



Administrative Morality: the duty of honesty

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The *duty of honesty*, established in Art. 11 of the Law on Administrative Improbability derives from the principle of administrative morality, present in the constitutional norm, about whose content there is great disagreement.

At first, we are not aligned with those who give the principle of administrative morality a moral or ethical content.

Historically, this principle was introduced in the French Administrative Law by Maurice Hauriou, to allow for the State Council of France to examine aspects regarding the *merit* of the administrative act, which were covered by the principle of legality. The administrative morality of which the master of Toulouse spoke consisted in the practice of the administrative act *with abuse or misuse of power*.

However, this aspect of administrative morality, of which Hauriou spoke, had already been accepted by the doctrine, with the inclusion of the analysis of the merit of administrative acts by the Judiciary Power, even before 1988.

The Rule of Law brought new foundations and new instruments for the analysis of administrative acts, incorporated in the constitutional principles (explicit or implicit), in such a way as to *modernize and update the content of the principle of morality*.

Among these constituent elements of the Rule of Law, the principle of *legitimate trust placed by him who is subject to the public administration* must be emphasized. Consider the words by Gabriel Valbuena Hernández: "For all of the above, the fact that this principle is not explicitly regulated does not preclude authorities from complying with the obligation to provide reasonable protection to the expectations of the those who are subject to the public administration. After all, this is a minimum requirement that derives from the most basic postulates of public ethics and *administrative morality*".



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This principle exists to prevent any of the Powers of State from introducing regulatory modifications, judgment criteria and points of view in a direction diametrically opposite to that they had been adopting, without respecting the trust that they received from the citizen. This change, if carried out, should be promoted gradually, so as not to cause any abrupt injustice.

The respect for the legitimate trust placed by those subject to the public administration, therefore, must be the *current content* of the principle of administrative morality, which, thus, surpasses its former French design and many of the praetorian understandings still in force. In this sense, any proceeding demanding the imputation of violations to the duty of *honesty*, *must demonstrate that the act contradicts, intentionally, the legitimate trust placed by those subject to the public administration.*