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## Principles of the Administrative Procedure Code and their Contributions to Accountability: the Portuguese Case

### ABSTRACT

**Objective:** The objective of this study is to analyse the contributions that the general principles established in the Portuguese Code of Administrative Procedure (Decree-Law no. 4/2015, January 7) have made to the exercise of accountability.

**Method:** Research was conducted using the qualitative method through bibliographic and documental research.

**Originality/Relevance:** Approval of the current Code of Administrative Procedure (Decree-Law no. 4/2015, January 7) brought important innovations in relation to the previous text, especially in its general principles of administrative activity. Among the changes, there is particular mention of the need for efficiency in Public Administration, its commitment to the accountability of its actions and ensuring popular participation. The study analyzed whether the inclusion of these principles strengthens pursuance of the Democratic State of Law, providing a favorable environment for the demands of accountability, as intended by the diploma.

**Results:** The analysis carried out shows that the current Code of Administrative Procedure acts in close proximity to constitutional values and the dimensions involving the concept of accountability, being in thesis an instrument to guarantee democratic legitimation.

**Theoretical/Methodological contributions:** The research contributes to discussion of the theme in Public Administration and to broadening the discussion in the literature, and particularly in the Portuguese legal system, whether the principles of the CAP contribute to accountability in public entities, given the new challenges presented by the growing complexity of modern societies and new visions of Public Administration.

**Keywords:** Public Administration; Accountability; Democratic State of Law; Social Control; Transparency.

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## 1 INTRODUCTION

The disciplinary area of Law is founded as a set of rules of behaviour, appearing as a set of norms that guide subjects' behaviour, with the normative experience being surrounded by multiple rules or prescriptions (religious, moral, traditional, ethical), the juridical norm being one of them (Bobbio, 2003).

Although norms are transposed in prescriptive language as laws, codes, etc., in themselves they are not a synonym of the positive text. The fact is that behind all grammatical language, precepts are extracted hermeneutically, presenting the real meaning of the text. In this connection, "norms are not texts or nor the texts as a whole, but the meanings constructed from systematic interpretation of normative texts" (Ávila, 2005, p.22). It is in this context that so-called juridical principals are presented, and these may or may not be made positive in legal commands, as instruments of the whole system's validity.

Alexy (2008, p.87) indicates that both rules and principles are norms, but the distinction between them, through the criterion of generality, is that "principles are norms with a relatively high degree of generality, whereas the degree of generality of rules is relatively low". In this case, the qualitative distinction of norms between principles and rules arises, with principles prevailing.

In the sphere of Democratic States of Law, the validating foundations of the whole juridical system are set out in a Constitution, which can also be seen, in the lines of Kelsen's positivism, as a fundamental norm (Bobbio, 2003), placed at the top of the system, where the main juridical norms of a given context are established, especially those known as fundamental constitutional principles. These principles are considered as structuring and fundamental norms of a constitutional order, with normative and bonding effectiveness for the state and private individuals (Cristóvam & Catarino, 2015).

It is important to mention that principles, among multiple functions, aim for self-integration of the system, within the so-called general principles of Law, so as to complete juridical arrangements in the case of possible gaps (Bobbio, 1995). In addition, possible conflicts between principles must be solved by the idea of precedence, according to the respective weights applied to each one, which does not mean the invalidity of one principle being unapplied rather than another (Alexy, 2008). Summarizing, principles are finalistic norms aiming for complementarity and partiality (Ávila, 2005).

Standing out in these conditions is the importance of principles in the juridical system, especially in guiding instrumentalization and interpretation of normative texts. In this connection, the new Portuguese Code of Administrative Procedure (CAP) contains a number of general principles of administrative activity, as the basis for applying and interpreting the commands presented therein.

It is worth mentioning that the State's juridical relationship with individuals is marked by constitutional and legal principles, among them those that value democracy, participation, giving account, control, transparency, attributing responsibility and political legitimacy, within what can be called a process of accountability.

The aim of this work is therefore to analyse the contributions of the general principles established in the new CAP, approved on 7 January 2015, almost 20 years after its last amendment, to accountability. The legal text itself refers to the need to modernize and adapt to the other norms of Portugal and the European Union, with efforts to consolidate the fundamental values of public activity in a Democratic State of Law. This study, of a qualitative and applied nature, uses bibliographical and documentary research procedures, based on content analysis techniques according to Bardin (2016), to build the concept of accountability, in a broad understanding of the evolution of Public Administration in line with

the Democratic State of Law, and for the relation between this theoretical framework and the positivized principles of the CAP in force.

After this introduction, the article is formed of five more sections. Section 2 describes the evolution of Portuguese Public Administration, the starting point for this study, since administrative reforms bring to New Public Management instruments that had previously been limited to the private sphere, such as accountability. Sections 3 and 4 explore the concepts of accountability and its relationship with social control and democratic effectiveness. Section 5 addresses CAP in relation to the concept of accountability, and Section 6 presents the final considerations of the study.

## 2 LITERATURE REVIEW

### 2.1 Brief description of the evolution of Public Administration

Development of the State had a direct impact on progress in Public Administration, reflecting the values imposed by society according to the political, economic, social and cultural situation of each period. The Portuguese Liberal State established a neutral Public Administration, as the exclusive executor of government deliberations, in a period that extended to the beginning of the 19<sup>th</sup> century (Araújo, 2017; Dornellas *et al.*, 2016).

With limited interference in the economy and society, this model was insufficient to implement the state of social well-being, made urgent by the post-war period, which required the State's functions to be extended (Araújo, 2017). It is in this context that, in the second half of the 19<sup>th</sup> century, through administrative reforms, neutral Administration gave way to Weberian bureaucracy, based on processes, organisation, standardization and rationality. However, this model also presented shortcomings related to the excess of processes, slowness and the high cost of maintaining the public machine, and a new reform was implemented in the second half of the 20<sup>th</sup> century, representing New Public Management (NPM) (Araújo, 2017; Secchi, 2019).

Setting out from NPM, models of public and economic organisation began to be influenced, gradually, by the principles of corporate governance integrated in management, such as efficiency, performance, economics and others, leading to significant changes in the entire public sector, including local government (Chamusca, 2013; Cunha *et al.*, 2015; Dani *et al.*, 2018; Neto *et al.*, 2019).

In the 1990s, the state structure, stimulated by States' transformations (mainly through democratization processes), came to allow the participation of civil society, until then excluded, in public management, admitting that the participation of other stakeholders, and not just one, is fundamental to address the complexity of different social interests (Neto *et al.*, 2019). Here, public governance emerges as a new way to govern and implement the Democratic State of Law, reflecting conflicting values and interests and also directed towards collective dialogue and debate (Chamusca, 2013; Ronconi, 2011).

According to Noja *et al.* (2019), the evolution of Public Administration to governance involves both public law and political theory, setting out from the model of separation of powers, through Weberian rational behaviour until introduction of the concept of governance, established by the World Bank, in the theory of contemporary Public Administration. For the same authors (Noja *et al.*, 2019), governance is based on democracy and popular participation, and can include anti-bureaucratic and anti-governmental feelings, admitting the existence of conflict between State and Society, which adds a "political" element to this citizen/Public Administration/elected representatives relation. This triangulation inserts elements of participation, institutional reinforcement and effectiveness (or the lack of it) in the economic and social development of governance.

The concept of public governance is not consensual among academics. However, a considerable number of authors (Abrucio, 2005; Chamusca, 2013; Kissler & Heidman, 2006; Ronconi, 2011) cite the common good, the quality of public services, citizens’ participation in decision-making processes, social control and democracy. As with the concept, nor are the principles of public governance consensual among authors, as indicated by Dani *et al.* (2018). This is due to the disparities of each country’s context and culture, although elements such as transparency, accountability, participation and equity are present in the majority of States (Dani *et al.*, 2018; Duarte *et al.*, 2018; Oliveira & Pisa, 2015; Paludo *et al.*, 2016).

Concerning the principles of governance, especially accountability, Santos (2001) describes how these can be linked to democratic decision-making processes – elections. Mentioning “Polyarchy” and “Democracy and its Critics”, both by Robert Dahl, from 1971 and 1989 respectively, the author describes the relation between elected authorities in the expression of preferences and voting, in a reference to vertical accountability, from an explicitly democratic angle Cunha *et al.* (2015) add the relation between exercising accountability and the option of renewing authorities’ periods in office, based on providing clear, transparent accounts, this being a responsible choice by voters.

**2.2 Accountability as a democratic instrument**

The term accountability has no exact translation in Portuguese, but among authors there is consensus that its definition involves concepts such as democracy and participation, providing accounts and control, attributing responsibility, transparency and political legitimacy (Abrucio & Loureiro, 2004; Akutsu, 2005; Arato, 2002; Barros, 2015; Behn, 1998; Bobbio, 2017; Lavalle & Vera, 2011; Miguel, 2005; O’Donnell, 1998; Olsen, 2018; Parkinson, 2015; Rêgo & Freire, 2018).

From the above and using content analysis techniques (Bardin, 2016), Figure 1 summarises the categories involved in the process of accountability.

Category	Meaning of accountability	Elements	Authors
Democracy and participation	Government by the people, a characteristic of democracies, occurs not only directly but mainly through elected representatives. Since they are represented, it is up to people to participate in public decisions. The relation between State and Society (agent-principal) should be based on trust and reduced informational asymmetry.	Instruments that favour political equality, equity, popular control, efficiency and responsiveness of Public Administration and its agents, besides the conscious choice of representatives.	Akutsu (2005); Barros (2015); Bobbio (2017); Dias (2020); ITM (2017); Bernardes & Leston-Bandeira (2016); Olsen (2018); Rêgo & Freire (2018); Rodríguez <i>et al.</i> , (2019); Rose <i>et al.</i> , (2018); Sá <i>et al.</i> , (2016); Sangki (2017); Shane (2006); Warf (2018).
Providing accounts and control	Trust is built through providing accounts: elected representatives and those in high positions of authority should not only give account of their actions and non-action, but also create conditions to make that information available, to allow popular control and that of agencies and other controlling bodies.	Instruments that ensure everyone’s access to complete, trustworthy information related to actions and omissions by elected representatives, except that which must be kept secret according to law.	Akutsu (2005); Andrade & Batalha (2017); Barros (2015); Batalha (2017); Cunha <i>et al.</i> , (2015); Dias (2020); ITM (2017); Leston-Bandeira (2016); Olsen (2018); Rodríguez <i>et al.</i> , (2019); Sangki (2017); Shane (2006); Valbuzzi (2015).



Category	Meaning of accountability	Elements	Authors
Transparency	The available information involves political and administrative dimensions, without being limited to accounting matters or legal compliance, since it should be voluntary.	Mechanisms that allow the spread of information and public decisions, focusing on the quality and usefulness of these data, so that citizens, holding that information, are in a better condition to participate, debate, monitor, evaluate and vote.	Akutsu (2005); Andrade & Batalha (2017); Barros (2015); Batalha (2016); Cunha <i>et al.</i> , (2015); Dias (2020); ITM (2017); Bernardes & Leston-Bandeira (2016); Olsen (2018); Rodríguez <i>et al.</i> , (2019); Rose <i>et al.</i> , (2018); Sangki (2017); Shane (2006); Valbruzzi (2015); Warf (2018).
Attributing responsibility	Based on the information provided, citizens can question the decisions taken by their representatives, based on efficiency, efficacy or processes, and ratify decisions through reward or punishment (continuing or changing the political order).	Tools that encourage responsibility and possible sanctions of public acts proportionately.	Akutsu (2005); Andrade & Batalha (2017); Barros (2015); ITM (2017); Bernardes & Leston-Bandeira (2016); Olsen (2018); Valbruzzi (2015).
Political legitimacy	Attributing responsibility gives power back to society, legitimizes the power of the people and the representativeness of those elected, closing the cycle of accountability processes.	Means to ensure that Public Administration always acts in the public and citizens' interest, for effective fulfilment of popular sovereignty.	Akutsu (2005); Barros (2015); Bobbio (2017); Dias (2020); ITM (2017); Bernardes & Leston-Bandeira (2016); Olsen (2018); Rêgo & Freire (2018); Rodríguez <i>et al.</i> , (2019); Rose <i>et al.</i> , (2018); Sá <i>et al.</i> , (2016); Sangki (2017); Shane (2006); Warf (2018).

**Figure 1.** Categories involved in building the concept of accountability in recent decades

Accountability processes were classified by O'Donnell (1998) in two groups: vertical (or political) and horizontal (or governmental). Horizontal accountability is based on mutual control among powers (checks and balances) and controlling agencies, which besides supervising routines and applying legal sanctions, aiming to ensure order is maintained, can propose transformations through impeachment processes, for example. Vertical accountability occurs during the election process, when society exercises its voting rights to reward (elect) or punish (substitute) its representatives, or even to participate in occasional, individual or collective deliberations and demonstrations, in relation to those occupying elected posts, from a more democratic perspective.

From the democratic angle, accountability has a fundamental role in analysing the interaction processes between political communities, the organisation of political institutions and agency questions, in the epistemological quality of the information provided, in equalizing authority, in building a civic identity and in popular participation (Akutsu, 2005; Behn, 1998; Cunha *et al.*, 2015; Nunes *et al.*, 2017; Olsen, 2018).

For Abrucio and Loureiro (2004), democratic accountability is based on requirements for those in authority to give account of their actions and non-actions, uninterruptedly and through institutional mechanisms, which does not diverge from the classification of vertical accountability proposed by O'Donnell (1998), but refers to institutional control during elected representatives' period in office and the rules limiting their power. In this connection, Behn (1998) draws attention to the leading role of public institutions in democratic accountability processes, considering they are responsible for implementing instruments to increase the performance, transparency and responsibility assumed by public agents before society, such as norms, laws, procedure codes and others.

The complexity of the accountability process goes beyond the act of giving account to prioritizing the public interest in a context of governance subject to popular control and re-establishing legitimacy, with a focus on reducing information and power asymmetries (Parkinson, 2015; Trenz, 2015; Valbruzzi, 2015). For Arato (2002), an accountability regime depends on two dimensions: the public sphere, which should institutionalize communication in order to adhere to norms and democratic principles, and civil society from whom interest and involvement in public affairs are expected. The same author (Arato, 2002) states that accountability mechanisms are essential to re-affirm the democratic norm, but it is not enough for them to be positivized in legal texts. They must be institutionalized with adherence to these norms, aiming to consolidate national sovereignty in democratic regimes. According to Behn (1998), accountability systems strengthen the integrity and trustworthiness of governments.

The concept of accountability is closely connected to democratic values, where not only elected members but also those in high public positions must ensure citizens have political autonomy and equal participation, consideration and value, through legal and institutional mechanisms (Olsen, 2018). Therefore, for the same author (Olsen, 2018), accountability processes are frequently related to Agency Theory, as the power exercised by agents (elected authorities), communication and choice processes, informational asymmetry and the behavioural basis are agency problems. Briefly, accountability, actions of giving account and governments taking responsibility through society's participation and control, with a view to democratic legitimacy, is developed through publicizing official actions, fulfilling the principles of legality, administrative transparency and efficiency, human dignity and popular participation, while respecting the premises of private life, confidentiality, honour and security (Akutsu, 2005).

### 2.3 Legal mechanisms for social control

There is a direct relation between accountability and social control: both form the basis of institutions in the Democratic State of Law, and although the checks and balances system acts in controlling powers, accountability processes will only be effective if counting on control by citizens, i.e., social control (Campos, 1990; Miguel, 2005).

For Martínez *et al.* (2017), the guarantee of effective social control is associated with the existence of legal markers that ensure this is exercised efficiently and effectively, in a set of actions between society, social control agencies and citizenship. For the same authors, social control mechanisms should favour transparency and access to information, in order to submit public accounts to popular scrutiny.

The right of access to information and its contributions, both to civil society and to governments, is recognised worldwide as demonstrated in Figure 2.

International action		Year	Positivized text
UNO's Declaration of Human Rights	Universal of Human Rights	1948	All human beings have the right to freedom of opinion and expression; that right includes the freedom to have opinions without suffering interference and to seek, receive and spread information and ideas through any means, without borders (art. 19)
International Covenant on Civil and Political Rights		1966	Any person has the right to freedom of expression; that right includes the freedom to seek, receive and spread information and ideas of all kinds, without considering borders, in oral or written form, printed or artistic, or by any other means they choose (art. 19)
Inter-American Declaration of Principles of Freedom of Expression		2000	Access to the information held by the State is a fundamental right of the individual. States are obliged to ensure this right is exercised. This principle only admits exceptional limitations that should be established previously by law for cases where there is real and imminent danger that threatens national security in democratic societies (item 4)
United Nations Convention against Corruption		2003	Each State Party should take the necessary measures to increase transparency in its Public Administration, establish procedures or regulations that allow members of the general public to obtain information about the organisation, functioning and decision-making processes of its Public Administration" (art. 10 and 13)

**Figure 2.** Ensuring access to information worldwide  
 Source: Adapted from Comptroller General of the Union, 2013.

Concerning Portuguese legislation, social control and access to information is supported by the following norms:

- a) Constitution of the Portuguese Republic, article 48, entry 1: ensures the right of access to information;
- b) Constitution of the Portuguese Republic, article 268: rights and guarantees of those administered;
- c) Law n° 65/1993: Regulates access to Administration documents.
- d) Resolution of the Council of Ministers n° 95/1999: determines the availability on the internet of information held by Public Administration.
- e) Resolution of the Council of Ministers n° 22/2001: reviews assessment of the websites of bodies belonging directly and indirectly to State Administration.
- f) Law n° 46/2007: approves the regime of access to administrative and environmental information and the reuse of administrative documents. transposing Directive 2003/4/CE, of the European Parliament and Council, of 28 January, and Directive 2003/98/CE, of the European Parliament and Council of 28 January, and Directive 2003/98/CE, of the European Parliament and Council, of 17 November.
- g) Law n° 51/2018 (in its current form): changes the Local Finance Law, approved by Law n° 73/2013, and the Code of Municipal Building Tax, approved by Decree-Law n° 287/2003.

Therefore, the accountability process is presented as something inherent to the context of the Democratic State of Law, in exercising the rights granted by the Portuguese Constitution, throughout its historic, evolutionary process up to the current instruments of governance and social control, seeking to ensure constitutional and legal principles, many of which are positivized in the current CAP.

### 3 METHOD

The study presented adopted qualitative research methods, through bibliographical and documentary research and content analysis techniques (Bardin, 2016) in order to identify the proximity between the existing literature on the subject and its materialization in the legal structure, especially Decree-Law n° 4/2015, of 7 January (Code of Administrative Procedure).

**4 RESULTS**

Having understood the concepts involved in accountability, the current CAP, forming Decree-Law nº 4/2015 is presented. This regulates administrative procedure, understood here as “the ordered succession of actions and formalities regarding the formation, manifestation and execution of the will of the organs of Public Administration” (Article 1, CAP), in the scope of all Public Administration action, including local authorities, as regards the general principles, the subject of this analysis (Article 2, CAP).

The first CAP was introduced by Decree-Law nº 442/91, being reviewed just once though Decree-Law nº 6/96. Approval of NCAP resulted from the need to bring the legal text into line with the constitutional text (granted in 2005) and the requirement according to European Union law, besides bringing the norm up to date, considering 20 years had passed since the last review of the document.

Concerning the general principles, it is important to mention that the current CAP positivized important resolutions in relation to the previous text, among them inclusion of the principle of good administration, with specific mention of efficiency in Public Administration and the need to bring this closer to society; besides the principles of responsibility; of open administration, ensuring access to archives and administrative records, among others. Another aspect warranting attention is extension of the principles of equality, proportionality, good faith and collaboration with private individuals, always aiming to strengthen the fundamental values of Public Administration in a Democratic State of Law (Portugal, 2015).

Set out in this way, it is our intention to analyse the contributions of the general principles established in the Portuguese Code of Administrative Procedure (Decree-Law nº 4/2015, of 7 January) to accountability. First of all, the procedures to achieve results covered an analysis of the content prescribed in the administrative document, in order to extract the principles contained in it (only expressed ones) and their respective concepts, for subsequent correlation with the concepts and elements of accountability contained in Figure 1. Therefore, from Chapter II of CAP, the general principles of administrative activity are described, besides others throughout the text, presented in Figure 3.

<b>Principle</b>	<b>Definition</b>	<b>CAP</b>
Legality	The organs of Public Administration (PA) must act according to law, within the limits of the powers granted to them, and according to their respective purposes.	Art. 3
Pursuing the public interest and protecting citizens’ rights	It is up to PA organs to pursue the public interest, respecting citizens’ rights and legally protected interests.	Art. 4
Good administration	Using the criteria of efficiency, economy and speed in PA activities.	Art. 5
Equality	PA cannot prioritize, benefit, harm or take away any right or make exempt from any duty because of origins, sex, race, land of origin, religion, political convictions or ideology, education, economic situation, social condition or sexual orientation	Art. 6
Proportionality and prohibiting excess	PA must adopt appropriate behaviour for the ends pursued, affecting subjective rights or protected private interests, when applicable, to the extent necessary and proportionately to the objectives to be fulfilled.	Art. 7
Justice and reasonableness	PA must give fair treatment to all those it enters a relation with, rejecting solutions that are clearly unreasonable or incompatible with the idea of Law, namely regarding the interpretation of juridical values and evaluations appropriate to carrying out administrative functions.	Art. 8



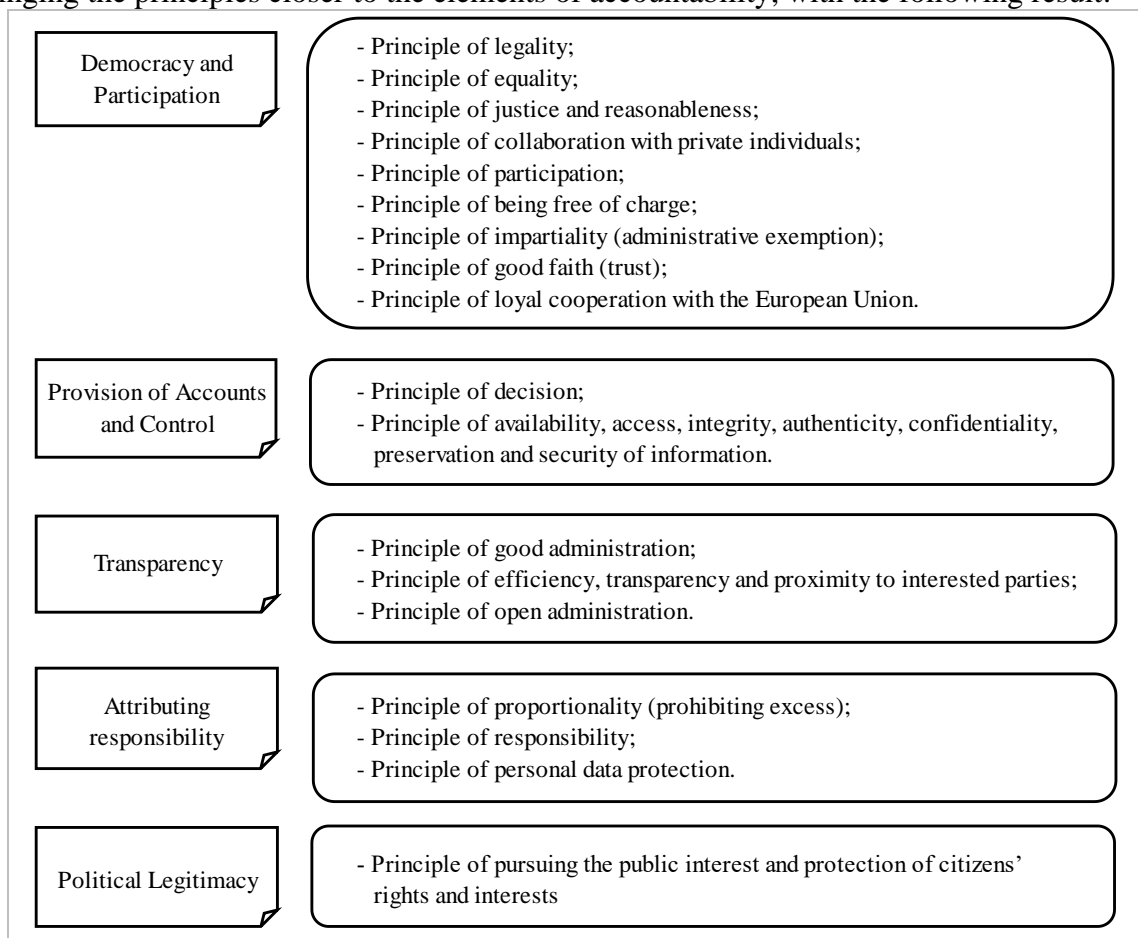
<b>Principle</b>	<b>Definition</b>	<b>CAP</b>
Impartiality(administrative exemption)	PA must give impartial treatment to all those it enters a relation with, that is, considering objectively all and only relevant interests in the decision-making context and adopting the organisational and essential solutions to preserve administrative exemption and trust in that exemption.	Art. 9
Good faith (trust)	PA and private individuals must act and relate to one another following the rules of good faith, respecting the fundamental values of Law that are relevant in the situations considered, and especially, the trust aroused in the other party in relation to the relevant action and the goal to be achieved with the action undertaken.	Art. 10
Collaboration with private individuals	Acting in close collaboration with private individuals, giving these individuals the information and clarifications they need, supporting and stimulating their initiatives and receiving their suggestions and information.	Art. 11
Participation	Ensuring the participation of private individuals, as well as associations aiming to defend their interests, in forming decisions that affect them.	Art. 12
Decision	The organs of PA have the duty to make statements about all matters in their competence presented to them, and particularly about matters directly affecting interested parties, as well as about petitions, representations or complaints formulated in defence of the Constitution, laws or public interest.	Art. 13
Efficiency, transparency and proximity to interested parties	Use of electronic means in carrying out PA activities, so as to promote administrative efficiency and transparency and proximity to interested parties.	Art. 14, n° 1
Availability, access, integrity, authenticity, confidentiality, preservation and security of information.	The electronic means used must ensure the availability, access, integrity, authenticity, confidentiality, preservation and security of information.	Art. 14, n° 2
Cost-free	The administrative procedure must be essentially free of charge, inasmuch as special laws do not involve the payment of expenses, charges or other costs borne by Administration	Art. 15
Responsibility	According to the law, PA responds to damage caused in carrying out its activity.	Art. 16
Open administration	Everyone has the right of access to administrative archives and records, even when no procedure concerning them directly is occurring, apart from what is set out in law regarding matters of internal and external security, criminal investigation, fiscal secrecy and people's privacy.	Art. 17°
Protection of personal data	Private individuals have the right to protection of their personal data and security and integrity of supports, systems and applications used for the purpose, according to law.	Art. 18
Loyal cooperation with the European Union	Whenever European Union law forces PA to provide information, present proposals or in any other way collaborate with the PA of other member-states, that obligation must be fulfilled within the defined time limit.	Art. 19
Procedural adaptation	In the absence of injunctive juridical norms, the person in charge of the procedure has discretion in the respective structuring, which, respecting the general principles of administrative activity, must be guided by the public interests of participation, efficiency, economy and speed in preparing the decision.	Art. 56
Principle of inquisition	The person in charge of directing the procedure and the other organs participating in the instruction, even when the procedure is initiated on the initiative of the interested parties, can take any steps revealed to be appropriate and necessary in preparing a legal and fair decision, even if related to matters not mentioned in the	Art. 58

requests or responses of the interested parties.		
Principle	Definition	CAP
Opposition to administrative actions	Interested parties have the right to oppose administrative actions with PA, requesting their repeal, annulment, modification or substitution; react against the illegal omission of administrative actions, in failure in the decision-making duty, requesting fulfilment of the desired action.	Art. 184

**Figure 3.** General principles in the current CAP

From the definitions in Figure 3, adapted from the legal text, there is a close connection between them in sustaining the administrative juridical system, based on constitutional precepts for the good and appropriate processing of administrative procedures subject to the code. It is noted, therefore, that the possible failure of one principle affects the effectiveness of others, since each of them participates in building the whole. Here, for example, it would not be correct, for example, to have a procedure that respected legality, but which was not proportional and fair, or that pursued the public interest but without transparency, or that was egalitarian but without the due data protection, among many other examples that could be formulated.

The same correlation can be made concerning the elements forming the concept of accountability, since each is a necessary part of the final definition, and so each of the principles in Figure 3 can easily adapt to more than one element of Figure 1, for the purposes of this study. Therefore, Figure 4 was drawn up using qualitative criteria, setting out from bringing the principles closer to the elements of accountability, with the following result:



**Figure 4.** Correlation of Accountability Concept Elements with Current CAP Principles

## 5 DISCUSSION OF THE RESULTS

Figure 4 shows that a great many of the general administrative principles have a close correlation with fundamental principles of the Constitution of the Portuguese Republic (CPR), which is based on fulfilling popular will and on democratic principles, forming what can be called constitutionalization of administrative law, with a view to a more democratic, republican and inclusive model (Cristóvam & Catarino, 2015).

The CPR contains the principles of legality (Art. 3, n° 2; Art. 266, n° 2); equality (Art. 13); justice, impartiality and good faith (Art. 266, n° 2); participation (Art. 9, c); collaboration with private individuals (Art. 267°, n° 5), being free of charge (Art. 20, n° 1); and loyal cooperation with the European Union (Art. 7, n° 5; Art. 8, n° 4), justifying the preponderance of those principles in the element of democracy and participation in Figure 1, since they aim to ensure political equality, equity and popular control through efficiency and trust in representatives, while not preventing adaptation to the other elements.

Continuing, the principle of decision and that of availability, access, integrity, authenticity, confidentiality, preservation and security of information are related to the element of giving account and control, through the preponderance of the characteristic of obligatory and true information to be provided by Public Administration, and also the necessary protection of private information. As stated, all the principles have in the background the constitutional text, those being in Art. 20, n° 4 and Art. 268, n° 1 and 2, both from CPR, respectively in the order described in the paragraph.

The element of better transparency is better connected to the principles of good administration, efficiency, transparency and proximity to interested parties, and open administration, given the characteristics that aim to give access to and publicize public actions among citizens, and also have a connection with constitutional precepts, more specifically in Art. 267, n° 1, Art. 81, 'c', and Art. 268, n° 1 and 2, all from CPR, respectively in the order of the principles listed. It is said that the principle of open administration is connected to the principle of the availability of information, while having a broader concept more linked to the collective. These principles support construction of a civic identity, since this creates conditions and opportunities for the ideal of popular control based on the information provided.

In attributing responsibility, most connected are the principles of proportionality (Art. 266, n° 2, CPR), responsibility (Art. 22, CPR), and protection of personal data (Art. 35, n° 2, 4 and 7), considering that Public Administration's non-compliance with normative rulings, especially those protecting private individuals, can lead to consequences for the agents responsible. It is worth saying that proportionality permeates all the other actions and principles seen, with its insertion in attributing responsibility being due to the preponderance of the principle with prohibiting excess (which can also be taken as a principle apart), limiting Public Administration in actions relating to subjective rights and private interests until the due proportion of what it is aimed to fulfil.

Finally, in political legitimacy, inserted here is the principle of pursuing the public interest and protection of citizens' rights (Art. 266, n° 1, CPR), as one of the basic pillars and grounding validity of the entire democratic system. Public Administration is intrinsically directed towards public ends, satisfying collective needs considered as of public interest, according to understanding of each context, being essential in ensuring fundamental rights, especially security, justice and well-being, designated as of primary public interest (Andrade, 2017).

However, some of the principles listed in Figure 3 were not included in Figure 1. This is because, given the analysis that they are restricted to the administrative procedure itself,

although they can be seen as principles arising from the general principles, they are not directly related to exercising accountability.

Therefore, the principle of procedural appropriateness, which refers to the limits of discretion in the procedure, arises from legality, justice, participation, efficiency and proportionality; the principle of inquisition, referring to the steps necessary in preparing the decision, concerns justice, collaboration with private individuals, impartiality, good faith, decision and proportionality; and the principle of repealing administrative actions is linked to the idea of legality, equality, justice, availability of information and open administration; without excluding, in all the hypotheses, other correlations of procedural principles with the general principles of administrative activity.

It is worth noting that the three procedural principles are part of the Constitution, with the CPR setting out the rights and guarantees of those administered in relations with Public Administration (Art. 268), these being legality; access to information, resolutions of processes, records and archives; notification of interested parties; and repealing administrative actions and norms.

## 6 FINAL CONSIDERATIONS

Exercising accountability is seen by various authors as a democratic and fundamental issue in implementing the State of Law (Abrucio & Loureiro, 2004; Akutsu, 2005; Arato, 2002; Barros, 2015; Olsen, 2018). This is because accountability actions involve instruments geared towards participation, giving account, transparency, attributing responsibility and political legitimacy, essential matters for democratic societies.

The elements forming the concept of accountability are closely connected to the constitutional principles established in the Portuguese Constitution, which in turn were also contemplated in drawing up the current Code of Administrative Procedure, approved with the aim of strengthening administrative activity in the context of the Democratic State of Law.

The correlation of the general principles of administrative activity with constitutional principles, which are structuring norms grounding the system's validity, strengthens political legitimacy through prevalence of the public interest, developing a new direction for Public Administration, marked by good administration and responsibility.

As conceived and in these circumstances, the objective of this study was attained, through analysis of the contributions made by the general principles established in the current CPA to the practice of accountability. In this connection, the concepts covered in defining accountability were listed and related to each of the principles of the current PCA. What is noted is a close relation between them, and between both and the text of the Constitution.

Suggested for future studies are new research paths regarding the application of each general principle in Public Administration, analysing specific situations and the respective fulfilment of accountability.

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## Princípios do Código de Procedimento Administrativo e seus Contributos para a Accountability: o Caso Português

### RESUMO

**Objetivo:** O objetivo deste estudo é analisar os contributos que os princípios gerais estabelecidos no Código de Procedimento Administrativo (Decreto-Lei n° 4/2015, de 7 de janeiro) português trouxeram para o exercício da accountability.

**Método:** Foi realizada uma pesquisa com recurso ao método qualitativo através de pesquisa bibliográfica e documental.

**Originalidade/Relevância:** A aprovação do atual Código de Procedimento Administrativo (Decreto-Lei n° 4/2015, de 7 de janeiro) trouxe importantes inovações em relação ao texto anterior, especialmente em seus princípios gerais da atividade administrativa. Dentre as mudanças, há menção expressa à necessidade de eficiência da Administração Pública, o compromisso desta diante à responsabilização de seus atos e à garantia da participação popular. Com efeito, o estudo analisou se a inclusão de tais princípios fortalece a concretização do Estado Democrático de Direito, propiciando um ambiente favorável as demandas de accountability, conforme é a intenção do diploma.

**Resultados:** A análise efetuada mostra que o atual Código de Procedimento Administrativo atua em estreita proximidade aos valores constitucionais e as dimensões que envolvem o conceito de accountability, sendo em tese um instrumento de garantia da legitimação democrática.

**Contribuições teóricas/metodológicas:** A pesquisa contribui para a discussão do tema na Administração Pública e para alargar a discussão na literatura, e nomeadamente no ordenamento jurídico português, se os princípios do CPA contribuem para o exercício da accountability, das entidades públicas, face aos novos desafios propostos pela crescente complexidade das sociedades modernas e às novas visões da Administração Pública.

**Palavras-chave:** Administração Pública; Accountability; Controle Social; Estado Democrático de Direito; Transparência.

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