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Integrity and good faith in the european concept of good administration: framework for legal and scientific research

Доброчесність та добросовісність в європейській концепції належного адміністрування: засади науково-правового дослідження

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The scholar does not consider gold and jade to be precious treasures, but loyalty and good faith.

Confucius

Nothing is at last sacred but the integrity of your own mind.

Ralph Waldo Emerson

Abstract

Clarifying the essence of the good public administration in the USA, United Kingdom, European countries, and Ukraine has led to the need for special studies of the Good Faith and Integrity principles. The purpose of this paper is to develop the framework for future study of the doctrine of good administration, within the European cultural and legal tradition. This study represents a “triune” system of methodology: 1) general (meta-theoretical) methods – theory “Law as Integrity” of Ronald M. Dworkin); 2) special (typical for the work) method – a legal operationalization;

Анотація

Уточнення сутності доброго державного управління в США, Великобританії, європейських країнах та Україні призвело до необхідності спеціальних досліджень принципів добросовісності та доброчесності. Мета цієї роботи полягає в розробці засад майбутнього дослідження доктрини доброго адміністрування в рамках європейської культурно-правової традиції. Це дослідження репрезентує «триєдину» систему методології: 1) загальні (мета-теоретичні) методи; 2) спеціальний (типовий для роботи) метод; 3) прикладні методи, запозичені з

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3) applied methods – logical-linguistic and sociological methods of content analysis. The results of preliminary review of the theoretical works were significantly modified on a basis of the collection and study of empirical material of activities in the sphere of public administration. A significant body of legal texts were examined by using the content-analysis method which has been successfully applied in the framework of the empirical research. The conclusions contain a basic hypothesis for future research. The basic concept of the claimed research, which has been developed, in such a way, is reduced to object, subject and aim of the further study of the issues raised in the field of good public administration.

Keywords: fairness, good administration, good faith, good governance, integrity.

Introduction

Law and morality are two bodies of norms and principles that regulate a human community and harmonize the behaviours of all individuals. Both normative systems have their common foundation in the constructs of Good Faith and Integrity, that demonstrate a dual legal and moral nature and are directed against corruption and abuse of law.

The European Code of Good Administrative Behaviour was approved by the European Parliament on September 6, 2001. In Article 7 (Absence of abuse of power) the code is guided that “Powers shall be exercised solely for the purposes for which they have been conferred by the relevant provisions. The official shall in particular avoid using those powers for purposes which have no basis in the law, or which are not motivated by any public interest”. And for opposition to the abuse of law and power the Article 11 (Fairness) provides that “The official shall act impartially, fairly, and reasonably” (European Ombudsman, 2002).

The modern legal discourse around the European Concept of Good Administration contains many keywords designed as anti-abuse instruments, namely: fairness, bona fides, good faith, integrity, conscientiousness, honesty, decency, good practice etcetera (Committee of Ministers of the Council of Europe, 2007).

Clarifying the essence of the good public administration in the USA, United Kingdom, European countries, and Ukraine has led to the need for special studies of the Good Faith and Integrity principles that play a major role in this issue.

інших наук. Результати попереднього огляду теоретичних робіт були значно модифіковані на основі збору та вивчення емпіричного матеріалу щодо діяльності у сфері державного управління. Значний обсяг правових текстів був вивчений за допомогою методу контент-аналізу, який успішно застосовувався в рамках емпіричного дослідження. Висновки містять основну гіпотезу для майбутніх досліджень. Основний задум заявлених досліджень, розроблених таким чином, зводиться до об'єкта, предмета та мети подальшого вивчення питань, порушених у сфері доброго публічного адміністрування.

Ключові слова: чесність, добре адміністрування, добросовісність, належне урядування, доброчесність.

The motivation for choosing the research theme determines the purpose of this paper. It is to develop the framework for future study of the doctrine of good administration and principles of Good Faith and of Integrity, within the European cultural and legal tradition (Hesselink, 2010).

Theoretical Framework or Literature Review

On the national level in Ukraine there are clearly insufficient publications regarding good faith and integrity in the administrative law. The main results of such research were reflected in some scientific works of the following domestic authors: K. Herasymiuk, Y. N. Kirichenko, O. V. Martselyak, R. Melnyk, I. I. Shmalenko, N. V. Zhmur. But in the modern foreign countries a great number of projects relate to this theme. These, no doubt, include fundamental works of authors such as, E. Dargay, R. Dworkin. The approach by scholars such as G. de Graaf, L. Huberts, R. Smulders to the study of public administration in the context of value conflict deserves particular attention (de Graaf, Huberts & Smulders, 2016). Of particular interest is the experience of implementing the program New Public Governance (NPG) by R. van Steden in Vrije Universiteit Amsterdam. In her works, K. Pallai explores anticorruption aspects of the "integrity" concept (Pallai & Kis, 2014). Public services through administrative contracts are studied by L. Pascariu (Pascariu, 2010) and G. Shalev (Shalev, 1979). But research at the intersection of two subject areas of constitution law and administrative law (N. Barber, E. Smith and many others) are of primary importance (Barber, 2018).

These publications, reaching across different countries and scientific schools, demonstrate the growth and dynamism of efforts to stimulate comparative research of public administration and in administrative law more generally.

A wide range of issues is constantly updated around such a question, how public administration is being shaped by the national and the supranational moral doctrines and values.

However, this needs to take into consideration one very important point. As noted by several academic lawyers, “domestic researchers, including drafters of regulatory legal acts, are rather superficial and sometimes irresponsible while formulating definitions of the relevant legal terms, which has an extremely negative effect on the efficiency of administration of the law” (Melnyk, 2022).

The complex approach which has been developing in our legal science requires the better analysis of the doctrines, legislation, and its practice in the light of international and European results and trends.

According to the results of the of the sources selection, the principles of Good Faith and Integrity have demonstrated sufficient representation in the existing legislation, case law in USA, Great Britain, EU, administration law of Ukraine and in international law.

The legal principle of integrity is widely presented in anti-corruption legislation of Ukraine, and what is very important - its interpretation formally corresponds to the international practice. In recent years there is an increase in the volume of scientific research on the problems of integrity in administrative law. Of particular interest are the works on the concepts of good governance and public administration (Herasymiuk et al., 2020).

In 2022, with adoption of the Law of Ukraine “About Administrative Procedure”, which should enter into force at the end of 2023, principle of good faith acquires a clear meaning and quite specific content for administrative law (art. 4 and 10 of this Law) (Verkhovna Rada of Ukraine, 2022). But up to this point good faith is stated only in civil legislation of Ukraine.

The preliminary results of a brief review of doctrinal and empirical sources demonstrates that the profound justification of normative content of integrity is clearly insufficient in modern science of Ukrainian administrative law. But an in-depth,

research-informed and theoretically driven understanding of good faith is completely absent in the discourse among the Ukrainian administrative law. This is because the good faith principle has never been referred to in any administrative legal text, including the Laws. On the contrary, within the framework of English-language law discourse, the notions of Integrity and Good Faith are spelled out in detail in the framework of the currently popular concepts of Good Governance and Good Administration.

Methodology

From a methodological point of view, this study represents an orderly terminology and a system of methods that form the basis for the development of a new understanding of the role and place of principles Good Faith and of Integrity in the conception of Good Administration. The foundation of such interpretation is a “triune” system of methodology: (1) *general (meta-theoretical) methods*; (2) *special* (typical for the work) *method*; (3) *applied methods*, borrowed from another sciences.

The basic general study method of this work was formed under the influence of one well-known interpretive theory of Law interpretation, such as theory “Law as Integrity”, developed by American philosopher and jurist Ronald Myles Dworkin (1931 – 2013) (Dworkin, 1986, 1977).

The special method of research is a *legal operationalization*, by which shall be carried out the definition of a fuzzy concept (for example, of evaluative notions in administrative law) so as to make it clearly distinguishable, measurable, and understandable using empirical observation (by comparing examples of use this notions in legislated or judicial practice).

The *logical-linguistic* and sociological methods for the meaningful study of documents and content analysis are the most productive among the *applied methods*. The choice of these methods is due to the need to develop a terminological system for European concept of Good Administration as a logical-conceptual framework of theoretical construction. Moreover, these methods allow for the empirical verification of the main hypotheses and conclusions, in particular, for an implementation of the principles Good Faith and of Integrity in the administration law of Ukraine.

However, the operationalization, as a common scientific method, is used in the other social and

legal sciences. But some authors notes: there are threats to the validity of operationalization in research of complex concepts (Lukyanenko, Evermann & Parsons, 2014).

In the field of public administration, this theory is the most successful, because it identifies certain conceptual frameworks for administrative researches and explains how they can be operationalized (Shields & Hassan, 2006).

Results and Discussion

The preliminary review of the theoretical works found that the concept of Good Faith (Bona Fides) has been developed most fully in the civil law tradition (Zimmermann & Whittaker, 2000). It is this understanding of the good faith that is borrowed from private law by administrative law.

Some researchers call this principle “bona fides”, in the Latin manner, but other scientists distinguish between “conscientiousness” and “good faith” (Bakalinska, Holubieva, & Vinnytskyi, 2019). It will be sufficient for our current purpose to use these terms interchangeably (as synonymous) unless their differences are specifically relevant in the legal situation.

It is worth thinking about the issue of origins of this principle in a historical light. Such reflections make lawyers rethink some existing approaches to this problem.

It is necessity to reverse the following theoretical construct used to explain the relationship between the law standards and misbehaviour: “Recognition of a top priority of the good faith principle in actions of participants in an economic turnover led to the need to protect their rights and legitimate interests from unfair competition” (Bakalinska, Holubieva, & Vinnytskyi, 2019). On the contrary, massive and systematic abuse of law, under conditions of the total commercialization of public life in the first century AD caused the genesis of the Bona Fides concept in Ancient Rome. The Good Faith principle was specifically designed to combat unfair behaviour (del Granado y Rivero, & Juan Javier, 2009). It is this goal setting that defines the functions of legal culture in the formation of modern good-faith relations.

The term “integrity” in several languages is often used together in one phrase with “perfection” and “development”. However, it was, “in connection with anti-corruption policy

that the integrity approach entered public consciousness” (Dargay, 2019).

Therefore, introducing the idea of this «integrity in public administration», promotes two major objectives: establishing zero tolerance to corruption, and improving the anti-corruption legislation.

So “given the level of legislative regulation, legal awareness, legal culture, and education of the population of Ukraine, it is proposed to combat corruption offenses... in two main areas: general and special. In particular, the general objective should include such ways to combat corruption as improving the legal anticorruption culture of citizens, public policy to involve various institutions of civil society, and the general population in the fight against corruption (a form of control by society). The special objective should include combating corruption in the field of public procurement, combating money laundering in the field of public finances, and combating corruption offenses more than or abusing of official position” (Sukhonos et al., 2021).

But it is necessary to consider “integrity concept as a phenomenon necessarily pervading the whole public administration system” (Dargay, 2019). In this regard, most promising is major expansion of competencies of administrative discretion for executive authorities as a form of their moral-legal self-regulation (Donnikova & Kovban, 2020). This needs to take into consideration the fact that a lot of management entities take part in the management, but they are quite diverse categorically. Some of them act at their own discretion and in their own interests, others are representatives and management agents who manage both from the outside, not being part of the staff, and from the inside, being an integral part of the team (Vartanyan, 2020). And that's why it's so important that the different administrators will be obligate to look for a compromise and do so quickly.

As the legal doctrines, legislations and case law show, good faith and integrity in public administration are closely associated with the legitimate realization of administrative discretion.

In this connection, the legal notion of an *employee “employed in a bona fide administrative capacity”*, in a way, can be called a case-study or a test case. It's defined in the case *Bath v. Woodland Meadows Romulus, LLC* (2009 U.S.) as an administrative officer, whose

primary duty is the performance of office or non-manual work directly related to the management, who has a decent payment for their work (not less than \$ 455 per week) and (it is especially important) “whose primary duty includes the exercise of discretion and independent judgment with respect to matters of significance” (USLegal, 2023).

It is explained that “in general, the exercise of discretion and independent judgment involves the comparison and the evaluation of possible courses of conduct and acting or making a decision after the various possibilities have been considered” (Bath v. Woodland Meadows Romulus, LLC, 2009).

The results of preliminary review of the theoretical works were significantly modified on a basis of the collection and study of empirical material of activities in the sphere of public administration.

A significant body of legal texts were examined by using the method of content-analysis which has been successfully applied in the framework of the empirical research.

The main task of this monitoring was to analyse the contents of the certain texts by identifying frequency characteristics of basic keywords.

The analysis results showed that the notions of Integrity and Good Faith have a high degree of representation in the modern legal discourse around the public administration.

But even more importantly, there is a stable correlation, on the one hand of the Integrity principle with the application of unilateral administrative acts and, on the other hand, of the Good Faith principle with the formation and performance of the administrative contracts, which are totally new phenomena in administrative law of Ukraine.

In English doctrinal sources, the parallel semantic antinomies are clearly tracked between (1) *Integrity – Corruption* and (2) *Good Faith (Bona Fides) – Abuse (Mala Fides)*.

In this regard, it is very significant that the construction of *Maladministration* was not only exhausted in the twentieth century (Wheare, 1973), but is becoming the top subject of current studies in the field of administrative law (Henthorn, 2023).

The normative texts of existing legislation and judicial practice, which have been subjected to frequency analysis, demonstrate that references to a theory of Good Governance are very common nowadays in Ukraine.

In contrast to this, the concept of Good Administration remains outside the attention of legislators and judges involved in the application of administrative law.

However, in the domestic doctrine, legislative and judicial practice there are many examples of serious logical mistakes, called a substitution of the thesis, that happens far too often regarding the notions of Good Faith and Integrity.

In general, there is every indication that these mistakes and shortcomings result from ambiguity, uncertainty of "Good Faith" and "Integrity" conceptual foundations, which have been insufficiently developed theoretically in administrative law.

Ideally, the comparative research of the integrity of public administration and good faith public administration should help bridge the gap between legal theory and practice in this issue.

For all the above reasons, one can potentially put forward the following basic hypothesis for future research:

The formation and functioning of the principles of integrity and good faith in the system of administrative law are caused by different interdependent types of factors: (1) material – the practice of public administration; (2) ideal – dominant in administrative theoretical and legal models, which in modern Western countries are actualized within the concepts of Good Governance and Good Administration. The legal content of these principles is revealed accordingly in the paradigms of Integrity Administration and Good Faith Administration. The emergence and content of these administrative and legal paradigms are objectively conditioned by the need to overcome the illegal practice of corruption administration and abuse of administration. Theoretical clarification of the administrative essence and normative content of the principles of Integrity and Good Faith on the basis of modern leading doctrines of government and administration should significantly facilitate the solution of extremely relevant problems in Ukraine: combating public corruption and abuse of administrative contracts and discretion.

The main content of the hypothesis is represented on the following scheme.

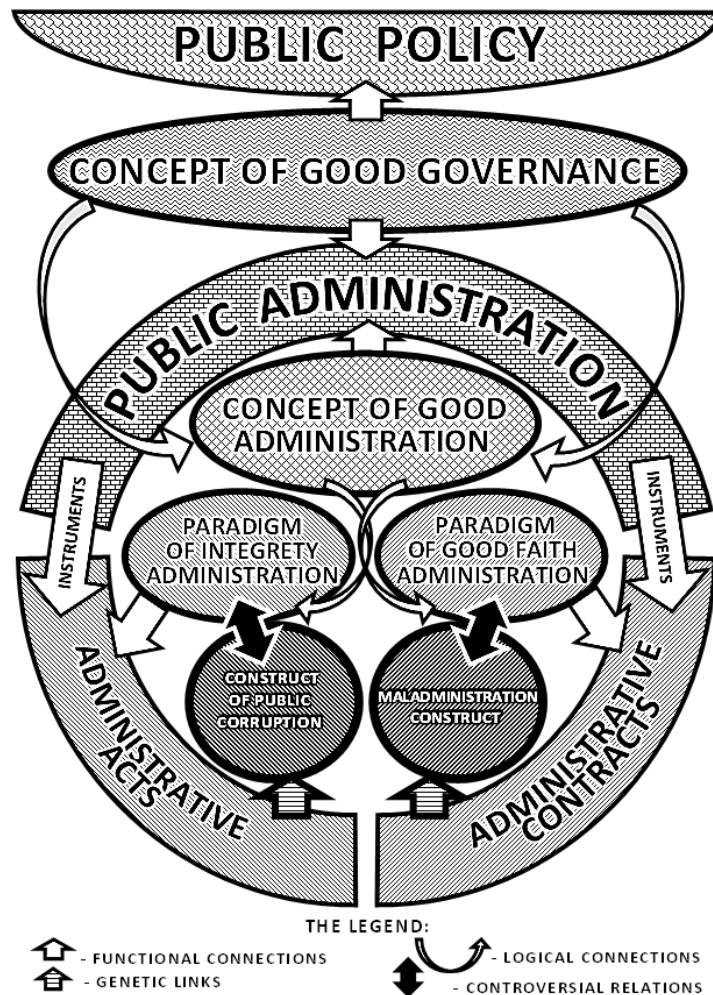


Figure 1. Terminological system of the “Good Governance” concept.
Designed as compiled by the authors

Conclusions

The basic concept of the claimed research, which has been developed, in such a way, is reduced to following points.

1. The object of the study must be a process of public administration modernisation in the USA, United Kingdom, EU, and Ukraine in accordance with the principles of good governance, integrity, and good faith.
2. The subjects of the research are the new European paradigms of integrity administration and good faith administration in opposition to constructs of public corruption and maladministration.
3. Accordingly, the aim of the study would be to provide a detailed and updated comparative analysis of the doctrines, legislations and judicial practice in European countries, the EU, USA and in Ukraine to reveal the administrative essence

and characteristics of Good Faith and Integrity in Good Public Administration, taking into consideration the possibility of their implementation in Ukraine.

Representatives of the international scientific community are invited to discuss the paper and comment on it.

Bibliographic references

Bakalinska, O., Holubieva, V., & Vinnytskyi, O. (2019). The moral and ethical principles on the formation of competition culture. *Amazonia Investiga*, 8(23), 469-475. Recovered from <https://amazoniainvestiga.info/index.php/amazonia/article/view/893>

Barber, N. W. (2018) *The Principles of Constitutionalism*. Oxford University Press. Recovered from <https://academic.oup.com/book/9458>

- Bath v. Woodland Meadows Romulus, LLC. (2009). Case Number: 2:2008cv13379. August 5, 2008. US District Court for the Eastern District of Michigan. LEXIS 92361, 3-4 (E.D. Mich. Oct. 5, 2009). Recovered from https://www.govinfo.gov/content/pkg/USCOURTS-mied-2_08-cv-13379/pdf/USCOURTS-mied-2_08-cv-13379-0.pdf
- Committee of Ministers of the Council of Europe (2007). Recommendation CM/Rec (2007)7 of the Committee of Ministers to member states on good administration. Adopted by the Committee of Ministers on 20 June 2007 at the 999bis meeting of the Ministers' Deputies. Recovered from <https://wcd.coe.int/ViewDoc.jsp?id=1155877&Site=CM/>
- Dargay, E. (2019). The Implementation and Experience of Integrity Management in Public Administration. *AARMS*, 18(2), 17–30.
- de Graaf, G., Huberts, L. W. J. C., & Smulders, R. (2016). Coping with public value conflicts. *Administration and Society*, 48(9), 1101-1127.
- del Granado, J.J. (2009). The Genius of Roman Law from a Law and Economics Perspective (September 18, 2009). XXVI Annual Conference of the European Association of Law and Economics. Recovered from <https://ssrn.com/abstract=1293939>
- Donnikova, I., & Kovban, A. (2020). Moral-legal self-regulation of freedom of conscience: culturological aspect. *Amazonia Investiga*, 9(32), 28-35. Recovered from <https://doi.org/10.34069/AI/2020.32.08.3>
- Dworkin, R. (1977). *Taking Rights Seriously*. Cambridge: MA Harvard University Press.
- Dworkin, R. (1986). *Law's Empire*. Cambridge, Massachusetts. London, England: The Belknap Press of Harvard university Press.
- European Ombudsman (2002). *The European Code of Good Administrative Behaviour*. Luxembourg: Office for Official Publications of the European Communities. Recovered from <https://www.ombudsman.europa.eu/en/publication/en/3510>
- Henthorn, T. (2023). What is Maladministration? Mylawquestions. Recovered from <https://www.mylawquestions.com/what-is-maladministration.htm>
- Herasymiuk, K., Martselyak, O.V., Kirichenko, Y.N., Zhmur, N.V., Shmalenko, I.I. (2020). Principles of integrity and good governance in Public administration. *International Journal of Management*, 11(4), 545-555. Recovered from https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3601652
- Hesselink, M.W. (2010). *The Concept of Good Faith. Towards a European Civil Code*. Fourth revised and expanded edition. Arthur S. Hartkamp, Martijn W. Hesselink, Ewoud H. Hondius, Chantal Mak & C. Edgar du Perron, eds. Alphen aan de Rijn: Kluwer Law International, pp. 619–649. Recovered from <https://ssrn.com/abstract=1762630>
- Lukyanenko, R., Evermann, J., & Parsons, J. (2014). Instantiation Validity in IS Design Research. In: Tremblay, M.C., VanderMeer, D., Rothenberger, M., Gupta, A., Yoon, V. (eds). *Advancing the Impact of Design Science: Moving from Theory to Practice*. Lecture Notes in Computer Science, vol 8463. Springer, Cham. Recovered from https://doi.org/10.1007/978-3-319-06701-8_22
- Melnyk, R. (2022). Terminological Problems Law of Ukraine «On Administrative Procedure». *Administrative Law and Process*, 4(39), 5-16. Recovered from <https://doi.org/10.17721/2227-796X.2022.4.01>
- Pallai, K., Kis, N. (2014). Towards Integrity” Integrity education and research at the National University for Public Service. *Public Finance Quarterly, State Audit Office of Hungary*, 59(2), 149-163.
- Pascariu, L.T. (2010). The Distinction Of The Administrative Contract From Other Types Of Contracts, *The Annals of the "Stefan cel Mare" University of Suceava. Fascicle of The Faculty of Economics and Public Administration, "Stefan cel Mare" University of Suceava, Romania, Faculty of Economics and Public Administration*, 10(Special), 407-412.
- Shaley, G. (1979). *Administrative Contracts 14* *Isr. L. Rev.* 444 (1979), Hebrew University of Jerusalem Legal Research Paper, 444-479. Recovered from <https://ssrn.com/abstract=2618047>
- Shields, P., & Hassan, T. (2006). Intermediate Theory: The Missing Link to successful Student Scholarship. *Journal of Public Affairs Education*, 12(3), 313–334.
- Sukhonos, V., Pavlenko, L., Krukhmal, O., Ivanovska, A., & Maletov, D. (2021). Forms of committing corrupt abuses of public finances and ways to counteract them in Ukraine. *Amazonia Investiga*, 10(39), 149-158. Recovered from <https://doi.org/10.34069/AI/2021.39.03.14>

- USLegal (2023). Employee Employed in a Bona Fide Administrative Capacity Legal Definitions. Recovered from <https://definitions.uslegal.com/e/employee-employed-in-a-bona-fide-administrative-capacity/>
- Vartanyan, A. (2020). Technology of convergence of team-coalition and administrative control of industrial enterprise. *Amazonia Investiga*, 9(26), 423-431. Recovered from <https://doi.org/10.34069/AI/2020.26.02.49>.
- Verkhovna Rada of Ukraine (2022, February 17). A law of Ukraine is "About Administrative Procedure". *Voice of Ukraine*, 15.06.2022, № 123. (in Ukr.)
- Wheare, K. C. (1973). *Maladministration and Its Remedies*. Hamlyn Lectures. London: Stevens and Sons. Recovered from <https://onlinebooks.library.upenn.edu/webbin/book/lookupid?key=olbp60754>
- Zimmermann, R., & Whittaker, S. (Ed.). (2000). *Good faith in European contract law*. Cambridge: Cambridge University Press.