] Ekonom No.12, 1999.

[22] In economic relations, these rules establish **trust** in the partner's word and fulfillment of accepted obligations, which in turn makes life easier and less costly. That is why **societies with deteriorated morality must make up to this by an increasing number of detailed formal rules** which beside other things increases transaction costs.

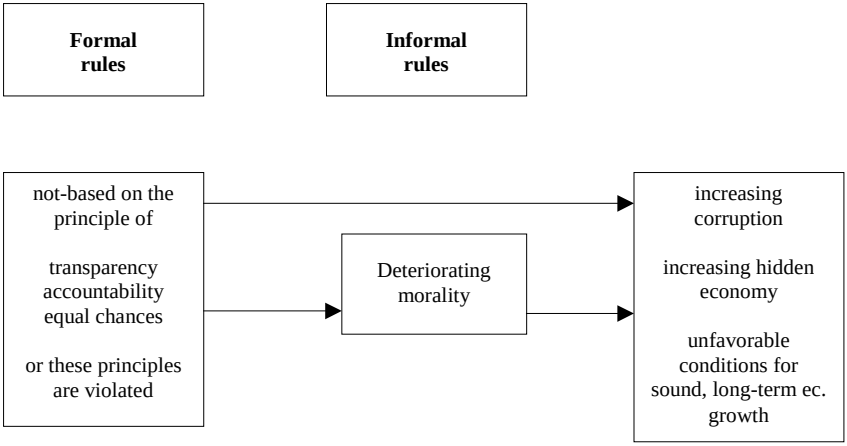
[23] Ekonom No.12, 1999.

[24] For example, if the state or its activities are non-transparent and taxpayers' money are spent inefficiently, entrepreneurs are not sure that if they stick to the set principles and behave in accordance with laws, the same state will protect them and they will be left free to produce, generate values and offer job opportunities.

The following graphics illustrate in a simplified way the relation between formal and informal systems and their impacts on economic growth:



The above relation holds true in reverse:

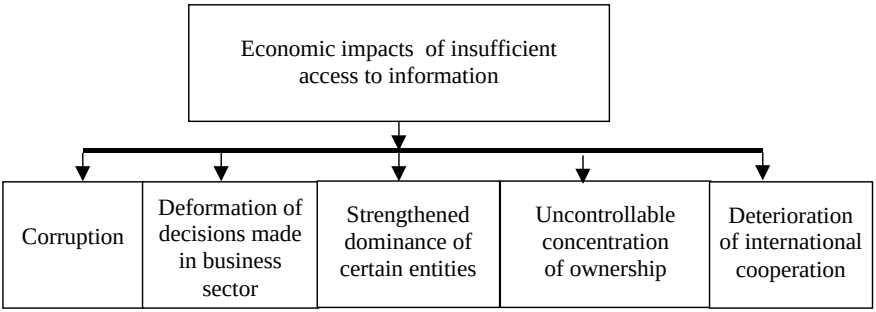


- insufficient access to information linked to educational standards may even cause lower life expectancy - an indicator more and more used amongst basic parameters describing the economic situation of given country.

It is very complicated, if not impossible, to measure corruption rates or levels. In spite of this there has been some empirical research in the Slovak Republic that revealed the situation in this country. A graph published in the 1997 Transition Report prepared by EBRD shows that the extent of corruption, and its low predictability, is worse than in case of the Czech Republic, Poland, Hungary and Slovenia. According to this study, Slovakia is at the same level as the former USSR states, like Estonia, Latvia and Lithuania. Research conducted by the CED revealed that 78% of Slovak businessmen had encountered corruption in state administration. A total of 66% of those having an international entrepreneurial background claimed that there was more corruption in Slovakia than in other countries. According to foreign sources, corruption is encountered most frequently in the following sectors:[25] military supplies, aircraft, ship and telecommunication devices, investment projects, parts of large industrial or agricultural projects (highways, artificial dams and bridges), licenses, consultancy fees, repeated state purchases - crude oil, fertilizers, cement, school textbooks, and medicaments.

- The lack of reliable economic information makes it more difficult for foreign investors to come to Slovakia, which results in less security of the current account balance, harder access to foreign markets, lower inflow of know-how, lowered competitiveness or reduced growth of the whole economy, absence of strong and sound foreign political lobby, etc.

The economic impacts of non-transparency are shown in the scheme below. Particular impacts have, of course, more than one reason (lack of information), but their mutual co-relation is very high.



[25] Moody-Stuart, George : The Costs of Grand Corruption, Economic Reform Today, CIPE, 4/1996.

The solution of any problem requires knowledge of the factors that caused the problem. Non-transparency is caused on one hand by deficiencies in formal (institutional) framework, but on the other, we can identify culture, ways of thinking and traditions as informal elements. The law of today does enable citizens to get access to information: this is often only a theoretical possibility. In real life, vague legal norms mean a minimum public access to information held by public administration, even if that information is not confidential by nature. Laws or regulations can be changed quickly, while it takes dozens of years or even centuries to change informal systems.[26] Thus, it is impossible to complete reforms in a few weeks but it is possible to get started immediately. Experiences from some countries prove that the drive for higher transparency can be successful within a relatively short time horizon (Hong-Kong, Singapore).[27] Taking into account the nature of the problem, a solution can hardly be made possible without a civic initiative supported by politicians and non-government organizations. The public as a whole is not sufficiently organized to defend its rights, especially in a situation where the public administration system traditionally does not provide relevant information. Businessmen manage to form themselves into efficiently-functioning organizations, but here we have to remember that a lack of information is for many of them advantageous, securing them a protection against the less-informed competition.

Based on the above, it is possible to say that solutions leading to increased transparency in Slovakia will have to be linked with both legal framework and creation of a new way of thinking. The first group of measures relates to legal norms allowing for efficient public access to information. It also concerns amendments to procurement legislation, license granting legislation, mandatory information about real owners of privatized property, mandatory foreign trip reports submitted by public officers, revision of a system of mandatory public release of accepted gifts and tax returns filed by public officers, isolation of certain state administration bodies from natural monopolies, etc. The second group of measures

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[26] Speech of Juraj Stern, establishing meeting - Alliance for Transparency and Fight Against Corruption, July 20 1998.

[27] Gray, Cheryl, W., Kaufman, D.: Corruption and Development, Finance and Development, March 1998.

should center around the "fight for public opinion"[28] but it also means getting journalists involved in transparency support activities, advocacy and involvement of businessmen and young people in the fight against corruption and for transparency (preparation of Codes of Conduct for public officers). Within the framework of formal and informal architecture of the Slovak economy, a further liberalization should proceed in order to transfer certain public administration tasks to the commercial sector. In addition, inefficient subsidies should be removed, state purchases reduced and third sector (non-government organizations) further strengthened. Besides eliminating the factors resulting in a low access to information, it is essential that negative consequences be combated through intensive anti-corruption efforts and protection of fair competition.

When trying to increase transparency, we should focus on non-economic advances (deepening democracy, reduction of crime rates) as well as on the impacts on economic parameters (GDP growth, lower unemployment, reduced state budget deficit, relieved pressure on increasing tax burden, higher FDIs, strengthened fair competition principles, efficient use of public finances, etc.). Transparency leads to strengthening the principle of equity, which in turn ensures that wealth distribution in a country is related to the contribution that each and every subject made when creating part of this wealth.

[28] Speech delivered by Zdenko Kováč - establishing meeting - Alliance for Transparency and Fight Against Corruption, July 20 1998.

SYNTHESIS AND CONCLUSIONS

*Julia Szalai**

Focus: democratization of governance in historical and international perspectives

When looking at the attempts over the last decade to re-shape public administration in the post-communist societies of Central and Eastern Europe, the participants of the 1999 Civil Service Forum largely agreed on the two focal questions that they attempted to investigate in their discussions: firstly, how far have the societies in question got in decomposing their institutional and habitual structures that they had inherited from the pre-1989 past of state-socialism; secondly, where do they stand now in comparison to the established democracies of the West. In other words: the subsequent sessions of the Forum adopted two major analytical axes - a historical and an international one. With these two dimensions in mind, issues brought up for discussion were put into a common framework formulated by Mr. Jiri Marek (Czech Republic) in the following way: *"The concept of democratization of public administration is closely linked with the transformation of the understanding of public administration as such – the shift from public administration as a tool of coercion to public administration as a public service to citizens."* There was a general agreement among the participants that, after ten years of continuous reforms of the field in all the respective countries, it is valid to ask a few questions about the success and shortcomings of public administration reforms in arriving at a major shift from 'being a tool of coercion' to 'servicing the citizens'. These questions have to address accessibility, accountability, transparency and the institutional guarantees for them. A thorough revision requires as much an account on the development of the relevant legal regulations, as on the potentials of both the citizens and the state to enforce them.

Conclusions

One of the main lessons of the Forum was to learn that the origins of deep-going changes in the broad field of governance had dated back to the times of late-socialism in all the respective countries of the region. Due to a long period of experimenting with economic reforms and rationalization

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from the early 1980s on, all these societies underwent a certain "learning process" of making management work more rationally and effectively, and letting the various interest-groups express their will (though still under the strict control of the authorities). As a consequence of these earlier experiences, Central and Eastern European societies entered the 1990s with rather elaborated and widely shared ideas about the necessary transformation of public administration in its move towards a democratic order. By this time, the core elements of the new approach to governance had been crystallized and were supported by the consensual political values of openness, accountability and service to the public. In line with the legislative deeds to translate the ideas into practice, new institutions were set up within a surprisingly short time, and a number of new laws limited the "rights" of the central bodies of governance (ministries, police, state-offices, etc.) to intervene from above.

The institutional and legal framework of a new democracy was thus created within a few years in all the "transition countries". However, to fill the framework with meaningful content proved to be a more difficult task. Hence, after a decade of experience, it seemed justifiable to discuss in a critical manner the actual outcome of the reforms that have been undertaken. The first recurring issue of these discussions was a multifaceted evaluation of the achievements of the transformation by analyzing, how far the structural changes in administration have got in really serving the two major tasks of moving from a command-regulated economic order to a market-based one, and from a top-down control over politics to the bottom-up representation of interests. Secondly, it was worth enumerating the various forms that have developed for expressing the needs of the various segments of "the public", and to follow their route to the decision-making bodies and administration. Thirdly, the Forum devoted great attention to the issues: what happens to seriously clashing interests on the level of governance, what are the country-specific mechanisms of conflict-resolution, and how do the various governing actors react to them?

It became clear that regular elections and the multiparty-based parliaments emerging from them have provided the most important safeguard of democratic working in all the societies of the region. Another common element of the transformation of their administration was the foundation of a number of new institutions of governance: the setting up of constitutional courts, the appointment of ombudsmen in charge of certain fundamental rights (human rights, data protection, freedom of information, minority-rights, etc.), the establishment of a structure of elected local self-governments

(with seemingly increased authority in comparison to their predecessors under socialism), the introduction of new institutions to guarantee the rights of national and ethnic minorities all belong here. True, the actual legal solutions defining the authority and mode of operation of these new institutions vary from country to country, but it is still valid to say that their introduction has meant a huge step ahead toward stabilizing the democratic order in all the post-communist countries.

While the creation of new institutional structures has followed rather similar paths in countries of the region (thus, led them back to the widely shared all-European tradition of governance), a closer look to the actual working of these institutions brought to the surface more differences than similarities. These differences have several sources.

First, they emerge from the differing speed of the two interrelated processes of privatization and decentralization. In some of the countries, the central state has still preserved its decisive role within the economy, while in others, its role has been cut back substantially. In accordance with these differences, the turn toward a market-economy and the redefinition of the prevailing property-relations (through one or another form of privatization) has reached varying standards. In a rather close correlation with the advancement of a private economy, the turn of public administration from being 'a tool of coercion' to becoming a means of 'servicing' also has reached differing stages. Where authoritarianism still has preserved its role in regulations, harsh phenomena of bribery and corruption seem to be more disturbing and burning issues than in societies where bureaucratic intervention has largely lost its ground through the advance of a now dominantly private economy.

A second important source of differences in the 'state of affairs' in public administration reforms has been the varying strength of the civil segments in countries of the region. Closely linked to the emergence of a second economy and the role of related social practices inhibiting indirect control over a range of socio-political issues under the communist rule, the post-1989 decade has witnessed important differences in the creation of a new, well-defined civil sphere. In some countries, NGOs and civil associations have taken over many of the tasks in education, welfare and health services, while in some others, it has been still the hierarchical service-management of state-socialism that has dominated the fields in question. In close connection with these differences, communities have had differing opportunities to exhibit control over their local governments. It was an

important conclusion of the discussions to reveal that the decentralization of certain tasks formerly under central control does not lead in itself to a rise in the standard of local services, neither to a better access to them. A second 'ingredient' is also needed: this is the emergence of powerful civil organizations that local governments can regard as much their partners in decision-making, as the organs of control of the communities.

Looking at the above-listed similarities and differences, it could be concluded that, regarding the main features of their political and institutional structures, post-communist Central and Eastern European societies have become genuine parts of an all-European tradition. However, looking at the actual working of the new structures, the societies in question still have to struggle with the inheritance of their communist past. In order to speed up democratic development, incentives for decentralization and, perhaps even more, for the shaping of a powerful civil segment seem to be the most pressing tasks that reforms of the upcoming years have to face.

WORKSHOP II –

Impact of Openness on Administration

Strengthening Government-Citizen Connections:

STRENGTHENING GOVERNMENT – CITIZEN CONNECTIONS: OPEN GOVERNMENT IN OECD COUNTRIES

Daniel Blume *

Introduction

Before going into the substance I thought it would be important point out the relationship between the various aspects of the work the OECD is doing.

The OECD basically works on three aspects of government-citizen relations. The first aspect is 'access to information', and is based on a survey of all the 29 countries of the OECD and their laws and practices for providing information to citizens. Another aspect of it is 'Citizen consultation and Active Participation' in policy making. The third aspect is the 'Impact of information Technologies', which many OECD countries seem particularly interested in, because it is an aspect that is changing so rapidly right now and which has a great impact on these countries. Even though in some governments they are much further along than in some others, they feel that they can learn from each other by the changes that are occurring. Those three items are all related, because they all build into each other. The main objective of these items is to improve policy effectiveness. But also to build public trust in government, so that that effectiveness can be achieved.

What is meant by Open Government?

When I am talking about Open Government, I basically mean, a continuum ranging from information and communication to public consultation to more active citizen participation. Or to look at it another way; representative democracy versus more direct democracy. When I talk about a continuum, I am not suggesting that the most active participation or the most direct democracy is necessarily better. Very often it is a question of finding the right balance of achieving public input, but not drowning in it.

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* OECD/PUMA, Public Management Service, France

In my presentation I am not addressing the aspect of service delivery. That is because I don't want to make the subject too big. I prefer to concentrate on the aspect of information and policymaking processes.

Better Information for the citizen

The work the OECD has done so far is not yet complete. There is a survey in progress. So I cannot report on the final conclusions, but I can give you some early results.

In terms of better information for the citizen we are finding that there is a legal aspect. Citizens have the right to information through: laws on access to government information, laws protecting personal privacy or personal data, and opportunities to lodge complaints or appeal decisions. But the effectiveness of governments beyond the laws depends very much upon the implementation, and the tools that governments are using. The tools are either direct, through governments announcements on television, radio, in speeches, newsletters, on the Internet or dissemination of government documents.

But the major form of communication to the citizen is through less direct means, through the media, non-governmental organisations or political parties, think tanks or stakeholder groups. Governments need to focus on effective use of these tools, and when they do that they need to focus on the quality and not the quantity. It is not necessarily better to have more information, but to have better information.

In ensuring that the quality is good, when integrating the information from different ministries, one should also look carefully at privacy laws. Because when services of public administrations are combined (for example, data from different ministries), to provide better information and service, very often privacy issues arise.

Consultation and active participation

Here I can become a little more concrete and talk about some examples of what different OECD countries are doing. The OECD has been conducting case studies on different countries experiences, and in particular policy sectors.

In Canada they have the Healthcare Policy Forum that they launched about four or five years ago. They brought together a commission of different interests of society and had consultation all over the country through what they called 'study circles'. These study circles invited all

citizens to attend weekend meetings at which they would be informed about the Health policy of the government. These gatherings were held in a period when they were cutting back the health services. It was very important to have input from citizens, because they were losing confidence in the health services. These weekend meetings were held at about three or four dozen locations within a couple of years and ultimately built up to recommendations, many of which were accepted by the government.

The UK People's Panel is a practice in the United Kingdom where they hired a consulting firm to randomly select a representative sample of five thousand citizens. They have been (and still are) continually consulting this group and sub groups over the past year and a half about the modernisation of the United Kingdom government. What they have found in their consultation is that the easy part is getting in contact with the groups (the NGOs etc.). The hard part is getting beyond these groups to the average citizen who may not want to get involved. Through this ongoing consultation on various issues the government has been able to get a better sense of what the average citizen might want.

Denmark has very open consultative traditions. In their health care sector they have experimented with what they call 'consensus conferences'. Consensus conferences are a way to bring together people in the parliament to discuss complex science and technology subjects over a four days period. The experts first present the subject and a cross-section of invited citizens then meet as a sort of jury to discuss the issues. The jury must come to a consensus or a conclusion about how to address the policy issue that they are dealing with. They have found that the difference between this practice and a public opinion poll is that you can ask all kinds of questions about the priority demands of the citizens in reaching the consensus in order to get a richer view of the complexities of citizen views.

The problem in all the three cases mentioned above is that they are expensive to undertake. The practices in Hungary and France are not necessarily more promising, but present a different philosophy: that the more that you can move these services to the local level, the easier it is for the citizen to be involved with them.

In the Hungarian public works programmes they have implemented a series of jobs programmes on the local level. These programmes involve those who were actually hired to do the work with how that work should be done, or involve local councils with how the local policy should be implemented, for instance the gypsy councils. The Hungarians have found

it much harder to deal with such issues at the national level. (This is a problem we have found in all five examples presented here.) In practice, it is much more difficult at the national level to get the balance right between the views of the average citizen and those experts or groups that can benefit from these inputs.

In the French case they have formed a number of committees to be involved in the social housing programme, representing different interests. In that way they have an institutionalised form of ensuring that several interests are represented. The problem is that sometimes after many years this can become a closed system, in the sense that only those groups that are involved know about the committee and that they don't necessarily share information with each other.

So innovation is important, to make changes, to challenge people to get more involved.

Differing Country Contexts

Different countries have very different approaches and different contexts. The same solutions do not apply for all countries. Some countries are more open than others. Nordic countries tend to have a more open tradition. In the European Union there is very often a tension, because for some of the Nordic countries, to comply with the regulations means that they have to be more secret with their information than they otherwise would be. The European laws are more closed than the laws in Denmark for instance.

Not all countries have freedom of information laws, some just have traditions that they follow. The United Kingdom is one example — they do not have a freedom of information law, but they have recently proposed one.

Resources, education and culture also matter. Some countries have more participative and consensus-oriented traditions and active civil societies. There is also a difference between more formal approaches and informal approaches.

Other tools for promoting open government

There are other tools that are used quite frequently, for example the citizen ombudsman. The citizen ombudsman can help to enforce laws. The Nordic countries, Korea, Greece and many others have citizen ombudsmen. In the UK, the proposed freedom of information law would include an "information ombudsman". The Internet is having a growing impact as well.

IT as an information tool

There is a dramatic growth of information available on Web sites. Although the Internet is more commonly used for providing information than for consulting, there is a problem of citizen access in relation to consultation. Most citizens don't have access to the Internet. But fortunately that is changing very fast. In some countries, like Iceland, Finland and some of the Nordic countries 50 percent of the citizens have access to the Internet. So here it can be used as a democratic tool for interaction between citizen and government.

Even with low access it has become a critically important communications tool. The Internet is not necessarily important in terms of providing direct citizen access to information. It is important for the media, to be able to have access to that information and communicate it to citizens. They can use it as a database on politicians' records, or on government actions, so that government can be held accountable for their acts. Because people are able to get that information much more quickly and easily, that allows for a more open discussion and a more open government debate.

Internet and Democratic processes; overall conclusions

In the OECD study on the Internet and its impact on democratic policy making, the overall conclusions were that it had some promising potential for increasing information availability. It seemed to particularly benefit the media and interest groups in getting information, but also mid-level civil servants. The political level had not yet become accustomed to using the Internet, so they were becoming more dependent on the mid-level civil servants to have access to this information. The citizen has been slower to benefit in terms of direct participation, because the access to Internet information is still low. And even though their surroundings are changing, decision-makers tend to stick to traditional means.

Impacts on Policy-making

For the policy makers it has be come more difficult to manage the policy process, because they are operating in a more complex environment. Governments have difficulty making their agenda stick, because information is transmitted so quickly that they have to respond faster to a greater variety of interests.

Factors impacting democratic quantity

This is a quick summary in a way of thinking about democratic quality. The consultant who conducted the study (Roberto Gualtieri of Canada) produced some findings as to the overall impact of the Internet on the policy-making process.

In terms of participation, transparency, accountability, political equality and credibility the impacts were mixed. They could not say that it led to an improvement. The same players were participating, but using the Internet to participate more effectively. So it was not widening involvement. The effect on transparency depended on circumstances. The consultant found that some governments actually used the Internet to bury information. The information was hard to find, because it was so deep into the website. The Internet only improves transparency if you use it well.

Recently the governments are making more efforts in that area. I think this is really important because citizens are relying on it more and more for their information. Where it had the most positive impact was on freedom of expression, freedom of association and for the treatment and role of minorities. Because what the Internet does, it allows different groups to be able to interact much more, and to have an impact. That raises questions for the policy-making process as well, because the more fragmented groups you have with an influence, the harder it is to achieve your goals. But for those groups it had a positive impact.

Obstacles to use of Internet in policy and democratic governance

In the short term, the obstacles to use of Internet in policy process and democratic governance relate to differences of technological standardization, problems with broadband capacity at reasonable prices, a lack of security, and (maybe the biggest problem of all) the ability to analyse or synthesize the information or software. In the longer term these obstacles can probably be overcome. Most difficult to overcome are the political, cultural and behavioral barriers. Partly because the younger generation is more accustomed to use these tools, as the younger generation moves to the political level they also will become more accustomed to using the Internet effectively for involving citizens in the process.

However, the nature of the decision-making process is not very conducive to broad-based participation. Because of the lack of political will to open up and at times insufficient public interest, issues need to be presented in a way that the public feels they can have an influence, or they won't get involved.

Future democratic and policy impacts –

When we look at future democratic and policy impacts there is some reason for optimism. Because the technologically literate are moving into positions of power and the technologies for interactivity, synthesis and feedback are improving. The key factor to this is to find a balance between the time required to engage citizens and the need to make timely decisions.

Actions governments can take to promote the Internet's potential to improve democratic quality

Governments can promote access to and use of the Internet, through policies such as telephone deregulation, and encouragement of competition, to reduce the price of access or bring down the prices of computers. Both citizens and government can benefit from this. The government can ensure the availability of good quality information and promote electronic consultation processes by using input and explaining how it is used.

Final Conclusions

I would say that building open government takes time and must be tackled from many different angles. One way is through building trust, through greater transparency and access to information. The second is through educating citizens to participate, by showing the citizens that they can have an influence and how the influence impacted on government decisions, by communicating what their influence was. There are no easy answers to that. We are finding in the OECD countries that they are struggling with this problem. It is difficult to get the average citizen involved. Finally it is important to find the right balance between direct democracy and more representative democracy in democratic decision-making.

IMPACT OF OPENNESS ON ADMINISTRATION PERSPECTIVE FROM ESTONIA

Ivar Tallo *

Stages of openness regulation

Using Karl Poppers well-known term one could say that Estonia under Soviet occupation was a closed society as other former CEE countries and the USSR herself. With the establishment of free democratic state Estonian society experienced a tremendous confusion in the ways information was handled both in the political and administrative realms. In terms of newly regulating information flows Estonia has passed through three different stages that characterize the way information has been regulated in the democratic political regimes.

The first stage could be characterized as a total freedom of information and it lasted from the reestablishment of independence in 1991 until 1994. During that time the memories of the previous order were so strong that any attempts to hide information were deemed as non-democratic and only very small amounts of information such as official records of those who had been working with KGB were legally secrets. Access to information in general was not regulated and depended on arbitrary decisions of the information holders.

The second stage is characterized by the gradual regulation of information flows which basically meant taking certain categories of information away from public use and creating penalties for illegal use of certain categories of information. It started with the creation of Official Secrets Act in the fall of 1994 that defined first what information was state secret and what information could never be secret. It followed with the Privacy Protection Act and a Law on the Databases. During that period many other laws created had also clauses that regulated information flows, e.g. whether salaries of people in certain position are public knowledge or who could have access to certain databases.

Now we are in the third stage that is characterized by further regulation of information flows but towards new openness. This period can be characterized by a strong public pressure to create Freedom of Information

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Act that has resulted in the draft act being prepared by the working group established by the Minister of Interior and containing officials, experts, politicians and journalists. The reason for the public concern was caused by the clearly observable tendency to limit the freedom of information both legally and with arbitrary decisions since much of a public space was not yet regulated.

Looking at the sequence of events shows us an interesting dynamics of information regulation. After the collapse of totalitarian system, there was an initial disarray in the movement of information. All information was public with very few exceptions that remained closed. This situation caused the need for limiting the information flows. Thus, total openness is not a sustainable state of affairs even in a democratic society. The first need for legislating access had to be and was restrictive - both to defend the very sensitive governmental and private information.

The following steps organizing information management – Law on Databases and before and after, separate legal acts to establish all kinds of databases necessary for the functioning of the state (we had almost none, as well as problems with statistics). This rather demand -driven activity was not coordinated and resulted in a maze of arbitrary decisions and different and often in compatible regulations that created the need to take the next step: to again formally open up government. This last step was clearly a result from a societal pressure led by journalists who were ever more often refused rather than given information.

Regulation of information flows

In order to understand openness regulation, one needs to look into generic question of regulating information flows. Generally there are three types of regulation of information flows and they can be categorized as follows:

1. Protection of government information – Official Secrets Act
2. Protection of information about individual – Privacy Protection
3. Protection of "public" – legislating access

First two are restrictive activities and only the third provides openness. It is also clear that when public offices are run according to the law (and it cannot be otherwise in a democratic society), then the necessity for the openness regulation comes only after the first two stages have been taken. So the developments in Estonia over the last decade after the reestablishment

of independence have corresponded to the developments in the Western hemisphere over a much longer period.

However, these developments have not taken a uniform course. Much depends on the political culture and in particular, the way a given society looks upon its government. In the Scandinavian region governments have traditionally been seen as partners to the society, in the continental Europe governments have been regarded as benefactors and in the Anglo-American tradition governments are more perceived as adversaries. The information flows have been regulated with corresponding philosophy in mind. In Europe governments are given much more rights to collect information because it is seen as necessary for the advancement of common good. In the Anglo-American region the main worry of the legislators has been to limit the power of government and thus, the government agencies as information collectors have much more restrictions in their activities.

When looking at the development in Estonia, one could see an interesting shift in the emphasis of the information regulation. From the Soviet experience the government was initially seen somewhat similarly to the Anglo-American perception and accordingly the regulation in the second stage took the course of building separate databases that were not allowed to communicate with each other. On the other hand, the need to get better data and with the lessening of the totalitarian fears has caused a shift in emphasis – not only has the society to know more, the government has the right and duty to know more as well.

Legislating access to information

Legislating access to information is not a "one shot deal", even if we leave aside the restrictive regulation. The most common association that people have when thinking about openness is the "Freedom of Information Act" but in reality there can be many more lower level regulations that make use of the rapid developments in the information and communication technologies that will be reflected in laws at a much slower speed.

With new government in office in March 1999, the new initiative of openness received a credible political backing. Instead of waiting for the laws to formalize openness the government came out with three initiatives:

1. Openness of the law drafting procedure.

In order to give a civil society a better access to the law-making process the government decided to make draft laws open to the public at a much

earlier stage than before. The regular law drafting procedure started usually within a ministry and after it was finished, the draft law was sent to the other ministries and to some selected NGOs. After that it went back to the ministry and from there to the government who after approving it sent it to the parliament. That used to be the moment when a draft law became public. The new initiative moved this point forward: ministries were to make the draft laws public from the moment they sent them out to other ministries. In order to so, the Internet was utilized and the draft laws were published in given ministry's homepage.

It was argued that in addition to normative satisfaction with openness and the rising legitimacy of the law drafting procedure this way the mistakes can be detected early and there are far less chances for specific interests to remain undetected. The latter was a specific concern for the transition society because the unequal development of civil society has meant that the groups that organize before others have very good chance to get their interests recognized unopposed and that is not good for the general development of the society.

However, as we now know, there are also some considerable minuses that have to be taken into account and that have put a success of this initiative under some doubt. First, opening the law drafting procedure created a general confusion about a given draft law. Governments are always provided with many more initiatives than they actually use. Especially in a coalition government some ideas that come out of one ministry can and will be stopped before they become formal regulations. When these initiatives became public at a earlier stage, they caused in some cases rather loud popular uproar. In other words, because questionable ideas are not weeded out yet, the blame falls on political government that actually has not taken any decision yet. The ideas are not taken as proposals but already as intentions and, as such, damage the legitimacy of the coalition, not only of one particular ministry or minister.

The second rather mundane worry relates to the question of expense. Documents have to go through "language expertise" twice, otherwise too much attention will be paid to simple mistakes and most corrections are just about the language.

And the third problem is the slowing down the process itself at a time of rapid development. Interest group fighting starts along the line of the process before it goes to the government. It is made worse by the fact that there is no real public venue for this exchange except the press, and thus

again, the legitimacy of government goes down and not up because all sides accuse sitting government of intentions of harming them.

2. Openness of proceedings in the parliament

Parliaments are never closed shops because it contradicts to the very logic of setting them up. However, it is not really clear up till now how far an openness of a parliamentary work should go. The Estonian Parliament – Riigikogu – decided that we should be as open as we can and publish not only the documents but the proceedings themselves. First, we have a full TV coverage of the assembly sittings but also, everyone can log on to internet and see the proceedings in a live picture.

Again, this was meant to raise the satisfaction of the people but it has turned out differently. People are asking very simple questions – why are deputies not all listening to the speeches? They get a distorted picture of parliamentary activities. It has not been very helpful also that journalists use the continuous coverage to make the points they want, e.g. someone is not listening because he/she is sitting with her eyes closed.

This latter means also that deputies themselves feel rather uncomfortable in the continuous limelight. On the other hand, it enforces the understanding that work is not as important as witty speeches and that is directing the energy of deputies to the direction of self-exposition rather than that of better scrutiny of the draft laws.

3. The status of treasury accounts in real time

The finance ministry decided that the public purse should be observable at all times and gave access to the government accounts over the Net in real time. The jury is still out about this initiative. The information is too specific for a layman to understand, and financial experts have not learned to benefit from it. So we have to wait and see. Supposedly, it raises confidence of international investors and the public at large but it probably has to be tested in a real crisis, even if its purpose is to avoid these crises.

Public Information Act

The drive to create a Public Information Act started already during a previous government. However, it was seen more by politicians as a means to win popularity rather than a genuine concern. Even the new government has not yet overcome the resistance of civil servants to the law and thus, even when the draft law is prepared, it is not officially approved by the

government and sent to the parliament. By itself the draft law is following the principle that "all public information should be public" and that it is not enough to legislate just access as a principle but rather to create mechanisms that back this constitutional promise in real life. The idea of the law is to demand that the executive power use its resources to create "an active information offering" in their web pages and to include there all document registries that ministries create. Naturally, access to some information is restricted but these restrictions are only for 5 years and for a very limited categories of documents.

Summary

When looking at Estonian developments from far and above, one could say that we have gone through a very long development in a very short period of time. The concern for openness has not been central issue, but rather the general regulation of information flows. We have mixed results in that we have established protection of sensitive information but we have failed by and large to protect privacy of an individual.

The reason for that is the sad fact that we have been concerned with public information and failed to take into account the developments in the private sector. Threats to the individual do not come from the public sector alone but also from private sector. What we have been talking here, is still underpinned by the fear of Leviathan, but modern Leviathan is not necessarily the state but perhaps a multinational gathering personal information. What do we do about that?

CREATING THE SYSTEMIC FOUNDATIONS FOR OPENNESS AND TRANSPARENCY IN PUBLIC ADMINISTRATION

Józef Płoskonka *

As we in Poland talk about openness or transparency in public administration, we mean something more basic than standards of behaviour or even proper administrative procedures. In the present situation, concentrating on such issues would look rather premature. Certainly, ensuring that proper standards of performance of public administration are kept is of utmost importance. Public officials in their everyday dealings decide on matters vital for citizens, their property or enterprises. On the part of the Government, it is a fundamental duty to do its best to ensure that such decisions are made in the proper and lawful manner. Yet, striving for perfect provisions, which would guarantee that the administration conforms to the rules of openness and transparency would be futile, unless such rules are well rooted in its more fundamental characteristics.

We cannot forget that Poland has had only ten years to rebuild her institutions. And one of the basic challenges awaiting all the countries, which had set themselves free from communism, was that of building a modern public administration. The job was twofold: the state lacked proper executive tools to carry out its tasks. What was probably more important, public administration was perceived as alien, being part of "Them" of the communist era. "Them" as opposed to "Us", that is common people. In effect, the most fundamental change to be brought about was to give citizens the right to demand openness and transparency on the part of public administration. On the other hand – to give public administration the reason to be open and transparent. The modern state cannot do without public administration. Therefore, to rebuild democracy, the administration had to be made a tool not only of the state but of the citizen also.

Such are the terms in which we in Central Europe think about reforming the state. We regard enhancing the performance of public offices on an everyday basis and perfecting the structures and organisation as highly desirable goals. Still the underlying idea remains: to reclaim the sovereignty of the citizen over the administration.

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In my opinion, three recent endeavours of the Polish government will prove most important in the process of refurbishing the administration. They are: reviving local governments, ordering the system of tasks and competence within public administration, and creating a civil service. All three are now coming into effect. Their success will mean laying a solid foundation for a good, civilised and – it is hoped – effective public administration.

The reform of 1998 (effective as of January 1st, 1999) has completed the Polish territorial system. In addition to self-governing municipalities, two higher levels of local government have been created:

- That of *powiat* – that is county, and,
- That of *voivodeship* – that is region.

In effect, on all levels of territorial divisions there exist elected public bodies, legally independent and legally responsible for all local or regional public tasks. Thus public administration in a municipality, a county or a voivodeship has become a tool of self-government. In this way, we have built a proper framework for openness and transparency. These principles are not simply demanded of the officials or clerks, they are rather ingrained in the very essence of public administration and the rationale of its existence. The establishment of self-governing counties and voivodeships bonds local governments to local societies and thus constitutes the primal accountability of the local public administration to elected representatives and – in the final instance – to the constituency. Therefore, the direct responsibility of a clerk to 'the centre' has been superseded by the principle of his/her accountability to the citizen.

The second aim of the reform was to order the system of competence within public administration. Three distinctly different segments of public authority have been created. The local segment – of municipal and county level – is mainly responsible for public services. The regional level is responsible for developmental issues of economic, cultural or environmental nature. The central segment was left with strategic, national tasks. At the same time, on every level the so-called general administrative authority has been created, politically responsible for the very result of the activity of state structures. What is more, most specialised services have been subordinated to general administrative authorities. (Until 1998 there were some fifty so-called special administrations subordinated to branch ministries and not to local authorities.)

In such a way, clear rules of allocation of responsibilities have been introduced. For the first time in many decades, a citizen has been given a chance to understand who is responsible for what in the state machinery and why.

The third process, launched only recently, is that of building the Polish civil service. Until now, there were no clear rules concerning the extent of the political sphere in public administration. The problem does not lie only in the sheer extent of the public administration sphere. Various countries have defined it differently. A more dangerous problem results from a lack of clear boundaries. Thus the 'division of spoils' principle could rule in the whole of public administration and every change of cabinet could involve replacements in all positions of power and at various levels.

The newly introduced law clearly sets rules for the separation of political posts from purely administrative ones. Thus, the role of a given person becomes more precise. This development is quite important and informative from a citizen's point of view. Additionally, within the domain defined as the civil service, the law creates "career trails" for those willing to join public administration.

All of these measures indicate that in Poland the main task is to create systemic foundations for openness and transparency. The basic directions of recent reforms, which I have outlined only briefly, are means to this aim.

While preparing and implementing the reform we hoped to build the potential of rational governance. Yet one has to bear in mind that we are not constructing an abstract rational state. The aim was to facilitate rational attainment of goals of the society. Not the least of them is to have a public administration open and transparent in its decision-making process. The citizens' faith in the enhancement of openness and transparency in public administration may well serve as a measure of the success of the reform.

TRANSPARENCY AND FREEDOM OF ACCESS TO PUBLIC DOCUMENTS IN FINLAND

Anna-Riitta Wallin, Yrjö Venna***

1. Dimensions of transparency

Three main dimensions of transparency are necessary for a liberal-democratic political system (Mather 1997):

(1) Public access to information must be granted not only in theory but also in practical terms. This requires that not only the documents should be accessible to the public, but also the decision-making process should be easy to follow, and that the decisions are phrased in terms which are understandable.

(2) The thinking and influences behind the published documents and decisions should be publicly accessible. People should know *why* and *how* decisions have been made so that those who have made them can be held accountable, if only as a last resort.

(3) Transparency and access to information should empower people in general, and interested parties in particular, to contribute to the decision-making process. People need information to know how to act effectively in the political process.

These basic dimensions have been borne in mind when analysing and developing the openness and transparency arrangements in various countries. The first dimension is covered by the legislation on the public access to documents and secrecy laws. The second dimension is affected by the administrative procedures act and the internal codes of conduct in administration. The third dimension is more a function of the previous dimensions, but also a feature of the administrative practice to involve the various interest groups into the policy-making process.

2. Reform of legislation on access to information in Finland

Finland was part of Sweden when the first Act on the Freedom of Publishing and the Right of Access to Official Documents was enacted in 1776. Ever since then, the principle of free access to information has

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prevailed in Finland. The right of access to information in official documents is a basic right protected by the Constitution. *The basic principle is that everyone has access to documents in the public domain*, unless access to them has, for unavoidable reasons, been specifically restricted by an Act.

For almost 50 years, access to official documents was regulated by the Act on the Publicity of Official Documents of 1951. It eventually became necessary to reform the legislation, partly due to the societal and technical developments of recent years. In this period, public functions were privatised, or private bodies were commissioned to carry our public tasks. Information technology changed the ways of storing, retrieving and transmitting information. There were also needs to codify the principles and regulations of about 120 secrecy provisions into one act to give better overall picture of what is secret and what is not.

The goal of the reform was to increase the openness in government activities, and to improve the citizens' possibilities to participate in the public debate and to influence and control the management of common issues.

3. Basic principles of the Act on the Openness of Government Activities of 1999

1. The scope of the openness principle is extended:

In addition to administrative authorities and courts, the Act applies also to State and municipal enterprises and private-law organisations and private individuals performing functions involving the exercise of public authority or performing a function commissioned by an authority. The new Act applies to documents irrespective of their manner of storage (paper or electronic documents).

2. Increased openness of preparation and preparatory documents:

According to the old law the preparatory documents did not belong to the public domain. Access to internal accounts and preparatory documents of an authority required the permission of the authority in question. The new Act changed this main rule: With the exception of documents to be kept secret, all preparatory documents relating to decision-making will enter the public domain when the decision has been made, at the latest.

Certain documents will become public earlier than under the previous legislation. Various studies, statistics and comparable accounts relating to the preparation of a decision will normally enter the public domain as soon

as they are fit for their purpose. An innovation is also that the authorities have a responsibility to have available information on legislation under drafting and on other projects under preparation. This will facilitate the monitoring of matters that are in a preparatory phase.

3. Promotion of access to information, customer service:

The Act obliges the authorities to inform the public of their activities. To this end they need to publish guidelines, statistics and other information about their activities and the rights and obligations of the citizens and collective bodies in their field of administration. The municipal authorities had this obligation for a long time already, and now it was extended to all public bodies.

The authorities have to ensure that documents are easily available. Indexes have to be maintained of documents in the public domain. New data systems must be designed in such a way that easy access can be granted to their public parts without disclosing secret information. Persons requesting the information have to be assisted in locating the information they want, and all clients must be treated on an equal basis. The Act sets also some performance standards for customer service: Access to documents should be granted as soon as possible, and in any event within one month (from the beginning of 2003, within two weeks) from the arrival of the request. If the request involves considerable amount of work, the time of delivery may be extended.

4. Limitations on access to documents

The Act codifies the principles and special cases where the freedom of information can be limited, previously embedded in 120 legal provisions. The general principle is that a document can be declared confidential if this Act or another legal provision so determine. Hence, openness is the general rule, and secrecy must be provided by law. The Act lists the subject matters in respect of which access to official document may be limited, as follows:

- Relations with a foreign state and an international organisation;
- Criminal investigations and registries that are important for prevention of crime;
- Plans and technical methods of police, customs, border guard and prison administration that are important for investigation and prevention of crime;

- Security arrangements of persons, buildings and data and communication systems, preparation for crises and civil protection;
- Internal and external security of the State, military defence;
- Preparation of financial, monetary and currency policy of the State;
- Protection of endangered species of animals and plants;
- Basic data on individuals given voluntarily for statistical purposes;
- Inspection, control and other supervisory activities of an authority;
- Commercial and professional secrets;
- Personal integrity, such as social and family conditions, physical and mental health, criminal records, psychological tests, and political opinions.

It can be noted that the release of confidential information is related to the estimated harm the release may cause to the protected interests. The authority may also release the information if the party who's interests are protected gives a permission for that. In order to promote the freedom of scientific research the Act gives discretion to the authority to allow access to confidential information for research purposes, provided the use of information does not violate the protected interests.

5. Entry into force

The new Act will enter into force on 1 December 1999. At the same time the provisions regarding the access to information and secrecy of 73 other acts will be amended in line with the new Act.

THE EU EXPERIENCE: TAKING THE EU CLOSER TO THE CITIZENS

Mary E. Preston *

First and foremost, it has to be said that taking the EU closer to the citizens is a considerable challenge and one where progress is still needed. The relationship between the EU institutions and the citizens they are there to serve cannot always be called easy.

To put the whole question into context, I should like to start by tracing the notion of citizens and citizenship in the EU and the various measures taken in recent years to try and bring the institutions and citizens closer together. I shall then try and explain where the difficulties seem to lie and the efforts we are making to overcome them.

Development of the Notion of EU Citizenship

The relationship between the European Institutions and citizens has of course changed considerably over the years. The European Union has gradually been conferring new rights which can be upheld by national courts and by the European Court of Justice. For instance "citizens" as such do not even get a mention in the 1957 Treaty setting up the European Economic Community. This talks merely of "closer relations between the States belonging to the EEC "and "freedom of workers". In fact it was not until 1992 that citizenship of the European Union was given formal recognition.

The Maastricht Treaty

The Maastricht Treaty signed in February 1992 established the notion of citizenship of the Union and gave these citizens a number of rights such as:

- freedom of movement and residence throughout the Union;
- the right to vote and stand as a candidate at municipal elections and in elections to the European Parliament in the Member State of residence;
- protection by the diplomatic and consular authorities of any Member State in countries where the ones own State is not represented;
- the right to petition the European Parliament and apply to the Ombudsman.

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Unfortunately it soon became apparent that not all EU citizens were particularly impressed by these new rights conferred on them. Following the signing of the Maastricht Treaty, a number of Member States organised referenda on ratification. Although in some countries this went quite smoothly, in Denmark the electorate voted against ratification. The result of the referendum in France was perhaps even more of a surprise. The electorate voted in favour of ratification but by a small majority. These results caused alarm bells to ring in European. Up to then, it was more or less taken for granted that the European electorate broadly supported the idea of Europe.

The referenda on ratification had indeed revealed a serious problem. Both the governments of the Member States and the European Institutions realized that something had to be done to improve the public's perception of the European Union. So at the end of the Birmingham Summit in October 1992, the Heads of State and of Government stated in their Declaration that "We must demonstrate to our Citizens the benefits of the Community and the Maastricht Treaty; make the Community more open, to ensure a better informed public debate on its activities, respect the history, culture and traditions of individual nations, with a clearer understanding of what member States should do and what needs to be done by the Community".

Initiatives taken by the EU institutions from 1992 onwards

October 1992 and the following months saw the start of a large number of initiatives on the part of the Commission, the Council and the Parliament to try and bring the citizen closer to the institutions. These initiatives included:

- greater emphasis on taking decisions at a level closer to the citizen (subsidiarity);
- the introduction of a Code of Conduct on access to documents giving citizens the right to apply for unpublished documents from the EU institutions;
- the setting-up of the EU's Internet server EUROPA to provide a wide range of information on the EU institutions;
- the codification and simplification of EU legislation to make it easier to understand;
- the EUROPE DIRECT service allowing citizens to ask questions on Europe by letter, e-mail or by telephone using free lines;

- a new approach to relations with special interest groups or lobbies;
- the organisation of "open days" and visits for groups to the institutions;
- the development of a network of information relays designed to bring information on Europe more directly to the citizen;
- various large-scale information initiatives such as "Citizens First" to inform citizens of their rights or about the EURO.

These initiatives have been gradually implemented and extended over the years.

The Amsterdam Treaty

In 1998 the Amsterdam Treaty made the ringing statement that it "marks a new stage in the process of creating an ever closer union among the peoples of Europe, in which decisions are taken as openly as possible and as closely as possible to the citizen".

The Treaty of Amsterdam gave citizens some new rights but more importantly it included measures aimed at diminishing the much-discussed "democratic deficit" of the EU institutions. The "democratic deficit" is a concept invoked principally in the argument that the European Union suffers from a lack of democracy and is remote from the ordinary citizen because its method of operating is so complex. According to this view the lack of democracy comes from the fact that the Community institutional set-up is dominated by the Council, an institution combining legislative and government powers and the Commission, an institution that lacks democratic legitimacy although its members are appointed by the Member States and are subject to a vote of approval by the European Parliament and are collectively accountable to Parliament. New measures in the Treaty of Amsterdam such as the extension of the powers of the European Parliament and provision for a regular supply of information to national parliaments are intended to help bring citizens closer to the institutions.

So did the citizens of Europe approve of the Amsterdam Treaty? This time the referenda went more smoothly. However, the effect was somewhat negated by the massive media coverage of the various problems in the Commission at the beginning of this year. Whether this was the direct cause of the low turnout at the European elections last June is still being argued about.

This low turnout has of course occasioned considerable heart-searching and recognition of the need to renew attempts to take the EU closer to the citizens.

What are the Obstacles to a Closer Relationship Between the EU and Its Citizens?

Lack of direct contact

There are a number of obvious difficulties in trying to take the EU closer to its citizens. Firstly, there is the question of remoteness or a lack of direct contact between citizens and the EU institutions. The average citizen in a Member State is unlikely to have any direct contact with the administrative branch of the EU institutions, the Commission. Whereas citizens do of course have considerable contact with their national authorities and their local authorities. They use the services provided at national and local level such as schools, hospitals, transport systems, they pay taxes and they receive pensions and allowances, they have to apply for all kinds of licences and authorisations and of course they may well serve their country in the armed forces or the police. None of these links exist with the European institutions.

One might however expect citizens to feel closer to the European Parliament. After all, the Parliament is directly elected, it represents the citizens. However, in the last elections, few electors seemed very interested even in voting for it. Turnout rates ranged from 24% in the United Kingdom to 90% in Belgium where voting is compulsory.

This reluctance to vote seems to be part of a general trend. The last decade has seen a general disenchantment with the democratic process. Voting levels are falling not only for European elections but also for national elections. A survey carried in the United Kingdom has shown that the younger generations are not interested in politics and have little faith in politicians to bring about the changes they see as necessary.

Lack of a basic understanding of how the institutions work

The way the institutions of the EU work is complicated. The system is a multi-level decision-making process entirely different from the political system in any of the Member States. In most cases citizens have not learned at school how the system works so how do we expect them to acquire this knowledge? The information is of course widely available in brochures, books and on the institutions' Internet server. However, many surveys have shown that the vast majority of EU citizens get their information from newspapers and television.

Generally speaking the media does not see its mission as that of explaining how the institutions work. When news of the EU institutions is given in the press or television, it often tends to be the more sensational news, disagreements and allegations of scandal. Even when the coverage is more balanced, the public often lacks the basic understanding of how the system works and the actual powers of the EU institutions to make sense of the information it receives. But then the EU system is not easy to explain. As one Finnish campaign helper said to me after the European elections "Try explaining the concept of "subsidiarity" to a potential voter in the middle of a busy street".

This lack of understanding of how the different institutions work and what their powers are inevitably contributes to a lack of confidence in the EU institutions. It is human nature to distrust something you do not understand.

Henry Kissinger is once said to have asked "If I want to speak to Europe who do I call"? For citizens too the lack of a single political leader to act as a figurehead is somewhat confusing. In the Member States even a citizen with absolutely no interest in politics nearly always knows at least the name of the Prime Minister. But how many people know who Mr Prodi is or Mrs Fontaine or the names of the leaders of the political parties in the European Parliament, let alone what they do. How often do we see them on television?

How do we Overcome these Obstacles?

So is this challenge of taking the EU to the citizens an impossible one? I do not think so. But we need to be realistic about what we are aiming at. It is no use pretending that the average citizen has a particularly detailed knowledge of the constitution of his own national state nor that he necessarily follows the day to day events in his national Parliament with tremendous interest. However, he does usually have a basic understanding of the political system and enough background to follow the main lines of what is going on. As for relations between citizens and the Commission - do you know any country where you hear people praising the hard work and efficiency of civil servants?

So what we should be aiming at is to demystify the workings of the EU institutions at least enough to enable all citizens, even those who are basically not very interested to have a basic understanding and a general acceptance of EU institutions. At the same time we need to provide more user-friendly and accessible information for those who are interested.

Demystification

This means not only supplying information but also supplying it in an appropriate manner. The EUROPA Internet server provides vast amounts of information but this is not always as well structured and as easily comprehensible as it might be. The new President of the Commission, Mr Prodi is very aware of the need for more explanation for the public. He has banished the use of numbers to describe the different departments and has insisted on clearly understandable names instead. So instead of DG 6 we now have "Agriculture" and instead of DG 8 "Development". A small step but one very much in the right direction.

Using intermediaries

The EU institutions use a variety of intermediaries as information relays to bridge the gap between them and citizens. Already a vast number of organisations such as university and public libraries and information centres of all kinds belong to a network providing information on Europe. Its not always necessary to contact Brussels to get the information you need.

The European Parliament is already making great efforts to inform national parliaments and invites national members of parliament to special hearings on important subjects.

Both Parliament and Commission also work closely with civil society organisations. Not only are these expanding rapidly, they are also banding together in European groupings and organising themselves at European level. This reflects the fact that many issues of direct concern to citizens are now dealt with at European level. The various non-governmental organisations have a vital role in bringing the interests of specific groups of the population (the disadvantaged, migrants, the handicapped) or the views of those with specific concerns (the environment, human rights) to the attention of the EU institutions.

However, the main intermediary between the institutions and the public are the media. The Commission is adopting a more professional approach to its relations with the media and time will tell whether this will provide a breakthrough in attempts to take the EU closer to citizens.

Greater openness and transparency enable greater accountability

The events of the last few months have emphasised the need for the EU institutions to be more accountable to citizens. In other words citizens and their representatives have a right to control and monitor how the institutions

work. For this to be possible there has to be even greater openness and easier access to the unpublished documents of the institutions. In fact a system of access to documents has been in place for five years already in the form of a voluntary code. The Amsterdam Treaty has now given citizens a formal right of access to documents of the Parliament, the Council and the Commission and the new legislation is under preparation.

Accountability

The institutions are monitored and controlled in many ways. The Court of Auditors checks on how the money is spent, the new OLAF organisation is there to combat fraud and the Members of the European Parliament are constantly asking questions. Citizens can and do petition the institutions and are entitled to complain about case of maladministration to the European Ombudsman.

Improving the service for citizens

The European Ombudsman has also been pushing the EU institutions hard to improve their service to the public. He has asked all the institutions and agencies to produce a legally binding Code of Good Administrative Behaviour covering relations between the institutions and the public. The Commission's Code currently under preparation covers the basic principles civil servants must follow in their relation with the public as well as specific rules on deadlines for answering correspondence.

More feedback

The EUROPE DIRECT service answers a vast variety of questions from the public on an enormous range of subjects. These questions of course provide useful feedback to the Commission on the areas of particular interest to citizens and show where further information is needed. Useful feedback on how the single market is working is provided by the problems reported to the "Citizens First" department by EU citizens who have hit problems in trying to use their rights to study, live or work in another EU country.

Looking to the Future

More measures are in the pipeline aimed at taking the EU closer to the citizen. The EU institutions are currently looking at new ways to include organised civil society in the EU policy-forming and decision-making process. The Economic and Social Committee has recently produced an

opinion on "The role and contribution of civil society organisations in the building of Europe". The Commission is also preparing a Communication on ways of improving relations with the non-governmental organisations. The Millennium Declaration and the Charter of Fundamental Rights are also seen as means of renewing contact between Europe and its citizens.

In a recent speech to the First Convention of civil society organised at European level, the former President of the European Commission, Mr Jacques Delors described what he saw as the golden rule for improving the way the European Union works. He spoke of the need to listen, listen, listen to what society is saying, translate that into action and once that has been done explain, explain, explain.

Conclusion

So to conclude, how well do we think that the EU institutions are meeting the challenge of taking the EU closer to the citizens? I would say that if the EU institutions were pupils at school and I was a teacher having to write their school reports, I should be inclined to put "have made significant progress but must still try harder".

EXPERIENCE WITH CITIZEN'S CHARTERS IN THE UK

*Geoffrey Sadler**

Although the title focuses on the Citizen's Charter, this programme needs to be set in the context of wider policies intended to improve the quality of government. The current UK Administration's Modernising Government agenda is a logical development of earlier policies with other objectives for improving government.

Citizen's Charter

The Citizen's Charter was conceived by and developed for John Major in 1991, when he was British Prime Minister. It was intended to be 10-year programme to raise the standard of public services and make them more responsive to users. From this high-level objective, three main ideas developed: charters, league tables and the Charter Mark Award Scheme.

There are currently about 40 main charters covering all the key public services. Each charter set out the standards of service that users of the service can expect to receive. The charters are owned and published by the appropriate government department, although they discuss them in advance with the Cabinet Office. In addition, there are more than 10,000 local charters produced by local service providers (eg doctors practices, police forces, fire services etc) explaining their service commitments. Both main and local charters should be displayed prominently for the users of the service to see and read.

League tables were most prominently introduced for schools, based originally on their examination results. The concept has, though, spread more widely. League tables such as those for schools are a Government requirement, whereas others have been adopted by different organisations for there own use, for example inspection and auditing. However, there are mixed views on the value of league tables, as the basis of compilation is often considered too simplistic.

The Charter Mark Award Scheme was introduced in 1992. It recognises and encourages excellence in public services and makes them more responsive to users needs. It is run by the Cabinet Office and is open to all public sector organisations that deal with the public. It is going from

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strength to strength and 1999 had a record number of winners. Currently it is free, with the cost borne by the Government. However, the continuing increase in applications means the cost of running the scheme is also increasing and proposals are being considered to start recovering some of the costs from applicants.

The overall Citizen's Charter programme has raised awareness by users of their rights when using public services. It has also started a culture change by service providers. However, there have also been some difficulties:

- Lack of ownership by public servants;
- Lack of awareness by the general public of what charters can do for them;
- Poor quality of charters;
- Insufficient monitoring and evaluation; and
- Lack of co-ordination between service providers.

In 1997 the new Labour Government in the UK reviewed the Citizen's Charter programme and agreed to re-launch it as part of its wider initiative to modernise and improve government. The new programme focuses more on the needs and wishes of those who both use and deliver public services.

Modernising Government White Paper

The UK Government published a White Paper, Modernising Government, in March 1999, which included five key commitments:

- **Policy making**: we will be forward looking in developing policies to deliver outcomes that matter, not simply reacting to short-term pressures;
- **Responsive public services**: we will deliver public services to meet the needs of citizens, not the convenience of service providers;
- **Quality public services**: we will deliver efficient, high-quality public services and will not tolerate mediocrity;
- **Information age government**: we will use technology to meet the needs of citizens and business, not trail behind technological developments;
- **Public service**: we will value public service, not denigrate it.

As part of the commitment on 'Responsive public services', future work will include looking at:

- Identifying the problems;

- Listening to people's concerns;
- Tackling obstacles to joined-up working, through local partnerships, one-stop shops and other means;
- Involving and meeting the needs of different groups in society.

The commitment on 'Quality public services' includes:

- Rolling programmes of five-yearly reviews of all aspects of government, particularly service delivery;
- Setting new targets;
- Getting the right balance in monitoring performance – matching the monitoring effort to the risk and the size of problem;
- Encouraging greater use of quality schemes: mainly Charter Mark, EFQM Excellence Model, Investors in People and ISO 9000.

To monitor progress on achievements, a Modernising Government Action Plan has been published giving details of all the projects in hand, including milestones and the names of the officials responsible for them. It is available on the Cabinet Office website (www.cabinet-office.gov.uk/moderngov/1999/action/index.htm).

One of these actions covers the Quality Schemes Task Force, which the Government had already set up in January 1999. Its terms of reference were:

- To explore the inter-relationship between quality schemes operating in the public sector;
- To examine the scope for improved guidance to services;
- To identify and promote best practice; and
- To consider the possibilities for closer working together with a view to enhancing the impact of the different schemes, and as a contribution to improving the quality of services.

The Task Force reported to the Minster at the end of last year with a 10-point plan of work needed to further the use of quality schemes in the public sector. The Minister will launch the first product, a guide on how the schemes fit with the new local government policy of Best Value, on 17 February 2000.

UNITED NATIONS DIVISION FOR PUBLIC ECONOMICS AND PUBLIC ADMINISTRATION

Some recent developments

Demetrios Argyriades *

In April 1996, the United Nations General Assembly, at its resumed 50th Session, adopted resolution 50/225 on Public Administration and Development. The resolution confirmed the vital importance of strengthening public administration for development and emphasized the need for cooperation among United Nations departments and agencies in supporting capacity-building in the broad areas of governance, public administration and finance. Specifically, the resolution confirmed the need for public administration systems to be "sound and efficient" and acknowledged that the role of the United Nations Programme in public administration is to assist Governments, at their request, and to focus *inter alia* on strengthening government capacity for policy development, administrative restructuring, civil service reform, human resources development and public administration training."

In para. 9 of the above resolution, moreover, the General Assembly invited "Governments to strengthen their public administrative and financial management capacities through public-sector reforms, with emphasis on enhanced efficiency and productivity, accountability and responsiveness" and "to encourage, where appropriate, decentralization of public institutions and services."

In 1997 and 1998, the subsequent Meetings of Experts on the United Nations Programme in Public Administration and Finance accorded great importance to decentralization which, in the Experts' view, "must go *in tandem* with new approaches exemplifying adaptability, participation, flexibility and responsiveness"

(Report E/1998/77/p.2). Significantly, however, both Meetings, in their Reports, warned against the pitfalls of hastily conceived and poorly implemented decentralization programmes, which not only had failed to achieve the hoped-for results, but "sometimes had been known to favour corrupt practices... and the power of local elites."

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* Management Consultant to the United Nations, U.S.A

Decentralization was part of the debate at the United Nations Conference on *"Public Service in Transition: Enhancing its Role, Professionalism, Ethical Values and Standards"* (Thessaloniki, November 1997). This regional high-level Conference, in which, as in that other Conference in Yerevan, Armenia, EIPA played an active part, recognized decentralization as one of the critical facets of the transition process and one of the conditions for successful integration into the broader community of nations. The Conference concluded that enhancing ethics and professionalism in the public service should not be limited to central government establishments, but equally extended to the staff of local authorities, and other public authorities, or even organizations discharging responsibilities on behalf of public authorities. The new configuration of State has multiplied the forms, loci and levels which the governance functions may take, or where they may be performed.

The new configuration of State and public service, explored in the discussions of the XIII and XIV Meetings of Experts on the United Nations Programme in Public Administration and Finance will loom large on the agenda of the next Meeting of Experts, which will be convened from 8 - 12 May 2000. The changing architecture of the State, the emerging multi-level structures and processes of administration, the shifting scope, domains and duties of the public service will be in the epicentre of the debate. New items have been added, reflecting the new tasks of the Division, as well as global concerns. Thus, the evolving responsibilities of the State in economic and social policies will be featured on the agenda, as well as the issue of public service indicators, already touched upon during the XIV Meeting of Experts.

The XV Meeting of Experts will focus on overarching issues, problems, challenges and trends, which will confront the Governments of the 21st century and will need to be addressed. In preparing for this Meeting, the Division has decided to cast its net as wide as possible, seeking advice from experts—practitioners and scholars—from all parts of the world. We wish to avoid the pitfall of an exclusive reliance on one or two dominant schools of thought and the concomitant error of projecting to the world the ideology and experience of a limited group of countries.

For this reason, the Division has requested inputs from a diversity of sources around the world. It will then be our task to attempt and overall synthesis of information, views and recommendations, which have thus been received and can be presented to the Group as background documentation to serve as point of departure for the XV Meeting of Experts.

With the help of the Experts and other high-level contributors to this process, the Division hopes to come up with a document consolidating the most important findings, conclusions and recommendations, with messages to Member States as they enter the 21st century.

For now, one thing is certain: that the process of consultation, cooperation, concertation, and consensus-building, which the United Nations was established to promote in the political, social and economic spheres, will be intensified during the coming decade, and must be organized and structured for greater effectiveness. This is another challenge for our Division and the UN Secretariat, as a whole. For this purpose, our Division has recently created and Online Network on Public Administration and Finance (UNPAN).

UNPAN has been established as a direct response to provisions in resolution 50/225 of the General Assembly and the recommendations of successive Meetings of Experts on the United Nations Programme in Public Administration and Finance. The Thirteenth Meeting of Experts called for an early establishment of an information clearinghouse of the United Nations Programme "to serve as an information interchange that would facilitate the dissemination of expertise, research, cutting-edge issues, and ideas in the field of public administration, and finance to and among the Member States." (Report, E/1997/86, para. 71)

From the beginning, the concept of UNPAN was based on the creation of a central hub and a global network of regional, sub-regional and national institutions working closely together. The concept of the clearinghouse was first tentatively presented by the UN Division for Public Economics and Public Administration at the Regional Conference on Public Service in Transition, which was jointly organized by the United Nations and the UNDP, and hosted by the Greek Government in Thessaloniki.

Addressing the participants of this Regional Conference, the Prime Minister of Greece Mr. Costas Simitis, offered to further this process by hosting a facility in Thessaloniki, which would be part of the global network, but focus on the needs and concerns of the region. Subsequently, the Greek Government proposed the establishment of a Trust Fund to finance the creation and maintenance of this regional facility, as an integral part of the UN-sponsored global network.

Detailed plans for the Trust Fund have now been finalized and are ready to signature. Concurrently, the arrangements for UNPAN were

developed and will soon be discussed at an inaugural meeting, which is scheduled to take place on Monday 15 to Wednesday 17 November 1999. The Division for Public Economics and Public Administration has suggested and requested that the Meeting might take place in Thessaloniki, the city where the plan for such a global network was mooted and explored. The Division will take this opportunity to formally inaugurate the Thessaloniki facility, although it is understood that it may not be fully operational by this November date.

TRAINING PROGRAMME FOR ESTONIAN PUBLIC INFORMATION OFFICERS

*Yrjö Venna**

1. Background

In the course of the Phare-funded Public Administration Reform Project in Estonia in 1996 - 97, a survey was conducted on the citizens' and civil servants' assessments on the functioning of the Estonian public administration. During the interviews both the potential advantages and the present disadvantages of the public administration became apparent. The most general opinion was that as a whole, the public administration works and is able to guarantee the functioning of the society. However, some concerns were expressed that the public administration is lagging behind the needs of the society and that it tends to alienate from the citizens and their needs.

While some of the concerns are related to the fact that the concept of state and the role of the public administration in the society is still somewhat vague, particularly in the dominant neo-liberalist value climate, the fact is also, that the public administration institutions have not done much to inform the public about their structures and functions. A partial and indirect picture of the state is given to the citizens via mass media. The interviewees claimed that *there is no conscious clarification of purposes, tasks and development strategies; there is no information aimed at public at large; the information provided is non-systematic and irregular*. As it comes to new legislation, there is no purposeful introduction and explanation of legislation to citizens.

According to the civil servants, the image of the administrative agencies is not as good as it should be. They thought that the image was unjustifiably low in the social opinion and that it was related to the constant attacks against one or another ministry by the mass media. On the other hand it was found that *the state has done nothing to improve the image of state agencies; citizens are just not aware of what the ministries are doing and how necessary and important their work is.*

* Head of Unit Central and Eastern Europe, EIPA, The Netherlands

2. Public Information/Press Officers:

The Estonian government is well aware of the shortcomings of the information between citizens and administration. In order to remedy the situation, the government has provided funds for recruitment of Public Information Officers (or PR/Press Officers) in ministries and agencies. This process started in 1995-96, and presently there are about 40 persons working in this function in the central administration. The public information policy is supposed to be co-ordinated by the Government Press Office of the State Chancellery, but due to the heavy daily work-load, the Press Office has no resources to be devoted to co-ordination and guidance. However, the Office has organised informal meetings for the ministerial press officers and keeps regular contact with them.

In practice, the Public Information Officers are working alone in their ministries and agencies. There are no clear guidelines, and the actual content of work is determined by the personal relations between the management and the Information Unit. The function of this new unit is not always supported by the rest of the organisation. There are difficulties in organising the internal flow of information in ministries in a way that would make work of the information unit easier. This all has caused stress, ambiguous expectations and frustrations in the daily life, resulting in high turnover among the officers.

The educational and professional background of the persons performing the function vary. Some have studied Estonian language and literature, some social sciences or psychology, few have worked as journalists prior to joining the government. *The Estonian Institute of Public Administration* has organised short 1-2 day seminars on aspects of societal information for the target group in co-operation with the Tartu University. As a part of a bilateral assistance programme between Estonia and Germany, a group of 15 Public Information Officers made a 5-day study visit to Bonn in 1997 in order to study the organisation and work of the information function of the German federal administration. However, a systematic training programme is still missing.

3. Systematic Training Programme

On the request of the Estonian authorities, *the European Institute of Public Administration*, in co-operation with *the European Journalism Centre* and the *Estonian Institute of Public Administration*, designed a systematic training programme for the Public Information Officers. The implementation

of the programme was made possible by the funds granted by *the Dutch Ministry of Foreign Affairs* under the MATRA-programme.

3.1 Objectives

The long-term objective is that the Estonian general public and the specific target groups of the activities of the administrative unit concerned, are better informed about the aims and general policies of administration that affect their life. The clients of the respective units are also better aware about their rights and responsibilities and are better equipped to participate in the policy-making process.

A long-term objective is also that the image of the Estonian public administration will become more positive in the eyes of the public, not due to impressive PR campaigns, but due to honest, reliable and timely information they get from administration.

The short-term objectives of the programme are as follows:

- to provide 16 Public Information Officers with concepts and practical skills to develop their professional role in an organisation and to equip them with planning instruments that will enable them to control the work-flow and target effectively the scarce resources, and
- to draft and design policy guidelines, strategy plans, media mix plans and information budgets for their respective organisation.

The emphasis will be to acquire practical skills that can help to cope with the work-load in the information unit.

The objectives fall well into the general objectives of the Dutch MATRA programme, to support the societal transformation into a pluralistic and democratic society. One of the key elements of a democratic society is access to correct information and transparency of administration. Well informed citizens can better look after their interests, form opinions and control administration against misuse of office. The Public Information Officers play a positive role in this process.

3.2 Programme Outline

The programme will concentrate in development of the work-role and the work-related skills. As the whole programme aims at practical skills and drafting of immediately useable products, the training programme is a combination of seminar- and workshop-type activities. The outcome of the

programme is thus not only better understanding of the work, but also a number of drafted documents that can be used by the information units.

The participants make home assignments between the formal modules. They apply in these assignments the concepts and models given during the formal sessions to their own work. The results are assessed by an Estonian expert who gives feed-back to the participants.

The structure of the training programme is presented in Annex.

3.3 Participants

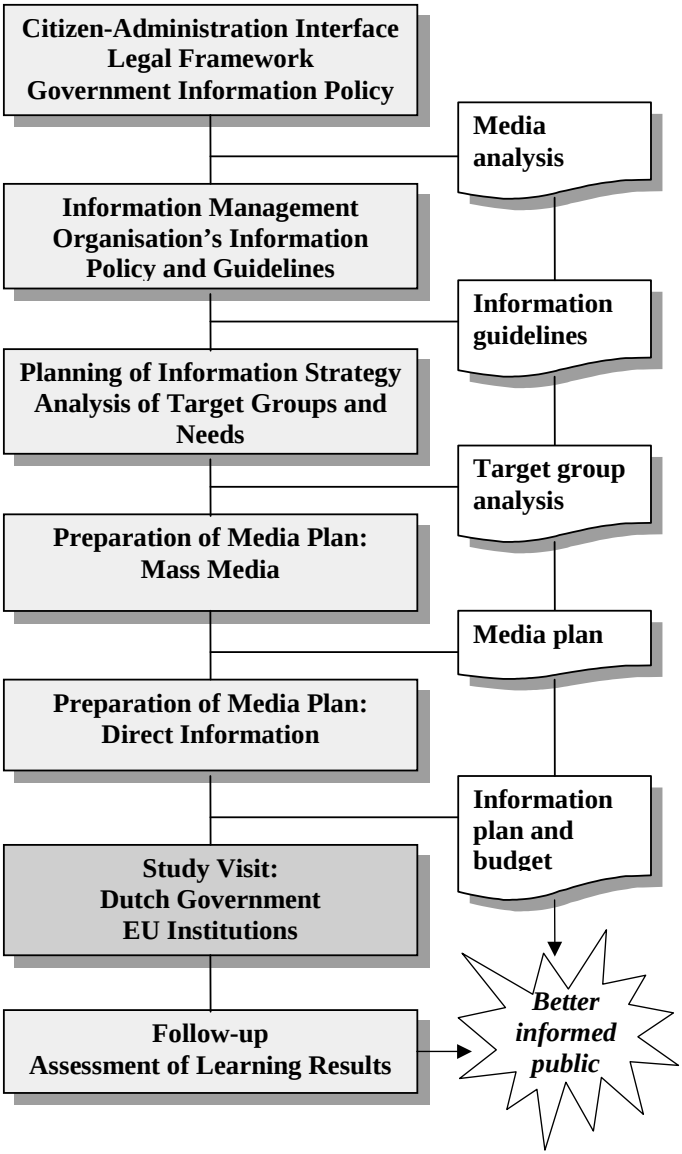
As the programme is practically oriented and contains workshop-type activities and study visits, the number of participants is limited to 16. The programme was announced among the public information officers and they were invited to apply by sending in an application form. A strong management back-up was necessary for a successful application.

The first module of the programme was implemented from 18 to 20 October 1999, and the rest of the modules are being implemented at intervals of approximately one month. Upon full completion of the programme the participants will receive a certificate.

ANNEX

Training Programme for Public Information Officers Estonia

7 modules



SYNTHESIS AND CONCLUSIONS

Martin Potůček *

To speak about openness in public administration in Central and Eastern European countries is not an easy subject matter. There are many reasons for it, both factual and analytic ones.

First of all, one should take into account the number of parallel transformations: changing political systems, economic reforms, reform of public administration as such. This all means that the interaction of these processes makes the task of reformers even more difficult than in more stable Western democracies.

Second, behavioural patterns of people and institutions, which still very much correspond to the previous, closed, authoritarian system of government.

Third, the need to establish a proper framework within public administration as such. In other words, the introduction of proper skills of good governance as the primary target for many countries and public services in the region.

These subjects were discussed from many angles in the workshop, both in general and taking experiences of selected countries as *pars pro toto*. Let me to sum up the main findings.

There is a clear mutual dependence between the openness in political life and the openness in public administration. One cannot imagine a huge discrepancy between them. That is why the political system should be fairly open before attempt is made to open up the public administration and vice versa. A term of audit society was used to characterise the societal milieu for an open national public administration.

There is a triad of the three qualities of public administration which should be considered as a mutually dependent whole: transparency, openness and accountability. All these qualities represent both the values per se and instruments which can be implemented within certain public administration institutional arrangements. Accountability depends on the degree of autonomy and on the position of actors who account (internal, external ones).

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* Professor, NISPAcee Vice President, Director of Institute of Sociological Studies, Faculty of Social Sciences, Charles University, Czech Republic

Special attention was paid to the relationship between the mass media and national governments. Despite the fact that mass media represent an important guardian of openness in administration, there was also mentioned the threat of their misuse for attracting public attention to unimportant issues instead of relevant and serious ones. Governments should enormously improve their public relation strategies and techniques. There is also an imminent need to reconsider corresponding social communication theories.

Interest groups and NGOs have also proved to be important mediators (even brokers) between the government and citizens.

The discussion touched the specific tasks of different branches of government. It was agreed that bureaucrats who worked in close contact with the public are more ready to behave in an open way compared to top-level civil servants.

Specific instruments were analysed which could be considered as good tools for rising openness in public administration: citizen charters, green and white policy books, ombudsman, state comptroller, government information officer, web sites of governmental offices, civic education programs at primary and secondary schools and at universities etc.

Apart from specific instruments and techniques, the ethics of public actors (especially politicians and top civil servants) and the level of participation of citizens would, could and should contribute a lot to the hopefully and presumably rising levels of openness, transparency and accountability.

There is no doubt that the task of transforming the public administration as defined above is a long term and demanding one for all countries. In Central and Eastern Europe, this represents an important and enduring job for the next couple of decades.

ANNEX 1 –
Programme of the Meeting

The 1999 Civil Service Forum

"Transparency and Openness in Governance: Challenges and Opportunities"

Maastricht, 28 – 29 October 1999

This project is financially supported by the Matra programme of the Netherlands Ministry of Foreign Affairs and the European Commission

Venue:
European Institute of Public Administration (EIPA)
O.L. Vrouweplein 22
6201 BE Maastricht, The Netherlands
Green Conference Room (1.45)

Introduction

The Civil Service Forum takes place every two years and forms a platform for discussion and co-operation between training institutes, senior civil servants and officials responsible for the civil service in order to improve the capacity of the institutes to cope with training needs, and to allow top level officials to learn more about the genuine needs of the ongoing reform of public administration. The participants are drawn from the administrations and training centres in the transition countries of Central and Eastern Europe, and the Forum provides the opportunity to discuss common problems and initiatives, and to exchange experiences with counterparts from the EU Member States.

The 1999 forum has been prepared in co-operation between NISPAcee (Network of Institutes and Schools of Public Administration in Central and Eastern Europe) and EIPA (European Institute of Public Administration). The Forum will take place in the Institute's premises in Maastricht, Netherlands, with generous support from the European Commission (DG IA) and the Netherlands Foreign Ministry.

Objectives

The focus of the proceedings can be defined as the openness and transparency in public administration. What legal conditions, incentives and patterns of communication should be established in order to make public administration citizen-friendly? How is it possible to ensure equal access of citizens to information? What should be the rules of behaviour of providers

of public services - such as Citizens' Charters - or legal conditions - such as "Freedom of Information Act". How can modern information technology improve communication between all actors in public administration? Knowing the answers to all these questions is of the utmost importance to the transition countries who are trying to get rid of the old centralised and authoritarian traditions of the previous communist bureaucracies.

Working Methods

Plenary sessions and workshops. Each workshop will open with a brief introduction presenting one or two systems, followed by a discussion between the presenters and the participants.

PROGRAMME

THURSDAY, 28 OCTOBER 1999

09.00 hrs – 09.30 hrs OFFICIAL OPENING

Ms Isabel Corte Real
Director-General EIPA, The Netherlands

Mr Berend-Jan baron van Voorst tot Voorst
Queen's Commissioner for the Province of Limburg, The Netherlands

Mr Martin Potuček
NISPAcee Vice President, Institute of Sociological Studies, Faculty of Social Sciences, Charles University, Czech Republic

09.30 hrs – 13.00 hrs PLENARY SESSION

Transparency, Openness and Accountability in Public Administration
Prof. Antonio Bar Cendon, EIPA, The Netherlands

Transparency and Openness of Quality Democracy
Prof. Yehezkel Dror, The Hebrew University of Jerusalem, Israel

11.00 hrs – 11.30 hrs Coffee Break

Constitutional Safeguards of Legality and Legitimacy
Evgeni Tanchev, Professor, Sofia University Law School, Sofia, Bulgaria

The Special Challenges Facing Governance in Transition Countries
Imre Forgács, Deputy Head of International Business School and Head of European Studies Department, Budapest, Hungary

Discussion

13.00 hrs – 14.30 hrs Lunch Break

14.30 hrs – 18. 30 hrs **WORKSHOP I**

Governnment / Citizen relationship

Chair: *Julia Szalai*, Deputy Director, Institute of Sociology, Hungarian Academy of Sciences, Budapest, Hungary

At the end of the twentieth century, transparency and openness in governance represent unavoidable expectations on the part of citizens in all developed countries. As a result of improved educational standards, higher expectations regarding service quality and citizens' rights, better organisation in civil society and more active and critical media, public bodies will be obliged to fundamentally change their relationship with citizens. The traditional secrecy which protected bureaucracy from questions or criticism is no longer acceptable, and administration will have to be conducted in an environment which allows, and encourages, citizens to take a greater interest in the workings of their governments and public services. The legitimate claim to continued support and loyalty from citizens cannot be sustained without this change.

Effective Approaches to Reform of the Government/Citizen Relationship
Mirko Vintar, Associate Professor, School of Public Administration, Ljubljana, Slovenia

Reports:

Transparency and Openness in the Public Administration Reform in the Czech Republic
Jiří Marek, Director of Public Administration Reform Department, Ministry of Interior, Czech Republic

Relationship between the Administration and the Public in Latvia
Armands Kalnins, Director, State Civil Service Administration, Latvia

Government/Citizen Relationship in the Ukraine
Juri Polianski, Head of the International Office, Ukrainian Academy of Public Administration, Office of the President, Kiev, Ukraine

Discussion

16.00 hrs – 16.30 hrs Coffee Break

The Freedom of Information in Hungary – the Law and the Practice
László Majtényi, Parliamentary Commissioner for Data Protection and Freedom of Information, Hungary

The Role of Government Information Offices
Bart W. Édes, Principal Administrator, SIGMA/OECD, France

The Role of NGOs: Interest Groups as Mediators between Government and Citizens
Emília Sičáková, President of Transparency International Slovakia, Center for Economic Development, Slovak Republic

Discussion

Synthesis and Conclusions
Julia Szalai, Deputy Director, Institute of Sociology, Hungarian Academy of Sciences, Budapest, Hungary

FRIDAY, 29 OCTOBER 1999

09.00 hrs – 13.00 hrs WORKSHOP II

Impact of openness on administration

Chair: *Martin Potůček*, Director, Institute of Sociological Studies, Faculty of Social Sciences, Charles University, Czech Republic

While the immediate demand for transparency and openness is seen primarily as a political issue, the changes affect far more than the rights and duties of individuals: they have major consequences for systems of democratic control, for the environment in which decision-making in the public sector takes place, for appellate systems to protect both citizens and public officials, and for systems of management, ethical development and training of public officials. These changes which are quite radical compared to the traditional system must be handled carefully and effectively if new problems are not to be created for both citizens and public officials. The workshop

aims to identify the main elements in this complex question, to consider relevant experience in different national systems and to explore possible approaches for an effective response to the future.

Strengthening Government-Citizen Connections: Open Government in OECD countries
Daniel Blume, *OECD/PUMA, France*

The Perspective from a Candidate Country
Ivar Tallo, Member of Parliament, Estonia

Report:

Impact of Openness on Administration in Poland
Mr Aleksander Nelicki, Advisor to the Minister, Ministry of Interior and Administration, Poland (participated instead of Józef Płoskonka)

Discussion

10.30 hrs – 11.00 hrs Coffee Break

Legislating for Openness
Anna-Riitta Wallin, Ministry of Justice, Finland

The EU experience: Taking the EU closer to the Citizens
Ms Mary Preston, Head of Unit "Measures for the Citizens", General Secretariat, European Commission, Brussels

Experience with Citizens' Charters in the UK
Geoffrey Sadler, Cabinet Office, The United Kingdom

Reports:

The Work of the United Nations in the Field of Openness and Transparency
Demetrios Argyriades, Management Consultant to the United Nations, U.S.A Paper presented by *Mr Michael Kelly*, Director of Development, EIPA, The Netherlands

Case study from Estonia: Training Public Information Officers
Yrjö Venna, Head of Unit Central and Eastern Europe, EIPA, The Netherlands

Discussion

Synthesis and Conclusions
Martin Potůček, Director, Institute of Sociological Studies, Faculty of Social Sciences, Charles University, Czech Republic

13.00 hrs – 14.30 hrs Lunch Break

14.30 hrs – 16.30 hrs **ROUND TABLE**

Implementing Transparency and Openness in Governance

Chair *Isabel Corte-Real*, Director General EIPA

Ivonne Blokker, Ministry of the Interior and Kingdom Relations, The Netherlands

Nadežda Mokrejšová, Department of Human Resources, Ministry of the Interior, Czech Republic

Alexander Kotchegura, Lecturer, Moscow State University, Russia

Linnar Viik, Adviser to the Prime Minister, State Chancellery, Estonia

This session should address the issue of how to move from policy/ strategic initiatives to action in this domain. The training aspects should be addressed in this round table discussion. Topics would include the question of transferability of training courses, the intentions of national training programmes and how students and civil servants should be trained to achieve openness and transparency in governance.

16.30 hrs – 17.00 hrs Coffee Break

17.00 hrs – 18.00 hrs **Closing Session**

Discussion

Conclusions

Martin Potůček, NISPAcee Vice President, Institute of Sociological Studies, Faculty of Social Sciences, Charles University, Czech Republic

Mirko Vintar, Associate Professor, School of Public Administration, Ljubljana, Slovenia

20.00 hrs **Final Dinner**
Hosted by the President of NISPAcee and the Director-General of EIPA