Energy in Public Administration - Between Human Rights and Efficient Administration
Dr. Mirko Pečarič,
Assistant professor for administrative law and public administration. University of Ljubljana, Faculty of Administration. Gosarjeva ulica 5, 1000 Ljubljana, Slovenia.
E-mail: mirko.pecaric@fu.uni-lj.si

ABSTRACT
This paper explores recent notions in public administration, which are intertwined and addressed to the administration of public affairs. On this basis it demonstrates that content of legal system is filled through the static legal principles and rules, but they receive their real content through the informal practices and conditions of the human mind. The paper concludes that discussed notions could have only one name, because they all are the synonyms of reciprocal relation between the human dignity and efficient administration.

Indexing terms/Keywords
Administrative justice; administrative culture; dignity; good governance; energy

Academic Discipline And Sub-Disciplines
Law; Sociology; Psychology;

SUBJECT CLASSIFICATION
Law Subject Classification;

TYPE (METHOD/APPROACH)
Literary and Legal Analysis;
Introduction

A state is a means by which common good is pursued and through which we correct injustices by taking steps that are at the relevant moment most effective without going at the expense of the others' rights. Every form of the administration of the society is "about activity - how people act and how they might act more effectively and more justly" (Bevir, 2011, p. 11). This paper explores recent notions in public administration which presents a non-stop relation between public power and society, the relation between effectiveness and justice. The old message of the Hamilton's speech at the Constitutional Convention on June 18, 1787 is not only still very clear, but it can be labelled as the first expression of administrative justice as a general form for the different actions of public administration: "[the people's] confidence in and obedience to a government, will commonly be proportioned to the goodness or badness of its administration" (Syrett, 1962, p. 589). The expression is now buried into different notions that describe more or less the same thing: the behaviour of public administration towards the individual and general public. One of them is in the Charter of Fundamental Rights of the European Union (hereinafter: Charter) that includes the right of every person to good administration. "This right, together with a right to an effective remedy and to a fair trial, create a more general right to administrative justice" (Kanska, 2004, p. 297). But what is administrative justice or good administration? Are they not only synonyms (along with good governance, sound governance, employee discretion or with similar notions) for describing the alma mater of all human rights, i.e. the right to human dignity in relation to the public administration's operations?

This paper bases its point upon the idea that the science of public administration could lose sight of the big picture needed to understand humans in it if becomes more and more focused onto specific fields. A structural layout that could convey a coherent picture, by explaining the component parts is quite needed in the presence of the multitude of notions that describe one and the same thing, looked at from the different angles. The starting point from which we make a decision is based on our personal evaluation of its content. Since the decision is based on logical, common sense and moral "how-to-do-it ideas" (Hood, 1998, p. 14) about the proper public administration in the context of time, place and other circumstances, it cannot be shaped without a look towards the public interest. This kind of human balancing is omnipresent within and outside the law, while the decisions choosing among conflicting public values are achieved through the mental operations of an official as person (selfishness or goodness is in the stance of a human not e.g. in the rational choice or principal–agent theory or welfare theory of the state). This is shown in the openness of the above mentioned non-stop relation that generate new rights despite the fact that they were not previously included in the legal frames. Based on the contents of the above mentioned and below discussed notions about the role of public administration this paper tries to demonstrate that a legal system does not operate through the legal norms that guide decision-making in various factual circumstances, but that it is mainly determined by informal practices and conditions that in case-by-case describe the real content of legal principles.

Justice

Administrative justice has to do with reciprocity and balancing, but the prime place takes justice that is at their core, so it would be prudent to see how the authors understand it. To justice as "a subjective judgement of value...cannot be answered by means of rational cognition...[because it is] determined by emotional factors" (Kelsen, 2006, p. 6), whereas to Hart justice "constitutes one segment of morality primarily concerned not with individual conduct but with the ways in which classes of individuals are treated [and it] is the most public and the most legal of the virtues" (1994, p. 167). Hart’s rule of recognition as a test of the legal validity of rules for the most part "is not stated, but its existence is shown in the way in which particular rules are identified...The use of unstated rules of recognition...is characteristic of the internal point of view. Those who use them in this way thereby manifest their own acceptance of them as guiding rules...and is naturally used by one who, accepting the rule of recognition and without stating the fact that it is accepted, applies the rule in recognizing some particular rule of the system as valid" (1994, pp. 101-102).

Vickers, similarly as Hart, claims that "we have to assume...an inner criterion, self-set and constantly reset by every exercise" (1999, p. 87), under which the judgment of reality is a matter of valuations and the instrumental judgment as the likelihood of given alternatives that are “aspects of one mental activity” (1995, p. 89). The above mentioned Hamilton’s saying is also an early indirect expression of the common sense about the principle of reciprocity (or of balancing as the synonym for the equivalent retaliation) that is the basic tenet in the psychology of personal relations. This principle has been also confirmed as the “tit for tat” evolutionary strategy in the context of the iterated prisoner's dilemma game (Axelrod, 1981). The foundation of law is thus not only the formalistic, but also contextual logic; it must be grounded on facts although they are subjectively established, evaluated and balanced: "[the text of the laws is inscribed internally, invisibly, upon the heart...The exterior law becomes the interior norm, nature exists and rules from within" (Goodrich et al. 2006, p. 5). To Rawls, justice is also a reciprocally subjective value: "a sense of justice is the capacity to understand, to apply, and to act from the public conception of justice which characterizes the fair terms of social cooperation...a sense of justice also expresses a willingness, if not the desire to act in relation to others on terms that they can publicly endorse" (2005, p. 19). Rawls is aware that public reason is affected also by non-public, intuitive reasons although he considers them rational if they are such “at least in a sensible (or satisfactory) way” (1988, p. 254). Nobel laureate in economics Kahneman shows that there are distinctive patterns in the errors people make due to biases, which recur in particular circumstances (2011). Cognitive errors and human intuition are along reason and logic also common to human understanding; to give justice is therefore, besides the facts, relevant also a personal, internal or subjective decision; it can be emotional or rational about what is right or wrong, or what is (il)logical about things, that a person perceives as being equal, similar, different, above or beneath, non/identical, (non)important, qualitative, quantitative, proportional, et cetera.
Justice as subjective evaluation is seen by one and/or many persons, who do not participate in rational discourse or do not work in public institutions. It cannot be defined precisely in advance, it can give only a frame or a working tool of justice, of what is guided by truth and reason under the broad notion of equality and reciprocity. The Oxford Dictionary (2012) describes justice as “1. just behaviour or treatment (a concern for justice, peace, and genuine respect for people, the quality of being fair and reasonable, the administration of the law or authority in maintaining this) or as 2. a judge or magistrate, in particular a judge of the Supreme Court of a country or state”. Equality and reciprocity of justice are in the public law assured by the “exchange rate” that balances between the public power and individual rights; it can be therefore explained as genuine respect of people, although it represents only a direction of thought and not its content. Justice shows directions, while the law (legislation) puts (temporary) limits on them. As justice can be complementary to human rights and fundamental freedoms (which are exercised directly on the basis of the Constitution), the law can be sometimes unconstitutional if it does not support them. In the more and more complex and intertwined surroundings the public power and coercion grow also outside the strict legal frames (soft law, political participation, co-regulation and cooperation), so balancing between them and the individual rights cannot be efficiently considered in the advance accepted legislation; the importance of justice is therefore even higher. In our unpredictable and changing surroundings we are closer to the idea of justice that can operate outside the legal frames. Everything can be balanced or exchanged by (in)direct means that are pondered over in view of value, whereby should always work genuine respect for the people. This is the starting point of justice – and in the public sector of administrative justice.

**Administrative Justice**

The “natural” phenomenon of justice (natural justice) is present in the case law and in many legal documents. The Constitution of the Republic of South Africa (1996) is one of the more demonstrative examples of it. In the Article 33 it defines just administrative action (it could be named the “administrative Miranda warning”): “everyone has the right to administrative action that is lawful, reasonable and procedurally fair. Everyone whose rights have been adversely affected by administrative action has the right to be given written reasons” (emphasis added). In the same Article the Constitution further provides that “national legislation must be enacted to give effect to these rights, and must a) provide for the review of administrative action by a court or, where appropriate, an independent and impartial tribunal; b) impose a duty on the state to give effect to these rights, and c) promote an efficient administration”. The notion of procedural fairness consists of the rule against bias (nemo iudex in causa sua), and the right to a fair hearing (audi alteram partem); these two are not explicitly mentioned, but are valid despite the Article’s openness. Impartiality, fairness and openness are the trinity of principles that were at the core of the tribunal system already in the 1957 British Report of the Committee on Administrative Tribunals and Enquiries (Franks Report) (AJCT, 2010a). The Charter from the introduction to this paper is with the principles of good administration (impartially, fairness and a reasonable time) parallel to the Report’s content of Justice – All Souls Committee (Administrative Justice - Some Necessary Reforms, 1998) which stated that justice is notoriously deficient in the provision of remedies for a citizen who is the victim of maladministration or other administrative injustice. A remedy, compensation or restitution, should be available, including for the loss caused by excessive or unreasonable delay. The committee described administrative law as administrative justice which is a fundamental, integral and the most important part of daily life for all of us and which must guarantee the independence of the Tribunal’s members, and along with hearings, representation, inquiries and counselling. The committee concluded that “there should be a permanent body, independent of government, charged with the duty of overseeing all aspects of administrative justice, drawing attention to defects and progressing reforms”. It suggested that the new body should be called the Administrative Review Commission.

Upon the provision of the Tribunals, Courts and Enforcement Act (TCEA, 2007), the Administrative Justice and Tribunals Council (AJTC) was established, whose function is to keep the administrative justice system under review, to consider ways to make the system accessible, fair and efficient, to advise on the development of the system, to refer proposals for changes in the system to relevant authorities, and to make proposals for research of the system (see Schedule 7, 13[2]). The AJTC issued the Principles for Administrative Justice (2010b), which are “not drafted in the language of obligation...but they are statements of what...is important and desirable in the system and an indicator of where and why change is needed. They are designed to engender a culture of service and continuous improvement within the system through self-assessment, measurement, dialogue and change management” (2010b, pp. 7-11). There are seven principles according to which a good administrative justice system should: 1) Make users and their needs central, treating them with fairness and respect at all times; 2) enable people to challenge decisions and seek redress using procedures that are independent, open and appropriate for the matter involved; 3) keep people fully informed and empower them to resolve their problems as quickly and comprehensively as possible; 4) lead to well-reasoned, lawful and timely outcomes; 5) be coherent and consistent; 6) work proportionately and efficiently and 7) adopt the highest standards of behaviour, seek to learn from experience and continuously improve.

Administrative justice (AJ) is from the internal point of view justice, as citizens or public bodies perceive it according to the operations of the public administration. In order to be real, impartial or objective, bias can be diminished and AJ can be perceived through Rawls’s (official’s and person’s) veil of ignorance, within which “parties would hypothetically choose mutually acceptable principles of justice” (Rawls 1999, p. 118). Citizens can perceive justice without being parties in the administrative procedures or being public bodies’ members, without being decision-makers, if they can imagine to be removed from their concrete position. The veil is not synonymous with a right decision, it stands for the complete procedure from the beginning to end, inside and outside of the legal frames. Administrative justice “has both ex ante and ex post elements” (Longley & James, 1998, p. 4): “one of the most important aspects of the ex ante stage is proper administrative procedure. As regards the ex post element, it consists of the right to judicial review and existence of non-
judicial mechanisms for the resolution of public law disputes, such as ombudsmen” (Kanska, 2004, p. 298). “Essence of the concept [of AJ] is tempered by conflicting (and legitimate) interests...there can be no fixed definition of administrative justice: the meaning of the concept will vary with the strength of competing interests” (Cryke & McMillan, 2000, p. 4).

For AJ was already said that it is based on balancing, on reciprocity; people must cooperate with each other; justice is in equality(Aristotle, 1998) that is determined by cooperation of different persons and things. Cooperation can be a solution, if there is an unknown number of iterations” between people. Based on the computer simulation of norms game, Axelrod came to the conclusion that promotion and sustainability of cooperation in the population can be achieved by metanorm: “the treatment of non punishment as if it were another form of defection; that is, a player will be vengeful against someone who observed a defection but did not punish it” (1986, p. 1109). Social norms are based on reputation, cooperation, appurtenance and emerge where “social meanings can emerge and disappear spontaneously, and often in the face of state efforts to regulate them” (Posner, 1998, p. 794). AJ balances between the efficient administration and the administrative law rights bestowed upon the people; such balancing Nehl mentions in the frame of the principle of good administration (and not of AJ) in which “community courts strike a reasonable balance between the functional needs of the administration on the one hand and the protection of individual rights and interests on the other” (Nehl, 1999, p. 25).

One of the widest notions of AJ (although it is not named as such) that takes of the public welfare and promotes democracy has Sweden; the Constitution of Sweden (1975) provides among the basic rights in the Article 2 that “[t]he personal, economic and cultural welfare of the individual shall be fundamental aims of public activity...the public administration shall promote the ideals of democracy as guidelines in all sectors of society. The public administration shall guarantee equal rights to men and women and protect the private and family lives of the individual”. Sweden is after Singapore the second best state in the world in the quality of public institutions (World Economic Forum, 2010) and one of the European states that has the Administrative Procedure Act (1986) with only 33 articles (while Singapore does not have it at all). Both states are also at the top of the states that have minimal corruption (Corruption Perceptions Index, 2010, p. 2).

AJ, among the principles of good administration (Art. 41): 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 Treaties and must have an answer in the same language.

This notion has its predecessor in the institution of the Swedish Ombudsman, Justitieombudsmank. The Office of the Parliamentary Ombudsmen was established there in connection with the adoption of the Instrument of Government that came into effect after the deposition of the King in 1809, while the idea of ombudsman as the representative (Ombudsman is “a government official appointed to investigate complaints made by individuals against government or public bodies [Swedish ombudsman: representative, from Old Norse umboðsmaðr, from commission + maðr man])” (Allen, 2000, p. 974) was not new. It emerged from the need to secure that judges and public officials act in accordance with laws and later to create such an organ that would be answerable to the Parliament, which could thus monitor the ways upon which the authorities comply with law. The role of the Ombudsman gradually grew from a pure punitive to an advisory and consultative function: “the task of forestalling error and general endeavours to ensure the correct application of the law has taken precedence over the role of prosecutor” (The Parliamentary Ombudsmen, 2010). Today the main goal of the Ombudsman is to safeguard the rights of citizens by leaning upon the principle of equal application of the law and of the indication of legislative or administrative legal errors or practices. This is grouped in the notion of “maladministration”. European Ombudsman uses the European Code of Good Administrative Behaviour (Code) in “examining whether there is maladministration, thereby relying on its provisions for his control function. But equally the Code serves as a useful guide and a resource for civil servants, encouraging the highest standards of administration” (The European Ombudsman, 2005, p. 4). TFEU (2008) states in the Article 298 the legal ground for the European law on good administration: “[t]en carrying out their missions, the institutions, bodies, offices and agencies of the Union shall have the support of an open, efficient and independent European administration”. Among the principles of good administration the Code states (see Articles 4-25): lawfulness, absence of discrimination, proportionality, absence of abuse of power, impartiality and independence, objectivity, legitimate expectations, consistency and advice, fairness, courtesy, reply to letters in the language of the citizen, acknowledgement of receipt and indication of the competent official, obligation to transfer to the competent service of the institution, right to be heard and to make statements, reasonable time-limit for taking decisions, duty to state the
grounds of decisions, indication of the possibilities of appeal, notification of the decision, data protection, requests for information, requests for public access to documents, keeping of adequate records, publicity of the Code and right to complain to the European Ombudsman about any failure of an institution or official to comply with the principles set out in this Code.

Violations of these principles constitute maladministration that can occur anywhere in the exercise or the omission of exercise of administrative functions. The list of maladministration cannot be completely filled because it depends on the context of the case and competences, but generally they refer to the fair procedure (although they are wider then the notion of natural justice in the English legal system or the due process of law under the U.S. Constitution). Similar to the Code list of principles is the British example, older than the European Code: though the term “maladministration” is not defined in the Parliamentary Commissioner Act (PCA, 1967), during the debate over the Bill, the Leader of the House of Commons Crossman speculated on what might constitute maladministration (the Crossman catalogue): a positive definition of maladministration is far more difficult to achieve. We might have made an attempt in this Clause to define, by catalogue, all of the qualities, which make up maladministration, which might count for maladministration by a civil servant. It would be a wonderful exercise—bias, neglect, inattention, delay, incompetence, inaptitude, perversity, turpitude, arbitrariness and so on. It would be a long and interesting list (1966). In the PCA injustice is the consequence of maladministration and can occur even without damage. This can be also seen in the case law of the European Court of Justice – ECJ (1966): “[w]e have not tried to define injustice by using such terms as “loss or damage”. These may have legal overtones, which could be held to exclude one thing, which I am particularly anxious shall remain—the sense of outrage aroused by unfair or incompetent administration, even where the complainant has suffered no actual loss. We intend that the outraged citizen who persuades his Member to raise a problem shall have the right to an investigation, even where he has suffered no loss or damage in the legal sense of those terms, but is simply a good citizen who has nothing to lose and wishes to clear up a sense of outrage and indignation at what he believes to be a maladministration.

Sir William Reid in the 1994 Annual Report of Ombudsman expanded the Crossman catalogue and added: rudeness, unwillingness to treat the complainant as a person with rights; refusal to answer reasonable questions; neglecting to inform a complainant on request of his or her rights or entitlement; knowingly giving advice which is misleading or inadequate; ignoring valid advice or overruling considerations which would produce an uncomfortable result for the over ruler; offering no redress or manifestly disproportionate redress; showing bias whether because of colour, sex, or any other grounds; omission to notify those who thereby lose a right of appeal; refusal to inform adequately of the right of appeal; faulty procedures; failure by management to monitor compliance with adequate procedures; cavalier disregard of guidance which is intended to be followed in the interest of equitable treatment of those who use a service; partiality; and failure to mitigate the effects of rigid adherence to the letter of the law where that produces manifestly unequal treatment (1994, p. 7).

In 2007 the Ombudsman issued the Principles of Good Administration that are the same as his Principles of Good Complaint Handling (2008). After a more detailed examination of the case law of the Court of Justice, Nehl came to the conclusion that the term good administration “comprises a set of rules of good administrative practice and that it has no specific legal content and purpose of its own. The functions, which the alleged principle purports to fulfil, are entirely covered by already existing process standards. Thus, the “principle of good administration” exclusively exists as a phrase but not as a procedural standard with a particular content and meaning” (1999, p. 37, emphasis added). Although the Charter was published one year after the above mentioned statement; the openness of this right in connection with the definition of maladministration by the European Ombudsman in his Report and by his Code still holds. The main ingredient of good administration is the respect of human dignity regarding a particular person’s right, balanced with the public interest which takes place mainly at adjudication, while the proposals for general decision-making are more present in the notion of good governance.

**Good Governance**

Governance can be considered as a set of “the involvement of society in the process of governing” (Pierre & Peters 2000, p. 7), as governing processes that are “hybrid and multijurisdictional, linking plural stakeholders in complex networks” (Bevir, 2011, p. 3) or as the “participatory process of governing the social, economic, and political affairs of a country, state, or local community through structures and values that mirror the society [and] include the state as an enabling institution, the constitutional framework, the civil society, the private sector, and the international/global institutional structure within limits” (Farazmand, 2004, p. 11). Good governance (GG) is therefore one of the many types of governance. The concept of GG has its origins in the United Nations agencies such as the WB, IMF, UNDP, or UNESCO, which at the time of the economic crisis of the 1970s prescribed requirements for structural and policy reforms in the governments and the society of the third world countries in Asia, Africa, and Latin/Central America as a condition for international financial assistance. According to the UNESCO “good governance has 8 major characteristics. It is participatory, consensus oriented, accountable, transparent, responsive, effective and efficient, equitable and inclusive and follows the rule of law. It assures that corruption is minimized, the views of minorities are taken into account and that the voices of the most vulnerable in society are heard in decision-making. It is also responsive to the present and future needs of society” (2011).

With the change from the classic government to governance, the former is not the only player any more, but acts amongst others (civil society, third-party organizations, international and supranational organizations) in the international, supranational or domestic policy arena. Good governance is the exercise of authority through political and institutional processes that are transparent and accountable, and encourage public participation, without which the human rights
cannot be respected and protected in a sustainable manner. The implementation of human rights relies on a conducive and enabling environment. “This includes appropriate legal frameworks and institutions as well as political, managerial and administrative processes responsible for responding to the rights and needs of the population” (Office of the UN High Commissioner for Human Rights, 2007, p. 1). According to the Independent Commission on Good Governance in Public Services (2004), the standard of good governance comprises six core principles of good governance: “focusing on the organisation’s purpose and on outcomes for citizens and service users; performing effectively in clearly defined functions and roles; promoting values for the whole organisation and demonstrating the values of good governance through behaviour; taking informed, transparent decisions and managing risk; developing the capacity and capability of the governing body to be effective and engaging stakeholders and making accountability real”.

The IMF directly connects GG with corruption and integrity mechanisms for safeguarding resources: governance is a broad concept covering all aspects of the way a country is governed, including its economic policies and regulatory framework, as well as the adherence to the rule of law. Corruption - the abuse of public authority or trust for private benefit - is closely linked: a poor governance environment offers greater incentives and more opportunities for corruption. Corruption undermines the trust of the public in its government. It also threatens market integrity, distorts competition, and endangers economic development. As a means of safeguarding its resources, the IMF assesses the governance and transparency frameworks within central banks of the countries to which it lends money. In the process, it promotes sound oversight, internal control, auditing, and public financial reporting mechanisms in these critical financial institutions (2011).

It was already said that the Charter’s right of access to documents is stated immediately after the right to good administration (in Art. 42). The consolidated version of the Treaty on the Functioning of the European Union (TFEU) states in Article 15 the principle of transparency: “[i]n order to promote good governance and ensure the participation of civil society, the institutions, bodies, offices and agencies of the Union shall conduct their work as openly as possible…Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, shall have a right of access to documents of the Union institutions, bodies, offices and agencies, whatever their medium, subject to the principles and the conditions to be defined in accordance with this paragraph”.

If the public right of access to documents is connected with the work of public bodies “as openly as possible” then we can determine that the Article 11 from the Treaty on European Union can be widened from information and consultation to real participation in decision-making in the sense of the American APA. The GG is wider than GA, it is pluralistically oriented toward the dialogue between the different stakeholders, recognizes causes and effects inside and outside legal frames, emphasizes democracy with participation and cooperation (partnerships, co-governance, political deliberation) and because of the wider field of different networks also the accountability and transparency of actions.

### Administrative Culture

Administrative culture (AC) indicates perception, analysis and interpretation of behaviour of public servants, which act according to the prevailing values in society. Owing to the emphasis on the legal grounds, which had the signs of the French principle of legality and general interest, the German war experiences and subsequent post-war attention to the protection of individual rights (Mahendra, 2001, p. xvi), the general understanding of the rule of law, there has somehow been lost the importance of values that prevail within agencies. “Having appropriate rules, standards and institutions is not enough. Unless the ethos of administrative justice is embedded, the system will be ineffective” (Creyke, 2007, p. 720). The legal control of government operations is still the leitmotiv in the majority of legal systems while we ought to focus on the reasons for illegal behaviour or acts. Despite well-intentioned aspirations, the focus has not been directed onto the conditions inside agencies, where values and working atmosphere are formed into a unique esprit de corps. The working conditions in the agency are determined by the particular characteristics of an internal and external surrounding that are interdependent and interconnected. The basis of any organization is its internal environment, which has similar elements everywhere, while an external environment is everywhere different.

AC is always a reflection of the society’s overall situation that is reflected in the specifics of the agencies. They live then in a generic form of administrative culture. Despite the fact that the generic concept of culture is well known, every nation understands it in its own way, since it is a mix of (different) factors that shape the lives and work of the nation. Although culture can be statistically evaluated upon the pre-established specifications, it cannot be transferred to another nation, as the other nation would lose pretty much of its identity. But despite the differences in the meaning of culture in different countries they all possess one common thing – the energy that protects what has been achieved and strives for the better; it is created by the force of values and mutual confidence. Compare the statement by Tolstoy that “happy families are all alike; every unhappy family is unhappy in its own way” (Tolstoj, 1999, p. 9): successful states are all alike, the unsuccessful ones rest upon their own mistakes. Just as the individual's personal culture consists of the interaction of education, values, morality and the ambient, the AC is a set of values, standards and rules of organization that are reflected in specific psychological phenomena which arise among officials. To the outside world it seems similar to a narrower psychology of the masses. AC could be seen as the interplay of factors that shape the work of management; in it we could find the psychological, sociological, organizational and legal sets of questions. As such it is a broader concept than good governance, which focuses primarily on legal values and relations between stakeholders whereby they influence legal values. It includes hierarchy, network connection, command and control, negotiation and participation of individuals, team and individual work. They all reflect an agency’s work, while lately we have viewed an agency only by its results. But they firstly depend upon culture. The culture of an agency and its internal connections can be judged primarily through the employees’ work; they are people who make a big contribution to the work of an agency, to its mission, performance and success and to the satisfaction of the general public. “No knowledge of administrative techniques can relieve the administrator from the task of moral choice – choice as to organisation goals and methods and choice as to...
his treatment of the other human beings in his organization. His code of ethics is as significant part of his as an administrator as is his knowledge of administrative behaviour, and no amount of study of the “science” of administration will provide him with this code” (Simon & Smithburg, 1991, p. 24).

In AC we could be looking at new era of human relations, which actually is not a new period, but a new emphasis on old findings, the era that does not deny everything but combines and connects pieces in new ways. It is not only about results, but also for expectations, trust and feeling. If we are successful with them, the results will be present too. For the administrative culture it could be said that it is so complex that it is adjacent to chaotic systems, which despite the apparent mess hide in them the forms of order and where even a small change in behaviour can lead to large differences (i.e. the so-called butterfly effect). Within culture we (hope or) trust that the values will be bred and that the working styles will be transferred from the past to the future; in the law we rely on written rules, which should lead to the desired future goals. However, it was already said that the subjective side of a human’s interpretation and implementation determines the real content of objective rules. Since the rules are incomplete abstract proxies for concrete examples, they are observed in a way that is understood and respected by authorities. Administrative culture thus becomes a mixture of the public trust that the public authorities will act in accordance with the rules and of the internal efforts which should justify that trust. The fulfilled public expectations might reflect in people’s willingness to comply with the laws that re-empower the public authorities to additional effort for justifying the public trust. This effort is reflected in the optimal use of the rules according to actual situations. The objective rule is so subjected to personal perception, which fills its content. Decisions about values are constantly taking place at all levels and activities. If values are common to a number of individuals in an agency, this results in a favourable climate for a common culture, for the same course of action in the same sort of cases. But - every decision can by its repetition lead to routine, if attention is not paid to the small shades, each having its own characteristics. Careful observation and comparison of differences is therefore a very responsible task and usually takes a long effort to turn the previous practices into a new course. Such points of change require strong individuals who can change the majority opinion in the agency.

Connections between the Presented Notions

According to the Charter and TFEU it seems that GA and GG are divided in the view of the (public) right of access to documents; but this division can be illusory: this right could be written also in the frame of the GA (and vice versa). It seems that the GA in the documents of the EU is oriented more to adjudication, while the GG to coordination, consultation with representative associations and the civil society in the process of making the abstract rules. These rights could be also grouped: the content of GA v. GG is different only in their focus (if the first is focused on the rights of the individual, the second is on the rights of the community); the GA from the Charter is similar to the Article 21(2) of the Finnish Constitution (1999): “[p]rovisions concerning the publicity of proceedings, the right to be heard, the right to receive a reasoned decision and the right of appeal, as well as the other guarantees of a fair trial and good governance shall be laid down by an Act”. Although integrity mechanisms have been developed in the frame of the administrative system against corruption and therefore belong more in the notion of GA, Creyke e.g. specifically uses a methodology for the national integrity system for measuring administrative justice (2007, p. 720).

There is only the one “good” way, while there may be many “wrong” ones. GA can be linked with administrative justice and AC to sound governance that to Farazmand means “a participatory process of governing the social, economic, and political affairs of a country, state, or local community through structures and values that mirror the society. It includes the state as an enabling institution, the constitutional framework, the civil society, the private sector, and the international/global institutional structure within limits…Governance is therefore inclusive and promotes participation and interaction in an increasingly complex, diverse, and dynamic national and international environment. Hence, the concept of “soundness” is used to characterize governance with superior qualities in functions, structures, processes, values, dimensions, and elements that are necessary in governing and administration” (2004, pp. 11-12).

Criteria and characteristics of the discussed terms that could be synonyms (they all relate to the balance between human rights and administrative effectiveness and efficiency) are overlapping, intertwined, so it is difficult to put them within individual terms. However, the table below shows them as they appear in various documents:
Table 1: Criteria for good administration, administrative justice, good governance and administrative culture

<table>
<thead>
<tr>
<th>Good Administration</th>
<th>Administrative Justice</th>
<th>Good Governance</th>
<th>Administrative Culture</th>
</tr>
</thead>
<tbody>
<tr>
<td>- Right to be heard</td>
<td>- Ethos, esprit de corps</td>
<td>- Participation</td>
<td>- Society’s values</td>
</tr>
<tr>
<td>- Access to a personal file</td>
<td>- Reciprocity and equality</td>
<td>- Transparency</td>
<td>- Internal values</td>
</tr>
<tr>
<td>- Duty to give reasons</td>
<td>- Reasonableness</td>
<td>- Consensus oriented</td>
<td>- Perception, analysis and interpretation of public servants’ behaviour</td>
</tr>
<tr>
<td>- Impartiality</td>
<td>- Lawfulness</td>
<td>- Rule of law</td>
<td>- Careful observation and comparison of differences on the system’s level</td>
</tr>
<tr>
<td>- Fairness</td>
<td>- Redress mechanisms</td>
<td>- Accountability</td>
<td>- Reflection of the overall situation in society</td>
</tr>
<tr>
<td>- Reasonable time</td>
<td>- Coherency and consistency</td>
<td>- Responsiveness</td>
<td>- Locus of control</td>
</tr>
<tr>
<td>- Good administrative behaviour</td>
<td>- Highest standards of behaviour</td>
<td>- 4E’s (economy, effectiveness, efficiency, ethics)</td>
<td>- Behavioural patterns</td>
</tr>
<tr>
<td>- Notification of decision, collecting relevant information</td>
<td>- Integrity (balancing between the efficient administration and the administrative law rights)</td>
<td>- Networks, civil society</td>
<td>- A mixture of public trust that public authorities will act in accordance with rules and of internal efforts that they will justify that trust.</td>
</tr>
<tr>
<td>- Duty of diligence</td>
<td>- Learn from experience and continuous improvement</td>
<td>- Purpose and outcomes</td>
<td>- Not only results, but also expectations and trust</td>
</tr>
</tbody>
</table>

MALADMINISTRATION | HUMAN DIGNITY | DEMOCRATISATION | SYSTEM’s EVALUATION

Sound Governance, Context-depended Craft, New Public Governance

The contents of the abstract synonyms depend on the circumstances of time, space and the individual cases, while they have all been somehow highlighted from the 1980s onwards. According to Osborne “both PA [Public Administration] and the NPM [New Public Management] fail to capture the complex reality of the design, delivery and management of public services in the twenty-first century” (Osborne 2010, p. 5). He offers the notion of New Public Governance that is “rooted firmly within institutional and network theory…It posits both a plural state, where multiple interdependent actors contribute to the delivery of public services, and a pluralist state, where multiple processes inform the policy-making system. It is concerned with the organizational and external environment pressures that enable and constrain public policy implementation and the delivery of public services within such a plural and pluralistic system…Its focus is very much upon inter-organizational relationships and upon the governance of processes, stressing service effectiveness and outcomes that rely upon the interaction of PSOs [public service organizations] with their environment. The central resource-allocation mechanism is the inter-organizational network, with accountability being something to be negotiated at the inter-organizational and interpersonal level within these networks” (ibid, 9).

Such kind of theories can be grouped into the one of Pollitt’s where “management (in both public and private sectors) is a significantly context-dependent craft – that individual techniques and processes which work well in one context may fail miserably in another. So it is vital to think about both the instrument or practice, and the context into which it is to be placed” (Pollitt 2003, p. xii). According to this and by the comparison between models of governance it is obvious that Pollitt and Bouckaert speak about the public management reform as the ‘deliberate changes to the structures and processes of public sector organizations with the objective of getting them (in some sense) to run better [this per se abstract word is only possible because there are]…several key concepts, including governance, networks, partnerships, “joining up”, transparency, and trust and no dominant model’ (2011, pp. 2, 11). The openness of the considered synonyms, longevity, complexity and resilience of their essential elements that intertwine and duplicate each other in different notions show only one element: the human mind that is responsible for the concrete content in a given context. Such findings are consistent with Donaldson’s anomalism of the mental “[e]ven if someone knew the entire physical history of the world, and every mental event were identical with a physical, it would not follow that he could predict or explain a single mental event….Strict laws…can explain and predict physical phenomena [because of the causality of
Energy as the “Old–New” Public Administration’s Notion

Like it is commonly known that prevention is better than cure, it is the same with the public administration. The myth of political neutrality of the executive branch and the effectiveness of Parliament’s control on the executive has disappeared, but there is no adequate idea that would resolve the use of the significant political power in the hands of the non-elected personnel.\textsuperscript{14} Mechanisms for identification and enforcement of accountability are not enough because they are curatively oriented. The law is about striving for objectivity and material truth, about acting from the outside,\textsuperscript{15} while the emerging ideas are subjective, intangible and personal. Because they are intangible, they cannot ‘prosecute and punish’ and therefore remain on the fringes of the law although they give it its essence in ‘seek and find’ (to find an old rule that can be applied to a new idea). They represent a set of individual reflections of individuals, who in the specific working relations within public duties and powers reflect their personal characteristics of what is right or wrong. These reflections can be defined by the concept of focus of control,\textsuperscript{16} i.e. what effects have caused somebody’s actions. Such behavioural patterns are evident inside the agencies (among colleagues, internal organizational units, relations to superiors) and to the outside world (to other bodies, to politics, citizens, media). Posner and Vermeule speak about executive signalling, where “well motivated executives send credible signals by taking actions that are more costly for the ill-motivated actors than for well-motivated ones” (2006, p. 894). It is all about what we can do to make the world a better place.

The existing systems of democracy cannot stand without bureaucracy; we need a bureaucracy that would be sensitive, proactive, responsive, more visionary, more-like in the direction of the Singapore’s Public Service for the 21st Century’s statement: “the goal of PS21 is transformation of the Singapore Public Service, from reactivity to proactivity, from a satisfaction with the present to a questioning of the future. This demands a change in approach, values, and culture...The Public Service must go from being a mere service provider and regulator to being a catalyst for change” (Lim, 1998, p. 131). Such kind of bureaucracy will have to be empowered to deal with complex problems more ‘as a personal matter’ than a legal one; in the complex surroundings we do not need “more sophisticated rules” (Lynn, 2011, p. 233) but more simple rules. The persistence of legal principles clearly shows that simplicity better handles the complexity: “there are large and complex domains of human endeavour in which simple rules should far outperform their more complex rivals. For these domains, the hard question remains: do we have the courage to try simple solutions when complex ones have failed?” (Epstein, 1995, p. 332). Nowadays, when there is a greater need for mutual assistance, the idea of good again comes to mind. It is closer to the definition by Justinian, which links it with justice and humanity\textsuperscript{17} rather than with the classical Ulpian’s entitlement. The society is more mature, educated, informed, prepared and even forced to operate in different ways that it was in the traditional state regulation. Different social situations have also changed the role of individuals and groups justify new forms of action. The discussed notions clearly show that the public administration has left strict legal frames although the possibilities of influencing the state operations by the people are almost the same as centuries ago. The ancient idea of good can be the start and end of all governmental activities; we do not need so many different notions that basically describe one and the same thing from a different angle.

There is no single finite question or set of questions for administrative law to answer, revolving around a single attitude to the state’s relationships with its subjects. Similarly, there can be no finite list of values. Lawyers...suffer from a professional deformation; they are too easily inclined to assume a judicial answer to every problem. Equally, they show a predisposition to leave the judicial branch of government unexamined (Harlow & Rawlings 2009, p. 48).

Today’s administrative law is more and more accepting that prohibited actions are not only the ones that are prohibited by law, but also those which are contrary to the above mentioned synonyms, all that is “not good enough”. If such proactive, preventative focus is inserted into integrity mechanisms, less will be bad administrative decision-making, bad soft-law or bad practices and with this also less complaints against actions of the state. Through the notions as synonyms that at their human core mean the same (different is only the context) was shown that the mind and the empirical world are connected in different ways, where prevail the mind, principles, and goodness (the results are different in every state, though many of them have very similar rules). By emphasizing values and confidence in the work of colleagues and institutions, by obligation to create suitable conditions for training and education of public servants who cooperate with citizens and listen to them (without having to be pushed from the higher management), we are closer to the idea of goodness. More effort must be made in improving working conditions, in the power of sincere and clear words, in fulfilling given commitments. In the time of global economic crises there are many suggestions to cut down the number of public servants, but in such a climate ethos is hard to build. Public culture relates to the possibilities for the timely and active action of public bodies to
solve concrete problems and to the degree of autonomy given to every public servant. Whatever a system of state regulation might be, it can cause many failures as it may present many rewards. Within this faint limit can, under the same rules, be present differences, which can be explained through the cited synonyms, through the degree of locus of control and through collective “programming” (with reciprocity, collective, signalling behaviour) of the community as a whole. To grow on the idea of goodness means the ability of government and each employee to re-act within its jurisdiction, to carefully detect and allow the necessary changes for the better, to punish violations and to reward good practices. In the end all aspects of public culture can be concentrated upon one question: what can the states do in reality (enable, restrict) that the public officials can legally, effectively and ethically carry out their responsibilities, to positively affect their and the others’ human dignities? Responses are clearly different for each state, but there is one common path: this paper starts with the statement of one of the Founding Fathers, and let it be also this place be reserved for him. What was in the 1980s described with reinvention, was in the 1780s with energy.

Energy in the executive is a leading character in the definition of good government. ... It is not less essential to the steady administration of the laws, to the protection of property against those irregular and highhanded combinations, which sometimes interrupt the ordinary course of justice, to the security of liberty against the enterprises and assaults of ambition, of faction and of anarchy (Hamilton 1961, pp. 471-2).

Durkheim begins from the other side, i.e. from the people, where “energy (beliefs, traditions and collective practices) is stored and transmitted to authority” (1992). And authority is the state that is “a group of officials sui generis, within which representations and acts of volition involving the collectivity are worked out, although they are not the product of collectivity” (ibid). It is all about people everywhere in the systems that habitually innovate, that constantly improve their quality, without having to be pushed from outside. This is what we need.

Conclusion

People can be most affected by the conduct of executive branch. The less moral behaviours of the officials there is, the more legal rules are needed for the protection of the human rights, but they remain without effect because of their powerlessness against the different inner convictions. A human’s autonomous evaluation is not a matter of dictated norms, rules, regulations and guidelines, but is mainly a matter of free choice, internal desire to be good, upright, correct, humane, better or something else. Compulsion arises from the basic sense of right, of moral assessment according to the apparent laws of logic. Personal assessment and to it connected decisions about actions are the foundation of democracy. If a human does not act in persona even to a lesser extent, he/she acts sloppily, disinterested, apathetic, unprofessional and estranged. The public administration does not have a major financial incentive, so efficiency must be always in front of its actions, while its means are relevant to the available resources and specific goals, be they named as good, justice, dignity, soundness or something else. They all can be put in the unity of value according to which we want to do good for the society as a whole. Such actions of ours can be named also culture. Who does not share does not care. The content of the discussed notions reveals that they are directed towards values in the public administration or towards some general notions that ensure internal and external freedom to hold opinions, ideas and initiatives.

The idea of good or energy in administration can encompass all ideas about how administrations should operate (they are synonyms). It goes further than the classic notion of the principle of proportionality or reasonableness. The public servants of the future will have to operate in an even more complex world than it is today, where more flexible rules will probably prevail, but within more stable values only as paths through which they will achieve decisions. Good government, good administration, good governance, administrative justice, administrative culture and other possible notions of the work in public administration must be equipped with people’s trust in the work of the administration and with energy in the administration as the starting keys to the better society and better world. The world’s best institutions of public administration regardless of the concrete rules, rest on this confidence between the state agencies and the public at large. This relation represents the essential bonding of all discussed notions and means that the public administrations will satisfy people’s hopes when people contribute to these efforts and vice versa. While an answer of what is expected from every state is different depending on the conditions of each state (and more and more on the global surroundings), there are common denominators: trust, confidence in the best results and choice that must be possible even with or without clear guidance. Only with this kind of attitude can the public servants balance between the people’s rights and administration’s efficiency.

References

[34] International right to know day: Ombudsman calls for more pro-active transparency in the EU...


Notes

1 The Constitution of Germany in the Article (1) begins with dignity: Human dignity is inviolable. To respect and protect it is the duty of all state authority. The German People therefore acknowledge inviolable and inalienable human rights as the basis of every human community, of peace, and of justice in the world.
2 The administrative justice system means in TCEA the overall system by which the decisions of an administrative or executive nature are made in relation to particular persons, including the procedures for making such decisions, the law under which such decisions are made, and the systems for resolving disputes and airing grievances in relation to such decisions (Schedule 7, 13[4]).
3 The evolutionary process allows successful strategies to thrive, even if the players do not know why or how. Nor do they have to exchange messages or commitments: They do not need words, because their deeds speak for them. Likewise, there is no need to assume trust between the players: The use of reciprocity can be enough to make defection unproductive. Altruism is not needed: Successful strategies can elicit cooperation even from an egoist. Finally, no central
authority is needed: cooperation based on reciprocity can be self-policing (Axelrod, 1985, p. 174).

4 In 1713 the absolute monarch Charles XII had created the office of His Majesty's Supreme Ombudsman. At that time King Charles XII was in Turkey and had been abroad for almost 13 years. In his absence his administration in Sweden had fallen into disarray. He therefore established the Supreme Ombudsman to be his pre-eminent representative in Sweden. The task entrusted to him was to ensure that judges and public officials in general acted in accordance with the laws in force and discharged their duties satisfactorily in other respects. If the Ombudsman found that this was not the case, he was empowered to initiate legal proceedings against them for dereliction of their duties (The Parliamentary Ombudsmen, 2010).

5 See Ch. 13, 5(1)(a).

6 1. Getting it right, 2. Being customer focused, 3. Being open and accountable, 4. Acting fairly and proportionately, 5. Putting things right, and 6. Seeking continuous improvement (Reviewing policies and procedures regularly to ensure they are effective; asking for feedback and using it to improve services and performance; ensuring that the public body learns lessons from complaints and uses these to improve services and performance). The principles are very similar to those from the New Public Management see main chapters in e.g. Osborne and Gaebler (1992).

7 The Ombudsman’s definition of maladministration is in the 1997 Annual Report: ‘maladministration occurs when a public body fails to act in accordance with a rule or principle which is binding upon it’ (Annual Report, 2010, p. 27).

8 E.g. Osborne divides public governance into socio-political governance, public policy governance, administrative governance, contract governance and network governance (2010, pp. 6-7). Theories of governance may include policy network theory, rational choice theory, interpretive theory, organization theory, institutional theory, systems theory, metagovernance, state-society relations, policy instruments and governance, development theory and measuring governance (Bevir, 2011).

9 United Nations Economic and Social Commission for Asia and the Pacific.

10 1. The institutions shall, by appropriate means, give citizens and representative associations the opportunity to make known and publicly exchange their views in all areas of Union action.
2. The institutions shall maintain an open, transparent and regular dialogue with representative associations and civil society.
3. The European Commission shall carry out broad consultations with parties concerned in order to ensure that the Union’s actions are coherent and transparent.

11 In-depth insight into the components of the rule of law actually reveals that the fairness (the procedural and substantive) is one of its main elements (Wade, Forsyth, 2004, p. 22).

12 The classic exposition is that in Dicey (1982).

13 One way of analysing human culture is that of Dutch anthropologist Geert Hofstede, who developed his theory of cross-cultural communication, where he applied five dimensions of culture; he states that cultural differences manifest themselves in several ways - through symbols, heroes, rituals, and values (2001; Longatan, 2008). But such tool can help us only in the numerical evaluation of what we already know – that cultures are different. Can only five dimensions measure the culture of a specific nation? I think that culture cannot be identified by a fixed set of necessary and sufficient conditions and that it is more close to the recognition technique, which was applied in famous dictum of US Supreme Court Justice Potter Stewart on pornography, “I know it when I see it”. See Jacobellis v. Ohio, 378 U.S. 184 (1964).

14 From the principle of legality it is different in the double personal approach: at the administrative culture it is about trust in respecting the rules, at the principle of legality the respect is demanded; at the administrative culture for the optimal use of the rules is personally interested officials themselves and at the legality they only meet the required minimum.

15 Partly negative because it is possible (and typical) to know of the singular causal relation without knowing the law or the relevant descriptions [of that relation] (Davidson, 2008, p. 64) and partly positive, because it shows on the impossibility of empirical proof of abstract concepts. If at the core of human activity is a human himself, it is not so much important if his finding is scientific, but that it is workable; it is not important if the findings are based on induction (experiment) or on falsification (people had used fire long before they knew its basic characteristics); to Laudan, the demarcation between science and non-science is a pseudo-problem that would best be replaced by focusing on the distinction between reliable and unreliable knowledge, without bothering to ask whether that knowledge is scientific or not: there are many well-founded beliefs that are not scientific and, conversely, many scientific conjectures that are not well-founded (Laudan, 1983).

16 The French have tried to fill this shortage with a general set through training, acceptance tests and school programs: ‘as a result of this educational and professional process, the agents of the French state both ordinary and administrative judges, can claim to be rather directly representative of the citizenry. After all, entry into the upper ranks of the state takes place by testing in form a single, inclusive, and free educational system (Lasser, 2009, p. 45).

17 The function of the State is simply to secure temporal welfare of its citizens; hence it takes cognizance only of internal acts and not of the internal motive (‘De internis non judicat praetor’) (Hastings & Selie, 2003, p. 146).

18 Rotter developed the concept originally in the 1950s (Rotter, 1954). Locus of control refers to an individual’s perception about the underlying main causes of events in his life. Rotter’s view is that the behaviour is largely guided by “reinforcements” such as rewards and punishments; individuals come to hold beliefs about what causes their actions. These beliefs, in turn, guide what kinds of attitudes and behaviours people adopt. This understanding of locus of control is consistent, for example with Philip Zimbardo: ‘A locus of control orientation is a belief about whether the outcomes of our actions are contingent on what we do (internal control orientation) or on events outside our personal control (external control orientation)’ (Zimbardo, 1985, p. 275). External locus of control is guided by the individual’s belief that his behaviour is guided by fate, luck, or other external circumstances, while internal locus of control is guided by the
individual’s belief that his behaviour is guided by his personal decisions and efforts.

19 Justice and humanity are the greatest human treasure. *Maxima inter homines bona sunt iustitia et humanitas.* (Just. Nov. 163,) (Stojčević & Remac, 1989).

20 Justice is the constant and perpetual desire to give to each one that to which he is entitled - *Justitia est constans et perpetua voluntas ius suum cuique tribuens.* Institutes, Bk. 1, title 1.

<http://www.constitution.org/sps/sps02_j1-1.htm> (last visited 17 March 2011)

21 It is about creating public organizations that constantly look for ways to become more efficient … By “reinvention” we mean the fundamental transformation of public systems and organizations to create dramatic increases in their effectiveness, efficiency, adaptability and capacity to innovate. This transformation is accomplished by changing their purpose, accountability, inventiveness, power structure and culture. … Reinvention is about replacing bureaucratic organizations and behaviour with entrepreneurial organizations and behaviour. It is about creating public organizations and systems that habitually innovate, that constantly improve their quality, without having to be pushed from outside. It is about creating a public sector that has a built-in drive to improve-what some call a “self-renewing system” (Osborne & Plastrik 1998).