

GUIDES TO GOOD GOVERN- ANCE

No. 08

On the Needs and Functions of Codes of Ethics



CENTRE FOR INTEGRITY
IN THE DEFENCE SECTOR



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of Defence

CENTRE FOR INTEGRITY IN THE DEFENCE SECTOR

The Centre for Integrity in the Defence Sector (CIDS) is promoting integrity, anti-corruption measures and good governance in the defence sector. Working with Norwegian and international partners, the centre seeks to build competence, raise awareness and provide practical means to reduce risks of corruption. CIDS was established by the Norwegian Ministry of Defence in 2012.

The views expressed in this booklet are those of the author and do not necessarily represent the views of, and should not be attributed to, the Norwegian Ministry of Defence.

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FOREWORD

CIDS is proud to publish the eight booklet of the series "Guide to Good Governance" (GGG). The objective of the Centre for Integrity in the Defence Sector's Guides to Good Governance is to present key issues within the area of good governance to a wide audience in a concise and reader-friendly format. The guides are usually brief, at the same time they do not overly simplify matters.

In this eight GGG – *"On the Needs and Functions of Codes of Ethics"* - the role of ethics in the public sector is discussed, focusing on the concept of ethics and how governments can enhance ethical standards within their bureaucratic systems. Two main modalities of codes of ethics is discussed:

1. codes emerging from a compliance-based cultural approach to ethics , and
2. codes emerging from an integrity-based cultural approach based on aspiration – ethics seeking to inspire the behaviour of civil servants.

The role of ethics in the public sector may be seen as bolstering the legitimacy of public institutions through the use of unbiased professional judgements as a basis for decisions. Those operating on behalf of public institutions should be answerable to the general public and open

to public questions. In this perspective, having ethical guidelines to inspire both the mind-sets and the professional behaviour of those involved in public decision making, is of paramount importance. Codes of ethics may definitively serve as useful instruments in order to fight unethical behaviour in the public sector. However, such an instrument is more effective when it constitutes an integral part of an institution's organisational policies. That requires continuous awareness-raising and training of the content and application of these codes. Furthermore, in order to foster understanding and acceptance of codes of ethics among those they are meant for, it is useful to involve civil servants at all levels in drafting and developing such codes.

The guide "On the Needs and Functions of Codes of Ethics" was written by Francisco Cardona.

CIDS is happy to receive feedback to the guide.

Oslo, 13 August 2019



Per Christensen

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1. Summary

The role of ethics in the public sector may be seen as enhancing the legitimacy of public institutions through the use of unbiased professional judgements as a basis for decisions. Those operating on behalf of public institutions should be answerable to the general public and open to public questions. In this perspective, having ethical guidelines to inspire both the mind-sets and the professional behaviour of those involved in public decision making, is of paramount importance.

Codes of ethics may definitively serve as useful instruments in order to fight unethical behaviour in the public sector. However, such an instrument is more effective when it constitutes an integral part of an institution's organisational policies. That requires continuous awareness-raising and training of the content and application of these codes. Furthermore, in order to foster understanding and acceptance of codes of ethics among those they are meant for, it is useful to involve civil servants at all levels in drafting and developing such codes.

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2. Making sense of the role of ethics in government and public administration

In the field of good governance and public administration, ethics can be understood as an assemblage of values, attitudes and standards that serve as behavioural guidelines to public officials. Ethics is aimed at ensuring that the actions of public officials always are focused on serving the public interest – the common good. Ethics in the public sector are in this respect a set of principles, values and standards guiding decision-making and behaviour inherent to the professional function as public officials. Ethics, therefore, is intimately entwined with professionalism in the public service.

With Rothstein and Sorak (2017), we may argue that the respect for ethical standards and the competence of public officials are critical factors for citizens when they evaluate the legitimacy of governments as well as public agencies. Professionals working in the public sector often have large discretionary powers (think of the functions carried out by judges, doctors, security services, teachers, and other public servants). Legislation and laws are not precise machines, and to implement them is not necessarily straight forward. The ability of public officials to make decisions according to the principles as prescribed by law must be guided by ethical values. This is crucial both

for the individual citizen and for the overall legitimacy of the political system in the eyes of the public (Rothstein and Sorak, 2017). Discretionary powers without an ethical framework – strong guidelines based on ethical values – may have devastating negative effects on society and the social fabric.

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At the level of governance of the state, civil servants also provide elected politicians with analyses and advice in the preparation of laws and policies. Frequently, such advice and the professional knowledge they are based on represent summaries of established expert knowledge and research. In democratic societies an important role for high-level civil servants simply is to provide that professional knowledge to the elected politicians. For an elected politician, it is vital that such advice, offered by civil servants, is presented in an impartial and non-biased way and that the civil servants operate under an ethical code that prevents them from promoting their private ideological motives or private interests. Bureaucratic ethics is fundamental because politicians need to get honest

information about alternative policies and actions, in a complex environment characterized by much uncertainty.¹

A professional civil service is a key to reduce corruption. A professionalized bureaucracy, in which civil servants are recruited strictly on the basis of their qualifications and skills, rather than their personal loyalty to or connections with politicians or special interest groups, is important for curbing corruption (Cardona and Eriksen, 2015). Professionalism strengthens the capacity of civil servants to use their skilled and unbiased judgement in order to serve the general or public good.

The professional judgement of civil servants is important to enhance moral or ethical reasoning about what is right or wrong in the everyday performance of public duties. Professional judgment may be defined as the application of the expertise, knowledge and experience, inspired by ethical standards and by the legal framework, resulting in making informed decisions about the courses of action that are appropriate in specific and frequently ambiguous circumstances (based on Ivan, 2016). Professional judgment is “neither a matter of simply applying general rules to particular cases nor a matter of mere intuition, but a process of bringing coherence into conflicting values within the framework of general rules and with sensitivity to highly contextualized facts and circumstances” (Kruse, 2011).

Professional judgement may differ from one profession to another, but it is always based

on the available knowledge and experience. It brings to mind the “practical wisdom” of Aristotle. The knowledge at the base of ethical professional judgements needs, in addition, to be evidence-based, not mere guessing. Evidence-based professional judgement may be defined as the conscientious application of best practice within a professional field, combined with up-to-date knowledge to guide decisions.

As Vibeke and Turney (2017) have noted in the context of comparing the implementation of child protection policies in Norway and the England, there is a great need for developing solid methods in order for public officials to make sound discretionary decisions. In implementing a defensible policy in an area which the authors, because of its complexity, brand as a “wicked problem”, the role of professional judgement takes on a particular significance. But as the Norwegian experience suggests, “unfettered or unchallenged use of professional judgement is potentially as problematic as over-reliance on protocols and procedures”. How, then, can we frame the application of professional judgement in a way that is flexible and sensitive to the particularities of the unique situations practitioners encounter, but nonetheless reliable, robust and accountable? The response of Vibeke and Turney is to propose an approach they call ‘*Grounded Professional Judgement*’ (GPJ) – characterised by “a strong commitment to epistemic accountability and epistemic responsibility” (Vibeke and Turney, 2017, pages 15-16).

Epistemic responsibility generally refers to either blaming or forgiving people for what they believe when there is ample evidence that their beliefs are wrong and not based on objective knowledge. It points at the profession-

¹ This observation is valid with regard to all kinds of situations and public issues. Teorell (2015), for example, has made a case that one reason behind outbreaks of war between states is that politically recruited high-level civil servants, acting as military advisors, have a tendency to provide the politicians with information that underestimate the enemy's military capacity while seriously overstating their own state's military capacity.

al responsibility of everyone to update his/her knowledge (McCormick, 2015, Engel, 2009, Arendt, 1967). Accountability in relation to professional judgement is connected to a process where the professionals are held responsible for their recommendations, decisions and actions. Accountability in this sense provides a form of 'answerability', illustrating the need for public control with regard to how professional judgements are carried out (Vibeke and Turney, 2017, page 16).

As a brief summary we may make sense of the role of ethics in the public sector if we look at it from the viewpoint of enhancing the *legitimacy* of public institutions through the use of unbiased professional judgements as a basis for decisions. Those operating on behalf of public institutions should be answerable to the general public and open to public questions. In this perspective, having ethical guidelines to inspire both the mind-sets and the professional behaviour of those involved in public decision making, is of paramount importance.

3. A government programme to enhance ethical standards

Ethical public behaviour is to a large extent favoured by transparency of procedures, openness to the disclosure of information, awareness raising, good leadership, and the legal and organisational design of the public sector. The protection and promotion of ethics in public administration are based on three pillars:

- the establishment of ethical principles and goals in the constitutional and legal framework
- an effective human resources or personnel management
- nurturing the ethical values of the individual public official, especially of those in leadership positions.

In practice, ethical behaviour is the result of a complex interaction of several factors. Researchers and practitioners of public administration often point out that, along with a solid legal framework that must be resolutely enforced, a proactive approach is needed. And to turn it around: measures that discourage and prevent unethical behaviour need to be in place. A proactive approach to promote ethical behaviour in public institutions is directly related to factors such as de-politicisation of public servants, good working conditions, fair

salaries, an open and motivating working atmosphere, well-functioning and active communication at all levels, and positive role-models – especially as played by the administrative leaders. In the final round, the political system and elected politicians must respect the need for professional integrity.

A consensus is growing that institutionalizing high ethics cannot be a stand-alone policy. Rather, it is closely entwined with the legal framework as well as the organisation and management of public organisations. A strong link exists between the ethical/unethical behaviour of civil servants and the country's specific institutional and organisational features, including the need for good working conditions for public officials. Within that conceptual framework codes of ethics have proliferated among OECD and EU member states, as instruments intended to support and enhance conscient ethically based policies in their governments.

Whereas some years ago, codes of ethics were almost non-existent, today there are hardly any government that neglect the need to invest in this instrument. However, codes of ethics are living instruments (they cannot

be written once and for all) and need to be understood and accepted by the people who apply them. Codes of ethics need to be maintained, cultivated and resolutely implemented. They should not serve as window-dressing. Staffers should be systematically reminded of them, on a regular basis, and provided with continuous training on the practical application of the codes of ethics.

As a brief summary, codes of ethics may definitively serve as useful instruments in order to fight unethical behaviour in the public sector. However, such an instrument is more effective when it constitutes an integral part of an institution's organisational policies. That requires continuous awareness-raising and training of the content and application of these codes. Furthermore, in order to foster understanding and acceptance of codes of ethics among those they are meant for, it is useful to involve civil servants at all levels in drafting and developing such codes.

4. What exactly is a Code of Ethics? Formulation, implementation and ways of enforcement

Codes of ethics differ from country to country. It is difficult to establish a “universal definition”:²

According to Rothstein and Sorak (2017), a growing body of research in recent decades has focused on the issue of public *values* in order to understand the wide variety of ethical codes that guide the proper conduct of public officials. Despite the existence of ethical codes in the public sector around the world, an unfortunate focus on Western countries characterizes the existing body of literature. A large number of studies have described themselves as “global” or “international”, yet these studies remain focused on the codes provided by governments in North America, the European Union (EU) or, somewhat more broadly, the member states of the Organization for Economic Co-operation and Development (OECD). Even when looking at that wider range of OECD countries, a bias exists –we are referring to relatively wealthy and stable countries that have benefitted from nearly two decades of OECD encouragement regarding “core values”.

Countries in Eastern Europe, Africa, Asia, and Latin America – arguably countries that frequently are in most need to develop a better understanding of public administration practices and codes that are designed to prevent corruption – continue to be ignored in most broad comparative studies.³ However, codes from developing and non-OECD countries should be included in order to answer the perennial question of whether there is a *universal* understanding concerning which values the civil service and public sector should uphold. Or is the answer specific to the political culture of different countries and different regions of the world (Rothstein and Sorak, 2017)?

Globally, there are different interpretations with regard to what constitutes a code of ethics. Sometimes, it is considered that a document cannot attain the status of an ethical code unless it has been passed by the Parliament (statutory law) or accepted by an authority such as the Government (e.g., a government decree) or what we may refer to as the State Employers Office (e.g., a country’s common civil service regulations). However, in some cases, a document that has not been

² See a sample of codes of ethics in the OECD Observatory on Ethics and Codes of Conduct, at: <https://www.oecd.org/mena/governance/observatoryonethicscodesandcodesofconductinoecdcountries.htm>

³ For Eastern Europe, see Palidaukaite, Jolanta (2006)

officially authorised may also have a de facto status as a code of ethics (Moilanen and Salmiinen, 2006).

A well-written code of ethics or declaration of values is a useful instrument that clarifies the values and standards expected when acting in an official capacity. In most cases, the code restates and elaborates the values and principles already embodied in legislation. This is useful since the relevant values and standards in many countries are scattered in numerous legal documents, which makes it difficult to locate the information and hard to understand the general idea of the civil service's governing values (Moilanen and Salminen, 2006). However, a mere restatement of legal provisions will not add any value.

A public code of ethics necessarily includes the core values expected to characterize public administrations.⁴ A declaration that lists public values and specifies codes of ethics can be seen as a constructive step in developing a more precise understanding of what constitutes ethical behaviour in the public service. Some OECD member states often begin by identifying their core values and to promote them by publishing a declaration of values. Subsequently, as the discussion on public-service ethics advances, the government may be better prepared to introduce more systematic and detailed guidelines in the form of a code of ethics – through comprehensive stakeholder participation and a consultation process which includes the staff but may also involve external actors. Indeed, to specifically involve the public servants concerned or their representatives in the drafting of a code of ethics is

a significant factor to consider, as is the active involvement of other key stakeholders.⁵

In comparison to laws, which prescribe sanctions if they are not complied with, the main function of codes of ethics is to guide civil servants in their professional work and to increase their awareness of moral aspects of specific tasks and situations. A major goal, therefore, is to increase ethical sensitivity and understanding related to professional judgement – particularly in situations characterized by professional dilemmas – and to provide clarity regarding accountability. As compared to laws, which are binding, a code of ethics is a less powerful instrument to combat wrongdoings, because it carries less absolute guidance and is only complementary to existing legislation and other regulations.

One of the main weaknesses of codes of ethics in this context, is that they imply weak enforcement mechanisms compared to other instruments, such as laws. This means that, on the one hand, they may be more vulnerable to non-observance and violations and, on the other hand, their successful implementation depends to a large extent on the existence of an environment of trust and the institutional ability to promote adherence to a code. The existence of trust is, in turn, largely dependent on the political and administrative culture of a country, as well as on other factors. Therefore, it may prove to be very difficult, if not impossible, to implement successfully an ethics enhancement policy by relying only on a code of ethics, if the required political and administrative conditions of trust are weak or missing.

⁴ See, for example, the Canadian "Values and Ethics Code for the Public Sector" (2011) at <https://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=25049>. This is a short (10 pager) combination of value declaration and code of ethics.

⁵ An interesting critical account on how a national integrity system is being built can be seen for the Netherlands in Huberts, L. and Hoekstra, A. (2016).

A prerequisite for an effective code of ethics is that its content is expressed in such a way that it can easily be understood and implemented by the relevant target group. The drafting of the code should be clear, consistent, comprehensive, and include practical guidance of application. Consistency means that the code must be harmonised with the relevant legislation and administrative procedures, in order to minimise ambiguity and promote overall understanding.

Quite often, drafting and adopting codes of conduct tend to become an end in itself. Once adopted, they are frequently forgotten. To counter that and in order to make the code a viable document and integral part of the organisational culture, training that is directly linked to the content of the codes, and awareness-raising as to how they should be applied, should be a permanently ongoing task.

One method to enhance the practical application of a code is to adapt it to the real ethical dilemmas faced by civil servants in their daily work. This can also be seen as a way to train the civil servants. The aim of such training is not only to discuss dilemmas in the framework of ethical guidelines, but also to train people to realize that they are facing a dilemma that they need to discuss and concluded. In order to conclude on something you also need to be able to identify and define the dilemmas you need to discuss. If the ethical guidelines gives answers to the dilemmas, the guidelines are adequate.

For this to happen, codes of ethics need to become an integral part of differentiated institutional instruments. The codes have to contain responses to actual organisational needs and challenges. That means they must be tailored to the particular tasks and responsibilities of an institution. Examples of organisational differentiation can be found in Sweden, Norway, Australia, etc. where each public organisation may have its specific ethical code to implement.⁶

This practice has by now spread to the majority of OECD countries. The decision to design different codes of ethics for different categories of staff and different institutional settings seems to be a logical one. Police officers, judges, teachers, or officials in the different ministries and agencies may have a lot in common as public servants, but in their daily work they may face very different situations and ethical challenges. Therefore, it seems to be the right decision to fine-tune codes of ethics for different categories of staff and to tailor them to specific institutional settings. This requires in turn a particular need to involve the staff concerned directly and substantively in the design of the ethical code (a bottom-up approach to drafting).

⁶ See, for example, the Norwegian Core Values in the Defence Sector, at <https://www.regjeringen.no/en/dokumenter/Core-values-of-Norways-defence-sector/id2000424/>

5. Two Main Modalities of Codes of Ethics

The OECD distinguishes between two culturally different modalities of codes of ethics, to be discussed below (Demmke and Bossaert, 2004):

3. codes emerging from a compliance-based cultural approach to ethics , and
4. codes emerging from an integrity-based cultural approach based on aspiration – ethics seeking to inspire the behaviour of civil servants.

The first one is principally top-down and focuses on rules and laws. The second approach focuses on encouraging commitment to ethics through greater awareness and motivation-stimulating instruments, and by relying on the personal responsibility of the official in question in order to prevent unethical behaviour. We may consider that a bottom-up approach is better. However, the problem is to find the right balance between coercion as a means of prevention on the one hand, and motivation and personal commitment as a means of prevention on the other hand. Top-down and bottom-up approaches are not mutually exclusive and may be combined.

Whereas some OECD countries rely more on a compliance-based approach, others prefer

to rely on more integrity-based approaches. The right combination of the two has yet to be established. Thus, for example, France, Italy and Germany represent a relatively strong top-down, compliance-based approach. Other countries, for example, Australia, Canada, the United Kingdom, Sweden and Norway have a bottom-up, preventative approach, or a mix of the two approaches.

Each approach has its own challenges. A compliance-based approach has to deal with the strengths and weaknesses of rule-based ethics. This approach tends to develop elaborate codes emphasising compliance with rules, thus acquiring a strong legalistic feature. In this context, people tend to think that if something is not explicitly prohibited, it may then not be considered wrong. Another weakness is that while legalistic approaches may help eliminate and prevent the most serious wrongdoings, they are not designed to promote proactive ethical attitudes and behaviour. Furthermore, organisations that rely only or mainly on a legalistic approach may become vulnerable to unethical behaviour if members of the organisation perceive the rule-enforcement efforts as dwindling and the likelihood of impunity rising.

The integrity-based approach emphasises personal responsibility and the values that underlie the laws and rules for the management of public resources. The ethical values involved do not simply involve the letter of the law and explicit rules but refer their spirit and underlying meaning in order to motivate the civil servants to comply with them. An integrity-based approach stresses the values that are promoted through specific ethical behaviour and remains tied to the more concrete functional areas of the organisation. A basic feature of this value-based approach is to try to identify which values are relevant and desirable and to find out how the civil servants concerned think about them. Both the top-down and the bottom-up approaches may be adapted to codes of ethics in new situations, for example, the emergence of new values.

The research by Rothstein and Sorak (2017) finds that there is a contrast between codes that focus on legal compliance and those that focus on inspiring public servants to act in accordance with certain values. The majority of countries have compliance-based codes that are typically written more like legal documents, instructing public servants what they should and should not do. While most of the inspirational codes come from countries that are relatively wealthy in their region, many of which belong to the OECD, the compliance-based and dominantly legalistic codes primarily come from Africa, Asia, and post-Soviet European countries.

The latter kind of codes are more indispensable in countries where the regulatory environments are weak (OECD, 2000). Aspirational codes are, perhaps, a luxury these countries cannot presently afford. It is only after a strong and ingrained system of laws and integrity systems are in place that a country may begin to shift towards more aspirational codes. In addition to regulatory weakness, countries characterized by a weak regulatory environment cannot so easily ignore the kind of economic concerns that are less of a problem for public administrations in wealthy nations. Frequently, the latter countries are much closer to and, therefore, coloured by the heritage of historical challenges they may have faced in the past (Rothstein and Sorak 2017).

We may ask whether – in countries where the principle of legality is weak or in countries where a negative attitude toward laws in general is prevalent, both in politics and in public administrations – any code of ethics may serve its purpose. A tradition of legal nihilism exists in some countries.⁷ In many cases, the answer to the above question is likely to be negative. This may help explain why, in these countries, the so-called codes of ethics tend to resemble a lot to legislation. They fall into the category of compliance-based codes of ethics in which the requirement to respect the law is the prime concern.

⁷ Legal nihilism is a trend in socio political thought that denies the social value of law and considers it to be the least perfect means of regulating social relations and solve social conflicts. Former communist legal cultures have often been branded as legal nihilism, particularly Russia, Ukraine, Romania, Bulgaria and the Balkans.

CONCLUSIONS / RECOMMENDATIONS

- Codes of ethics are conceptually difficult to define, but they may be useful instruments to help implement an ethics-enhancing organisational policy, provided that certain conditions are in place, especially trust in government and in public institutions.
- The right balance between top-down and bottom-up approaches in the drafting of codes of ethics may be difficult to achieve, but a good combination of legal framework, good personnel management practices, and the fostering of the individual civil servant's ethical attitudes may become successful through training that improves professional judgement and epistemic accountability (adherence to facts and objective knowledge).
- Experience and research show that active staff participation, clarity in language, and actual application of practical organisational ethical dilemmas may contribute to success, especially when the values promoted by the code of ethics are consistent with the political and administrative culture of the country or institution.
- The experience of some OECD countries shows that a code of ethics that includes a short, concise statement of principles and standards is more effective and better accepted by the officials to whom it applies. Once a code of ethics is more readily understood, it will be more easily enforced and less susceptible to internal contradictions. A lengthy, detailed and complicated code that attempts to address every situation that might arise, on the other hand, may in practice prove to be ineffective.
- In countries where the principle of legality is weak, a strong system of laws in order to build integrity should be developed first, before those countries should consider shifting to more aspirational ethical codes. Trust in institutions is crucial for aspirational codes of ethics to operate in an effective way.
- In countries with a weak legal culture, when it comes to drafting a code of ethics it is probably better to acknowledge upfront that what needs to be prepared is a law focusing on duty and discipline, including enforcement mechanisms. In those countries,

an aspirational code of ethics will normally not work and will not be suited to effectively combat corruption, even if aspirational codes are better suited to promote individual integrity on a voluntary basis.

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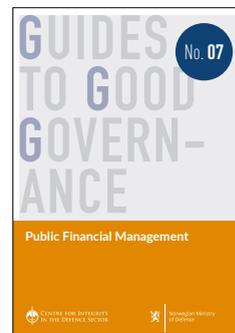
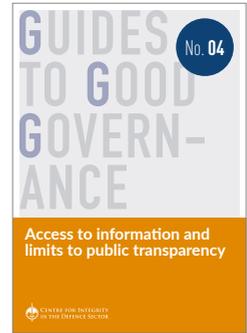
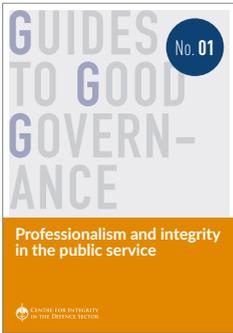
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Guides to Good Governance series



Guides to Good Governance is a series of small booklets each of which discusses a particular topic of importance to good governance in the defence sector. The guides can be read by individuals with an interest in learning more about one or several topics of direct relevance to good governance in the defence sector – or the public sector more generally – and they can be used for educational purposes.

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