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***Speaking truth to power-the role of the ombudsman in the 21st
century***

*Session I- Innovative practise in up skilling agencies an improvement
administrative practices*

***Proposal for the establishment of a Code of Good Administrative
Behaviour in the Portuguese Public Administration?***

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Abstract

The Portuguese Ombudsman is an independent State body enshrined in the Constitution of the Portuguese Republic, elected by Parliament and whose main role is to defend and promote the rights, freedoms and guarantees and legitimate interests of citizens.

The right to a good administration is a fundamental right according to Portuguese legislation and it is also formally recognized in article 41 of the Charter of Fundamental Rights of the European Union.

This presentation will provide an overview of the recommendation made by the Portuguese Ombudsman to the Parliament regarding the adoption of a Code of Good Administrative Behavior, focusing on the relations between citizens and the public administration and promoting the confidence of citizens in the public institutions.

Dear colleagues,

I've been asked to chair this panel and to contribute to the discussion by sharing with you an initiative of the Portuguese Ombudsman: the Code of Good Administrative Behaviour.

In fact, I must stress that there is no Code of Good Administrative Behaviour yet, as the Ombudsman's recommendation to Parliament to adopt a Code has not yet been discussed.

Background: The European Code of Good Administrative Behaviour

The Portuguese Ombudsman's proposal was inspired by a similar initiative from the European Ombudsman.

In April 2000, the European Ombudsman presented to the European Parliament a special report following an own-initiative inquiry into the existence and the public accessibility of a Code of Good Administrative Behaviour in the different Community institutions¹.

On 6 September 2001, the European Parliament adopted Resolution C5-0438/2000 - 2000/2212(COS) approving, with some changes, the Code of Good Administrative Behaviour, which European Union institutions and bodies, their administrations and their officials should respect in their relations with the public. According to a publication of the European Ombudsman on the European Code of Good Administrative Behaviour, it «*is intended to explain in more detail what the (...) right to good administration should mean in practice*»².

The right to good administration has been recognised as a fundamental right, enshrined in the Charter of Fundamental Rights of the European Union (article 41) and, in view of the formal legally binding status attached to the Charter, by means of the Treaty of Lisbon, it appears unquestionable that this right will have ever more important significance in the future.

¹ OI/1/98/OV (<http://www.ombudsman.europa.eu/cases/specialreport.faces/en/407/html.bookmark>).

² The European Ombudsman, *The European Code of Good Administrative Behaviour*, Luxembourg: Office for Official Publications of the European Communities, 2005, p. 7.

The proposal of the Ombudsman of Portugal

Inspired by the initiative of the European Ombudsman, the Portuguese Ombudsman (*Provedor de Justiça*), Judge Alfredo José de Sousa, decided that a similar initiative, envisaging the adoption within the Portuguese legal order of a Code of Good Administrative Behaviour, would be justified in Portugal³.

With this aim, the Portuguese Ombudsman addressed a letter to the President of the Parliament on 19 April 2012 proposing the adoption of a Code of Good Administrative Behaviour.

He based his proposal on existing codes of conduct and ethics of the different United Nations, Council of Europe and OECD instruments, underlining the right to a Good Administration of the European Union Charter of Fundamental Rights.

The proposed Code tries to reflect the pre-existing Portuguese framework relating to ethical principles and good administration, namely the Ethical Charter of Public Administration (1997) and its predecessor the Deontological Charter of Public Service (1993).

As explained in the letter addressed to Parliament, the Code intends to compile, in a clear, concise and accessible wording, the principles of good administration which should guide the conduct of every official, in their relations with citizens, stating the fundamental values of public service, the guarantee of the rights of citizens and the rules concerning the behaviour

³ The full text of the Code is available, in Portuguese, at http://www.provedor-jus.pt/restrito/rec_ficheiros/Anexo_BoaConduta.pdf.

which the latter expect from public administration official, making them more visible to citizens

The Code proposed by the Portuguese Ombudsman also takes into account not only the constitutional rights of citizens *vis-à-vis* public administration and the relevant general principles of Portuguese administrative law, but also legislative measures of administrative modernization and public administration ethical principles.

The recommended Code consists of 28 articles and is structured in five chapters, relating, respectively, to “Common provisions” (I), “General principles” (II), “Rights of the citizens” (III), “Parameters of conduct” (IV) and “Final provisions” (V)

The “Common provisions” clarify the object as well as the scope of application of the Code and, in this framework, the explicit safeguard of the maximum level of protection should be noted, in the sense that nothing in the Code should be interpreted as restricting or adversely affecting the rights of the citizens as recognised by the law.

The “General principles” include the well-established legal principles of legality, pursuing the public interest, equality, proportionality, justice, impartiality, independence, objectivity, respect for legitimate expectations and the absence of abuse of power.

The Chapter on the “Rights of the citizens” compiles the respective rights of citizens, relevant in the citizen-state relationship in public administration, underlying the respective obligations placed on public bodies, services and their officials. It comprises the right to good administration, to timely decisions, to be heard, to the statement of the grounds of a decision, to notification, to the indication of the possibilities of appeal (including the right

to complaint to the Ombudsman), to data protection and to access to administrative information and documents.

The more practical aspects of the right to good administration have been gathered under the umbrella of “Parameters of conduct” for officials. This Chapter brings together matters such as dealing with the public, acknowledgement of receipt, indication of the competent official, the duty to reply, redirecting the citizen concerned to the competent service or maintenance of adequate records. Among the innovative orientations, the inclusion of a directive aimed at tackling possible linguistic barriers in administrative procedures should be highlighted, and officials should, whenever possible, meet the needs of citizens by taking the appropriate measures with a view to ensuring a minimum understanding of the communications that are addressed to them.

The “Final provisions” related to how the Code is made public, its adaptation to specific situations with an ethical dimension occurring more typically in certain public service, as well as the right to complain to the Ombudsman in case of non compliance with the Code.

The Ombudsman’s proposal for the adoption of a Code of Good Administrative Behaviour does not specify the form of the document to adopt. It is the Ombudsman’s intention to leave this to Parliamentarians as several solutions could be envisaged. It could be a Resolution of Parliament, as happened at European Union level; however but the Ombudsman is open to discuss any other solution.

Outcome at the present stage

In the XI Legislature (2009-2011), the Code of Good Administrative Behaviour, proposed by the Portuguese Ombudsman was examined within the Parliamentary Commission on Labour, Social Security and Public Administration. Judge Alfredo José de Sousa has been heard by this parliamentary body, which conveyed that this initiative was favourably welcomed.

With the elections in Portugal in 2011, and a new legislature, the Portuguese Ombudsman decided to re-send the proposal to the new Parliament and issued a recommendation on the 19th January 2012 to Parliament to adopt a Code of Good Administrative Behaviour. Although the proposal was sent by the President of Parliament to all Parliamentary groups, until now no initiative has been presented to launch a discussion on this proposal. Recently, the Portuguese Ombudsman wrote to the Prime Minister, asking for the coalition that forms the IXI Constitutional Government to support his proposal. This letter was circulated within the media as a way of making pressure on the Government and to launch a discussion on the proposal.

The right to a good administration and the prevention of corruption

When presenting his initiative, the Portuguese Ombudsman was aware that some legislative initiatives were pending concerning the prevention of corruption and similar infractions.

Also during the new legislature, a proposal relating to the establishment of a framework on the elaboration of codes of conduct and ethics in relation to the prevention of corruption was discussed and rejected. This rejected project, although establishing a more comprehensive framework, envisaging

infractions and sanctions, also included some principles of good administration, coinciding with the ones of the Ombudsman's initiative.

To avoid any misunderstandings, the Portuguese Ombudsman emphasised that his mandate covers the protection of citizens' rights regarding the administration and that, as such, he did not intend to adopt a code on corruption issues within the public administration, but only to compile some general principles of good administration that should guide the conduct of every official in their relations with the citizens.

In this respect, I should clarify that the Portuguese Ombudsman has no competences to investigate cases of corruption, unlike other institutions present here today, that also have a mandate regarding the prevention and investigation of corruption. Where the Portuguese Ombudsman receives a corruption complaint, he must inform the person who submitted the complaint that criminal facts are outside the scope of his competence and that they should inform the fact to the criminal authorities. If, during one of the Ombudsman's investigation, sufficient evidence of corruption practices or connected activities arises, the Ombudsman has the duty to inform the competent criminal authorities.

In any case, it is evident that a code intending to promote the right to a good administration, focusing on the relation between citizens and the public administration, and promoting the confidence of citizens in public institutions, will have a positive impact as regards preventing and avoiding corruption. And the principles of good administration include measures that seek to avoid conflict of interests and promote transparency and information, to reduce the risk of corruption. The respect and implementation of a Code of Good Behaviour, favouring a model of conduct promoting truthfulness, accuracy

and efficiency in the public administration, is a way of reinforcing the prevention of risks of corruption and similar infractions.

Conclusion

With this proposal to adopt a Code of Good Administrative Behaviour, focusing on the protection of the rights of citizens, the Ombudsman seeks to contribute, within its competences, to the promotion of a culture of public service, based on the principles of good administration, and inform all public officials as well as citizens and civil society in general, of the rights they have concerning their relation with the public administration.

Although the recommendation to Parliament has not been discussed yet, the Portuguese Ombudsman, following the principle “practise what you preach”, adopted it internally, including the Code in the Internal Regulation of the Services of the Portuguese Ombudsman. The Regulation is published in the Ombudsman’s website, making more visible to citizens the rights they have and what they can expect when they address the Ombudsman.

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