

## Accountability of employees in public administration

### Odgovornost zaposlenih u javnoj upravi

Jovana Anđelković<sup>a\*</sup>

<sup>a</sup>Toplica Academy of Applied Studies, Department of Business School Blace, Serbia

#### Article info

##### Rewiev paper/ Pregledni rad

Received/ Rukopis je primljen:

10 May, 2023

Revised/ Korigovan:

15 June, 2023

Accepted/ Prihvaćen:

20 June, 2023

DOI:

<https://doi.org/10.5937/bizinfo2301111A>

UDC/ UDK:

347.56-057.34

#### Abstract

*The aim of every legal system founded on the rule of law that strives for the principle of legal certainty is to achieve effective liability to the highest extent possible. In the Serbian public administration, the long-term avoidance of accountability for different illegal acts has weakened the liability of employees who also do not feel they will be held accountable for their acts. They do not believe that an appropriate sanction is prescribed for this type of conduct. This is the case of the institutionalized forms of legal accountability, whose enforcement actions are regulated by law. We might assume the kind of the existing awareness about accountability in terms of moral norms and corresponding provisions of a soft law character. The perspective of citizens on trust in public administration is largely neglected in the discourse of administrative ethics and accountability.*

**Keywords:** Ethics, moral, professional accountability.

#### Sažetak

*Svaki pravni sistem, koji počiva na temeljima vladavine prava i teži ostvarenju principa pravne sigurnosti, nastoji da u što većoj mери ostvari efikasan sistem odgovornosti. Tako je, u srpskoj javnoj upravi, dugogodišnje izbegavanje odgovornosti za različite nezakonite radnje oslabilo osećaj, odnosno svest o odgovornosti. Tako je za oblike pravne odgovornosti, koje su institucionalizovane i čije su radnje izvršenja normirane i sankcionisane pravom, a može se onda pretpostaviti, kakva je svest o odgovornosti kada su u pitanju moralne norme i odgovarajuće odredbe soft law karaktera. Važno je napomenuti da je perspektiva građana u velikoj mери zanemarenau diskursu o administrativnoj etici i odgovornosti. Stoga, cilj rada je da kritičkom analizom postojećih normativnih rešenja, ukaže na slabosti i nedostatke u funkcionisanju ovog instituta i ukaže na pravce daljih reformi.*

**Кljučне речі:** Етика, морал, професионална одговорност.

### 1. Introduction


Concern about limiting power, subjecting authority to the rules of law, and suppressing abuses has occupied human society for centuries, depending on its developmental stage. Historically speaking, the world's confrontation with authoritarian regimes has led to a search for forms of government that are more accountable to citizens. During the past twenty years, the public sectors of many countries in the world have undergone significant changes in their governments' efforts to respond to the challenges of globalization and technological progress. The place that in the past was occupied by the concept of power and authority, which was considered the starting point, is now occupied by a person, that human being, who assumes a central role in democratic systems.

Public administration in countries worldwide has undergone various transformations and reform processes (Vukašinović-Radojičić & Vučetić, 2021, p. 32). One of the constants in the reform process is establishing an efficient and sustainable accountability system as a necessary element of democracy and the rule of law.

Today, accountability can rightly be said to be one of the cornerstones of democracy. Accountability is a term that cannot be associated and observed exclusively from the point of view of legal science but also contains a sociological and political component, but it is most often associated and observed in the context of the accountability of individuals before the law.

\*Corresponding author

E-mail address: [joka2912@gmail.com](mailto:joka2912@gmail.com)

This is an open access paper under the license 

The efficient functioning of the public administration should imply a constant aspiration that its personnel consist of the most professional and capable staff with emphasized moral qualities because this is one of the critical factors of the effectiveness of its work.

## 2. Accountability in public administration

As part of a collective, a work organization, an employed person acquires certain rights upon starting work but also assumes obligations as a correlative of rights. To the greatest extent, personnel capacities determine the quality of public administration. (Löffler, 2002, p. 16) Therefore, responsible personnel are a necessary substrate of public administration. Some authors believe that three stages can be distinguished in the development of the quality of public administration services, namely (Halachmi & Bouckert, 1995, p. 286):

- 1) quality of compliance with norms and procedures;
- 2) quality in the context of effectiveness;
- 3) quality in the context of client satisfaction.

In the first phase of development, we notice strict normativism and conformity of the behavior and actions of public administration employees following prescribed norms and procedures. Therefore, everything that is brought under the legal norm is prohibited. Such a strict institutionalization of the institution of accountability can even weaken it. It is impossible to legally regulate all violations of work duties, even if they are regulated by different branches of the legal system (administrative, labor, criminal, civil, and misdemeanor law...). An ideal accountability system with no irresponsible individuals is almost impossible to imagine, considering that human individuals differ significantly in character.

It is clear that work must be done to build a climate of responsible behavior in public administration, primarily created by strengthening self-accountability. In our legal system, there has been a climate of accountability for years. Violations of official duty in public administration are frequent, whether they are misdemeanors, criminal or disciplinary acts, or whether the condition for the administrative officer's accountability for damage is met, the fact is that a proper judicial or procedural epilogue is often absent. By long-term avoidance of accountability, the public administration weakens its integrity because the organization cannot be different from the people who make it up because "integrity is not a virtue in itself, as much as it is a synthesis of virtues that work and function together to form a coherent whole." (Rohr, 2008, p. 95). This is what we call morality, that is, character. How important morality is to promoting integrity can simply be illustrated by the fact that integrity is used to describe a person with a sound moral character. "When applied to an organization, integrity refers to an environment characterized as healthy and in which respect for others transcends individual interests." (Bernstein & Solomon, 1999, p. 267).

Citizens want to trust their public administration; they want their "good administration", which protects the public interest and the rights and interests of citizens,

because how can you trust an organization in which the system of accountability almost does not work? Strengthening self-accountability is a complex process involving many factors and requiring a long-term commitment.

## 3. Types of accountabilities in public administration

Different classifications of accountability are possible, depending on the criteria of division into a legal, political, and moral liability; subjective and objective accountability; individual and collective; accountability for illegal and non-illegal actions; and accountability for the legality and expediency of the work of administrative officials. (Vučetić, 2021, p. 211). Some have exclusively theoretical significance, while certain types of accountabilities are generally accepted in all legal systems.

### 3.1. Legal liability

Legal liability presupposes a legal delict, i.e., any social behavior impermissible from the point of view of the law, i.e., visible, illegal, and (as a rule) hidden behavior of legal entities as perpetrators of legal delicts. Legal liability occurs in the form of criminal, material (civil law, liability for damage), misdemeanor, and disciplinary accountability.

Liability for damage (material liability) is a type of legal liability conditioned by the general legal duty to refrain from causing harm to another (*neminem ledere*) because the limit of the subjective rights of one person is the subjective rights of another person. In this sense, personal accountability for one's actions is inviolable and a rule of law. However, the state's accountability for damage is a form of accountability for the actions of others, that is, the state's objective accountability for the work of its organs and public officials, where the state is in the role of *sui generis* guarantor for the legal and proper conduct of public administration. (Brans, 2001, p. 7). This understanding is by the organic theory of the state, according to which state organs are parts of the state's personality and the fact that the state works and functions through them. By analyzing the judicial practice in the legal system of the Republic of Serbia, it is concluded that the courts are moving away from objective liability and are increasingly shifting to the "terrain" of the state's subjective liability with individual explanations of their judgments. It is clear that this issue of the concept of accountability does not have a purely theoretical significance but a great practical significance because it is essential to find the right measure of the state's accountability in civil disputes.

When we talk about the liability for damage caused by public administration employees, we distinguish between two situations: the liability of administrative officials for the damage they cause in their service, i.e., in connection with the performance of their duties, to their authority, i.e., the state, and their liability when they cause damage to citizens and other legal entities. The condition of liability of an administrative officer for damage caused at work or

in connection with employment is guilt in the form of "intention" or "gross carelessness". The employee will not be responsible if the damage is due to simple carelessness. According to the Law on Civil Servants (2005) the existence, amount of damage, and the circumstances under which it was caused are determined by the manager or a person authorized by him in writing, and if the civil servant refuses to compensate for the damage, the right to compensation can be exercised in civil proceedings. Another possibility that the law allows is the conclusion of a written agreement between the manager and the civil servant, which determines the amount and method of compensation for damages, which has the force of an executive document. A civil servant is released from liability for the damage caused by the execution of the superior's order if he informs the manager that the execution of the order may cause damage. The injured party has the right to request compensation for damages directly from the civil servant if he caused the damage intentionally. If the Republic of Serbia compensates the injured party for damage caused by a civil servant intentionally or due to gross negligence, it has the right to demand reimbursement of the amount paid from the civil servant within six months from the payment date of compensation.

The number of cases in which damage was caused to a state body at work in connection with employment is worrying, either intentionally or through extreme carelessness, and no one was held accountable for it. The 2017 SIGMA(OECD) standards mandate that public authorities take accountability in cases of regulatory violations and guarantee compensation. These standards suggest that the candidate states analyze positive legislation in the area of compensation for damages, final court decisions, and reports of the Ministry of Finance, which would determine how compensation for damages from the state works in practice and what is the percentage of realized recourse requests from administrative officials.

Violating duties from the employment relationship entails the disciplinary accountability of the employees. This type of accountability arises if the employee does not perform entrusted tasks conscientiously and by the work discipline rules. Discipline can also be understood as the ability to control oneself by refraining from actions/actions that are not by the rules. Actions for disciplinary actions in public administration are very diverse and include different types of doing and not doing administrative officers, contrary to work discipline. How vast is the range of possible disciplinary actions that some authors consider that disciplinary responsibility should be exempted from the application of the principle of legality because, in this matter, it is simply impossible to predict in advance all possible violations of work duties and obligations of employee behavior, as well as due to the existence of implicit obligations to respect work discipline (Lubarda, 2012, p. 35).

Accountability for a criminal offense or misdemeanor does not exclude disciplinary accountability. In question are parallel and autonomous forms of legal liability, which means that the disciplinary authority, when deciding on

the penal accountability of an administrative officer, is not bound by the decision of the court on accountability for a criminal offense or the authority for misdemeanors concerning his misdemeanor responsibility, just as these authorities are not bound by the decision of the disciplinary authority and accountability of officers for breach of duty from the employment relationship.

A comparative legal overview of disciplinary sanctions that can be imposed on civil servants looks like this:

- Written warning or penalty (in many countries);
- Prohibition of career advancement for a certain period (in France);
- Downgrading to a lower degree or coefficient (in France, Germany, and the USA);
- Mandatory relocation (in France and Spain).

Temporary exclusion from public service with a full or partial suspension of salary rights (in many countries):

- Mandatory retirement (in France);
- Reduction or loss of pension rights (in Germany);
- Termination of the employment contract or final removal from the civil service (in a large number of countries);
- In the USA, the concept of the so-called "alternative discipline", by which the Agency can request the employee to research and write an essay on the impact of absenteeism instead of suspension or punishment for not showing up to work.

As an additional obligation, the civil servant may be asked to compensate for the damage caused by his act, i.e., disciplinary action (Cardona, 2003). In Slovenia, civil servants may be sentenced for severe violations of their official duties: a fine, dismissal from duty (position), move to a lower rank, and termination of the employment contract. The termination of the employment contract can be pronounced in the case when the civil servant committed a disciplinary offense intentionally or through gross negligence (gross negligence). When choosing a disciplinary sanction, the following must be taken into account: the degree of responsibility of the civil servant, the degree of guilt, the severity of the consequences, and the subjective and objective circumstances under which the act was committed (Cardona, 2003)

Criminal and misdemeanor liability are particular types of legal liability of public officials, regulated by the norms of criminal and misdemeanor law. In our legal system, criminal liability has long been the jurisdiction of the administrative authorities, who conducted it as a form of administrative procedure. Now misdemeanor liability is under the jurisdiction of special Misdemeanor Courts, which implement the provisions of the Law on Misdemeanors as a fundamental procedural law, which is now very similar to criminal proceedings. Regarding the liability of administrative officials, the Criminal Code (2005) contains a large number of criminal offenses against official duty, and the misdemeanor liability of administrative officials is significant in the context of specific special laws that prescribe the misdemeanor accountability of administrative officials, such as the Law

on Free Access to Information of Public Importance, the Law on Public procurements, etc.

### 3.2. Non-legal accountability

The criterion for dividing accountability into legal and non-legal is apparently very clear, but essentially and in practice it is not always the case. Legal liability is that type of liability, which is fully prescribed by legal norms and whose non-compliance leads to sanctions. On the other hand, non-legal accountability is not regulated by legal norms and this type of accountability is followed by some other form of sanction, which is not socially organized within the legal order of a country. However, forms of non-legal accountability can also lead to legal liability.

Non-legal accountability means political and moral accountability. Political accountability is a type of accountability to which public officeholders are subject. In theory, it is also called socio-political and moral-political accountability. Under it is meant accountability for violating political rules of conduct, that is, conduct that is not by the views of the political organization to which the subject of accountability belongs. Therefore, this type of accountability is accompanied by political sanctions, such as reprimands, removal from political office, warnings, etc.

Some authors (Jovičić, 2006, p. 110) insist on distinguishing between legal political and extralegal political accountability, considering under extralegal political accountability, accountability before public opinion, and party accountability, accountability to one's party, which decides that a certain person should hold a position. Subjects of legal political responsibility are the head of state, members of parliament, and ministers. In terms of this type of responsibility, ministers differ from all other persons in the administration, and the control of the administration by the parliament is understood as "supervisory power for ministers". In supervising the work of ministers, the parliament has at its disposal various legal means (parliamentary questions, interpellations, parliamentary investigations, surveys, etc.) that the parliament can use. Other institutions that can also control and do control ministers (for example, the press) do not have legal instruments that could be used "against those ministers who do not want to submit to their supervision". Finally, the minister is obliged to answer to the parliament the questions addressed to him or the objections expressed about his work or the work of the department he manages. The minister has no legal obligation, for example, in front of the press, public opinion, etc., who can also criticize him. Therefore, "if it is legally organized, the political accountability of ministers is a legal concept" (Jovičić, 2006, p. 131)

Its complete marginalization in Serbian law is noticeable when talking about moral accountability. It is necessary to work on the moralization of labor relations in public administration and thus strengthen the self-responsibility of employees, and to complement the types and forms of legal accountability with this type of accountability and thus strengthen the integrity of public administration and

citizens' trust in its work. The fact is that the citizens, and not even the public administration employees themselves, know about the creation of the Code of Conduct; if they do, they do not know their content, that is, their legal significance.

The State of South Australia, or rather its Government (Commission South Australia) has adopted a public sector value system for all institutions after extensive consultation, and at the same time, offering assistance to each public administration organization in its effort to implement those values or to create its value system, if it wishes. Thus, some public administration organizations in this country have formed their ethics committees, which aim to supervise the implementation and monitoring of the adopted value system. These committees may, after consultation with their staff, update said rules. Thus, in the introductory part of this Government document, it is stated that "a strong set of values can change the way of working in public administration. Values help us clarify who we are, why we are here, and where we are going. They define who we are as public servants".

Accountability, understood as corrective behavior, aims to influence other employees not to commit those acts for which they may be sanctioned, but also to the same employees who have done such a thing not to do so in the future. This way, the number of undesirable behaviors and actions is preventively reduced. The sociological aspect of the impact of sanctions on labor relations can be read through the numerous consequences of the social nature and social milieu surrounded by the individual who suffered the sanction and the implications of his struggle to ensure his existence through social mechanisms through the reintegration of the labor relationship. Aspects of the legal and political view of this issue concern the width of the borders and the extent of the sanctions' effect on labor relations, the conditions for their application, and their legal consequences, which is also a question of an ethical nature (Bogićević, 1991, p. 197).

### 4. Management accountability in public administration

This specific type of accountability is not yet regulated in Serbian law. We are talking about management accountability, which implies the accountability of managers for the work and results of the organizations they lead, that is, assuming accountability for management. Although this is a term that originates from the financial management and control system (Financial Management and Control - FMC). The basic existence assumptions of this type of accountability are the existence of authority. This is where the problem of delegation of authority, the system of delegation of authority, and decision-making power arises. Furthermore, the autonomy of managers in their work, and therefore accountability for their work and accountability. For the functioning of this type of accountability, it is essential to establish an adequate legal framework for its functioning and the transfer (delegation) of accountability and authority. Also, for the accountability of the public administration, it is essential to work on the regulation of

internal control in the public sector, i.e., internal audit, defining the goal, importance, and characteristics of this form of control, as well as its legal and strategic frameworks.

## 5. Professional accountability

The professionalization of public administration, i.e., its human substrate, without which it would not be able to function, is a constant process, and in this sense, we can also talk about the professional accountability of employees in public administration because the organization is what its people are, who make it up. In the context of this type of accountability, it is necessary to talk about the methods and systems of evaluation and promotion of public servants and to point out the weaknesses of the functioning of this system in Serbian law, that is, about the template behavior during evaluation and the absence of a direct connection between work performance, results, competencies, and evaluation and promotion. Furthermore, when discussing professional accountability, professional training of employees in public administration and insufficient motivation of employees for training must be taken into account.

The professionalism of the Serbian public administration must be raised to a higher level, employment in the public administration must be based on public competition, a check of knowledge and abilities, competence, and subsequent evaluation and promotion, must be linked to performance and appropriate professional training.

## 6. Conclusion

Legal regulations must be perfected, expanded, and adapted to new social circumstances; even the most perfect legal norms can produce terrible results if there is no appropriate "climate" for their social implementation. Thus, in the Serbian public administration, the long-term avoidance of accountability for various illegal acts has weakened the accountability and the feeling of other employees that they will be held accountable, that is, that an appropriate sanction is prescribed for such disposition of behavior. Such is the case with forms of legal liability that are institutionalized and whose execution actions are regulated by law, and one can then assume how weak the awareness of accountability is when it comes to moral norms and corresponding provisions of a soft low character.

The goal of every personnel policy is that the right people and the proper value criteria come to the fore. This is how it should be in public administration, employment based on public competition and competencies, and promotion must be linked to performance, competencies, and professional training, to motivate public servants to work harder and better because, for a long time, "public administration" cannot be seen as a "safe harbor" and a form of exercising power, but a service that is responsive to citizens, to the public interest, transparent and that must rest on the foundations of legal certainty and the rule of law.

Establishing an adequate legal framework and the transfer (delegation) of responsibility and authority are essential for the functioning of managerial responsibility. Internal audits in the public sector can contribute to strengthening the accountability of employees in public administration, and therefore it is essential to arrange its legal and strategic frameworks. On the other hand, there is a great distrust of citizens in the work of certain institutions that perform external control of public administration.

The established system of evaluation and advancement of public servants in Serbian law shows great weakness and patterned behavior during evaluation, i.e., the absence of a direct connection between work performance, results, competencies, and assessment and advancement. A tiny number of employees in public administration are interested in professional training due to a lack of motivation because it is not implemented in practice in connection with evaluation and promotion.

## References

- Bogićević, C. (1992). Uticaj sankcija na radne odnose i status radnika. *Radni Odnosi i Upravljanje*, 22(6), 33–35.
- Bernstein, B., & Solomon, J. (1999). 'Pedagogy, identity and the construction of a theory of symbolic control': Basil Bernstein questioned by Joseph Solomon. *British journal of sociology of education*, 20(2), 265-279. <https://doi.org/10.1080/0142569995443>
- Cardona, F. (2003). *Liabilities and discipline of civil servants*. Sigma.
- Commission South Australia. (n.d.). *Legal Professional Ethics*. Commission South Australia. Retrieved January 14, 2023, from <https://lsc.sa.gov.au/dsh/ch02s01.php>
- Halachmi, A., & Bouckaert, G. (Eds.). (1995). *Public productivity through quality and strategic management* (Vol. 1). IOS Press.
- Jovičić, M. (2006). *Demokratija i odgovornost*. Službeni glasnik.
- Lubarda, B. (2012). Radno pravo–rasprava o dostojanstvu na radu i socijalnom dijalogu. *Beograd: Pravni fakultet Univerziteta u Beogradu*.
- Lončar, Z. (2000). *Odgovornost ministara - sa posebnim osvrtom na jugoslovensko parvo, doktorska disertacija*. Pravni fakultet Univerziteta u Novom Sadu.
- Löffler, E. (2002). Defining and measuring quality in public administration. *Building better quality administration for the public: Case studies from Central and Eastern Europe*, 15-34.
- Rohr, J. A. (2008). *Ethics and integrity of governance: Perspectives across frontiers*. Edward Elgar Publishing.
- Vucetic, D. (2021). Accountability of Local Administration Personnel in Serbia in the Context of Good Governance Principles. In *The Legal and social context of responsibility: collection of papers from the International scientific conference* (pp. 209-277). Faculty of Law in Nis.
- Vukasinovic-Radojicic, Z., & Vucetic, D. (2021). *Profesionalizacija javne uprave u Srbiji*. Kriminalističko-policijski univerzitet.
- SIGMA (OECD). (n.d.). *Principles of Public Administration for EU candidate countries and potential candidates*. SIGMA (OECD). Retrieved January 16, 2023, from <https://www.sigmaweb.org/publications/principles-public-administration-eu-candidate-countries-and-potential-candidates.htm>

- OECD. (2020). Recommendation of the Council on Public Service Leadership and Capability. OECD. Retrieved January 16, 2023, from <https://www.oecd.org/gov/pem/recommendation-on-public-service-leadership-and-capability.html>
- Law on Civil Servants, Official Gazette of the RS, no. 79/2005; 81/2005; 83/2005; 64/2007; 67/2007; 116/2008; 104/2009; 99/2014.
- Code of conduct of civil servants, Official Gazette of the RS, no. 29/2008; 30/2015.
- Criminal Code of the Republic of Serbia, "Official Gazette of the RS", no. 85/05; 88/05; 107/05; 72/09; 111/09; 121/12; 104/13