

## The Role of the Principle of Transparency and Accountability in Public Administration

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**Abstract:** The purpose of this paper is to analyze the importance of open public administration and several aspects referring to transparency as a crucial principle of administrative procedure and administrative law as well as how transparency and accountability impact the value of democracy, citizens' trust and rule of law. Transparency is a fundamental requirement for the reliability and integrity of public institutions in order to promote public trust and public support. Transparency in public administration guarantees legal assurance and increases the level of legitimacy in decision making process. The principle of transparency has a direct impact on the accountability of administration toward the citizens, while citizens are able to get all the information regarding the work of public administration and also are allowed to get involved in the process of decision-making. The transparency in public administration has a great impact in the process of public administration reform and promotes the level of efficiency, effectiveness and responsiveness, as main components of the concept of good administration.

**Keywords:** transparency; accountability; public administration; democracy; good governance

### 1. Introduction

The principle of legality is a constitutional principle in all democracies and a crucial principle in public administration. It guarantees legal assurance and increases the level of legitimacy in the decision making process, because administrative acts become more expected by the citizens. The principle of transparency has a direct

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impact on the liability of public authorities toward the citizens, by enabling citizens to obtain all information regarding their activity.

The transparency in public administration has a great impact in the process of public administration reform and promotes the level of efficiency, effectiveness and responsiveness, as main components of the concept of “good administration”. In this regard the transparency in public administration is sustained by the use of new modern Information and Communication Technologies. Therefore, the modernization and computerization of public administration are considered as the main factors of government transformation toward a higher level of transparency and open information accessibility.

Transparency symbolizes a mechanism of promoting good governance and public trust in a democratic and modern public administration. In democratic and modern public administration, the principle of transparency is a controlling element against maladministration and corruption and the promoter of good governance and accountability toward protection of public interest and citizens’ rights.

In this regard the principle of transparency can be considered as an advocate of legitimacy and accountability in the administration that establishes a reciprocal confidence between the government and the citizens and guarantees ease of gaining information. Transparency is a fundamental requirement for the reliability and integrity of public institutions in order to promote public trust and public support.

The deficiency of transparency in the decision-making process has a direct impact to dim the confidence in public administration and participation of citizens. Lack of transparency and accountability in public administration *inter alia* diminishes the value of democracy and rule of law. A standard of transparency and accountability improves the performance of public administration, as citizens anticipate from the public official's adequate services which are of public interest, and served on the grounds of justice. This occurs when public administration regularly publishes its report over given decisions and answers citizens’ requests *vis-à-vis* their administrative decision- making process.

## **2. The Nature and Importance of Principle of Transparency in Public Administration**

The principle of transparency is among the basic principles of the work in public administration, a principle that aims to build a legal and democratic rule of law. This

principle, in essence, refers to public bodies that are open to society in order to inform citizens about their activity. Public bodies should act transparently in order to ensure the right of the party or citizen to be informed about stages and the progress of the proceedings, access to the files, and the right to be notified about the appropriate remedies to be used.

Transparency means being open, communicative, and responsive. Based on this principle, it is the obligation of public authorities to make public all information related to the activity of administration, while on the other hand; interested parties should have equal access to data and information sources. Curtin and Meijer in their analytical approach about “Does transparency strengthen legitimacy”, they reach the conclusion that the principle of transparency is a key element of democratic institutions and can only be a starting point in building public understanding, participation and involvement, but in their opinion - naive assumptions about the relationship between transparency and legitimacy can and should be avoided (Curtin & Meijer, 2006). In the past decade the focus on transparency, as an aspect of improving governance and the fight against corruption has been related to pluralism, democratization and improvement of governance.

The principle of transparency is a legal standard that is implemented by the EU institutions as a basic mechanism for other norms. Furthermore, the notion of transparency has emerged in a wide range of other areas, ranging from legislation on financial matters to social law and to recruitment by the EU Institutions (Bernitz, Nergelius & Cardner, 2008). The principle of openness was introduced to European law by the Amsterdam Treaty, which incorporated it into Article 1 of the Treaty on European Union (TEU).<sup>1</sup> Moreover, the concepts of integrity, transparency and accountability have been identified by the UN countries, collectively and individually, as part of the founding principles of public administration.<sup>2</sup> Bröhmer looks at the roots of transparency and examines the question of whether a principle of transparency can be derived from the constitution. Consequently, he does not only consider administrative transparency but the transparency of all three powers: of the legislature, the executive, and the judiciary (Bröhmer, 2004). Principles of transparency imply public trust, as the significance of a democratic state and a

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<sup>1</sup> Treaty of Amsterdam amending the treaty of European union, the treaties establishing the European communities and certain related acts, oct. 2, 1997, 1997 o.j. (c340) 1 [hereinafter treaty of Amsterdam].

<sup>2</sup> The UN Charter states, “The paramount consideration in the employment of the (UN) staff ... shall be the necessity of securing the highest standards of efficiency, competence and integrity.” (Article 101) In addition, many Member States identify integrity, transparency and accountability among core values or founding principles for their public administrations in their constitutions and relevant laws.

modern system of public administration; provide fair services; accountable governance as main factors in fighting corruption and maladministration and promoting good governance. An open and transparent public administration allows that any person indicated by an administrative decision be aware of its basis.

Governments are required to open and ensure stakeholders access to various information about the public policy process, the budget allocation for the implementation of development policy, as well as monitoring and evaluation of policy implementation (Dwiyanto, 2008). The principle of transparency picks up where the principle of legality falls short and it can be seen as a functional counterpart of the later (Bijsterveld, 2004). The aim of transparency influences the enhancement of accountability and citizens' participation in the decision-making process in public administration.

Transparency is considered as an important condition for high-quality governance. Therefore the European Ombudsman has made efforts towards a general law on good administration in order to prevent maladministration. The Ombudsman has created a "Code of Good Administrative Behavior" that contains 27 articles, as basic rules for good administration. The right to good administration as well as the right of access to documents was included in the Charter of Fundamental Rights of the European Union, which was signed and proclaimed in Nice on 7 December 2000.

Article 41 includes the Right to good administration:

- 1. Every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions, bodies, offices and agencies of the Union.*
- 2. This right includes: a) The right of every person to be heard, before any individual measure which would affect him or her adversely is taken; b) The right of every person to have access to his or her file, while respecting the legitimate interests of confidentiality and of professional and business secrecy; c) The obligation of the administration to give reasons for its decisions.*
- 3. Every person has the right to have the Union make good any damage caused by its institutions or by its servants in the performance of their duties, in accordance with the general principles common to the laws of the Member States.*
- 4. Every person may write to the institutions of the Union in one of the languages of the Constitution and must have an answer in the same language.*

Article 42 contains the Right of access to documents:

*Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, has a right of access to European Parliament, Council and Commission documents.*

Citizens today have higher expectations toward the government, demanding much greater transparency, good governance and accountability. Transparency as one of the main principles of good governance enables Citizens to monitor the work of the public administration in general as well as the decision-making process specifically. Postmodern society is one of “permissiveness” (Lipovetsky, 1992), but also of generalized supervision (Foucault, 1979).

Transparency improves democracy has been recognized in authoritative legal sources. Declaration No. 17 to the Maastricht Treaty indicates that the right of access to the documents held by the EU institutions is linked to the democratic nature of these institutions.<sup>1</sup> In this regard, there is a direct link between the principle of transparency and principle of democracy that determines the way how public authorities should advance fundamental rights of the citizens. Transparency is necessary to guarantee a proper functioning of the decision-making process, having in mind that the involvement of citizens gives more space for feedback and reflection. More and more, the importance of transparency should be considered as a tool to address some of the biggest challenges for a sustainable and democratic administration. The practical implementation of this principle has the potential to be limited in cases of confidentiality, or the secrecy of the work in the administration. Though, when it comes to state discretion to disclose certain information due to confidentiality, public interest or national security vis-à-vis violation of human rights, case law of the Inter-American Court of Human Rights (IACtHR) provides the following: “in cases of human rights violations, the State authorities cannot resort to mechanisms such as official secrets or confidentiality of the information, or reasons of public interest or national security, to refuse to supply the information required by the judicial or administrative authorities in charge of the ongoing investigation or proceeding” (Mack Chang v. Guatemala; Claude Reyes v. Chile,

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<sup>1</sup> See Declaration No. 17 to the Final Act of the Treaty on European Union signed at Maastricht on 7 February 1992

2010).<sup>1</sup> In other words, information related to trials of grave human rights abuses may not be withheld on the grounds of national security.

### **3. Impact of Transparency and Accountability in the Quality of Administrative Decision-Making Process**

Based on many empiric studies, it is understandable that there is a link between the principle of accountability and transparency, because only through transparency, the public officials prove that the principle of accountability and responsibility are being respected. Transparency refers to unfettered access by the public to timely and reliable information on decisions and performance in the public sector, while, accountability refers to the obligation on the part of public officials to report on the usage of public resources and answerability for failing to meet stated performance objectives (Armstrong, 2005, p. 4). As long as accountability remains a duty for the public officials to report for their actions, then, the transparency becomes a practice.

In a democratic country, under the principle of responsibility, public officials have an official duty before the citizens to report about their decisions and actions. Thus, the principle of transparency requires that administrative actions should be either opened for public review or accessible for citizens. So, accountability and transparency remain key values for democratic governance, of course considering that "...many decision-makers do not seem to have a real interest in more transparency and are not convinced that being more open brings much to the efficiency and the credibility of these institutions" (Sciso (ed.), 2017, p. 252).

There is no democracy without accountability and transparency, because "accountability is the obligation or willingness to accept responsibility or to account for one's actions. Transparency is the quality of "being easily seen through" and, in governance, is when actions of an organization are "scrupulous enough to bear public scrutiny." (Sciso (ed.), 2017, p. 251) In this direction, in one hand, transparency serves as a supportive tool to assess the level of the administrative making process, while on the other hand, it shows that the administrative practice is in line with domestic and international legal framework *vis-à-vis* administrative justice.

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<sup>1</sup> Cited according to: Jo-Marie Burt and Casey Cagley, Access to Information, Access to Justice: The Challenges to Accountability in Peru, International Journal on Human Rights, v. 10 • n. 18 • Jun. 2013 Biannual English Edition. P.77. Available at: <http://sur.conectas.org/wp-content/uploads/2017/11/sur18-eng-jo-marie-burt-and-casey-cagley.pdf>. Accessed: May 7 2018.

The democracy loses its sense if there is no transparency and accountability, because if a democratic country does not respect these principles, then the concept of democracy as a system governed by the people becomes nonsense. In such situations, there might be cases when the administrative-making-process flows arbitrarily causing hypocrisy due to lack of transparency; thus “hypocrisy, saying one thing and doing another, cannot only be detected, but also publicized...” (Lord, 2006, p. 127).

Transparency, freedom of information and citizens’ right to have access in the decision of public administration might be classified as actions that aim a governance which is transparent *vis-à-vis* its citizens. This kind of transparency primarily allows citizens to have access and information; then, makes them more eligible to contribute towards improving the society. One of the scholars opines the same, providing that “this openness allows participants access to information and eventually empowers them to use this information to improve society” (Benavides, 2006, pp. 461-477). Moreover, the openness of the administration empowers both, the quality of the democracy as well as government, because “greater transparency is a boon for democracy and good governance, according to most observers. The trend toward greater transparency diffuses control over information and, in so doing, takes power from the strong and gives it to the weak and disenfranchised. This reallocation of power occurs within states, allowing citizens to challenge or even topple authoritarian regimes (Lord, 2006, p. 91).

Transparency and accountability improves the performance of public administration. For example Peter Aucoin and Ralph Heintzman refuse to accept that accountability and improved performance necessarily pull in opposite directions; on the contrary, they state that accountability can, and should, be a major force for improving performance (Wolf, 2000, p. 16). Therefore, constitutional modern democracies should not only guarantee clear rules for access to executive power, but must also ensure the transparent operation of public functions, so that society may know and evaluate governmental management and the performance of civil servants. This process implies a true cultural transformation of the concept and practice of public service; it assumes the submission of government management and the performance of civil servants to the daily scrutiny of society; it requires the right to access information to be disseminated and take root among the population and for its exercise to be effectively promoted, as well as the right to privacy and the private lives of persons, through the protection of their personal data. It requires, in short, the generation, encouragement, and consolidation of the culture of transparency and access to public information (Benavides, 2006, pp. 461-477). David Sobel suggests

that “a culture of openness requires the forging of a new relationship between citizen and state, one that fosters the capacity for informed debate and decision-making that citizens need to genuinely participate in a democratic society” (Sobel, Noll & Bogado, 2006).

It is understandable that modern public administration *inter alia* should include citizens’ trust as well, because “citizens expect public servants to serve the public interest with fairness and to manage public resources properly on a daily basis” (Armstrong, 2005, pp. 5-6). Fair and reliable public services and predictable decision-making inspire public trust and create a level playing field for businesses, thus contributing to well-functioning markets and economic growth. The integrity, transparency and accountability of public administrations are a prerequisite to and underpin public trust, as a keystone of good governance” (Armstrong, 2005, pp. 5-6).

Lastly, it is worth mentioning that public administration nowadays is under intensive scrutiny, so public agencies should make efforts to determine the role of public sector *vis-à-vis* citizens’ requests for more transparency and accountability. Hence, there is a need for a better balance of the use of power through accountability, which from public administration perspective means that “there must be power to act, but that power must be exercised with discipline; there must be accountability, but beyond checks, it must energize new sources of creativity in people” (Jerome, McKinney, Lawrance & Howard, 1998, p. 84).

#### **4. Conclusion**

Access to public information and citizens’ participation in the decision-making process of the public administration are most crucial elements of open public administration. In this regard the principle of transparency in public administration involves many other principles that are influencing the process of transformation toward open and good governance. The accomplishment and implementation of this principle involves requires a number of contributing features such as information technology, the commitment of public officials, the consciousness of citizens, efficient public services, proper control, etc.

Consequently, the main challenge for any modern and democratic public administration is how to establish a government which is transparent and functional. Because from the modern public administration, citizens anticipate that public

officials are on duty to best serve the interests of the public as well as to manage public resources with premeditated decision. Also, modern public administration should inspire citizens' trust as a fundamental instrument for good governance.

The value of transparency and accountability in public administration in the last three decades received essential attention, in particular when it comes to the need for governmental reforms *vis-à-vis* development of societies and requests for more transparency and accountability from public officials. Thus, reformed governance should involve standards for cooperation between administration and citizens in order to promote further rule of law, citizens' participation, accountability, and transparency.

The energy to construct an open and transparent administration should be generated from politicians, ministers and other high and middle public officials, civil society and citizens, if a country aims to build a modern public administration and democratic governance. Though, accountability and transparency are essential for both, democratic governance and public administration that serves its citizens.

Transparency and accountability *inter alia* smooth the assessment of the quality of the administrative decision-making process, at the meantime, administrative practice *vis-à-vis* administrative justice is better harmonized with both domestic and international legal framework.

Also, transparency and accountability improve the performance of public administration, as responsibility and transparency must be a push factor towards the improvement of performance. Therefore, constitutional modern democracies should not only guarantee clear rules for access to executive power, but must also ensure the transparent operation of public functions, so that society may know and evaluate governmental management and the performance of civil servants.

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