THE LEGAL NATURE OF THE RIGHT TO GOOD ADMINISTRATION

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Abstract

Some of the norms included in the right to good administration are considered binding, even if they were not recognized at the time of the initial drafting of the contracts. An example is the rule that individuals must have access to documents held by government agencies. When clarifying the legal nature of the right to good administration, it is considered expedient to clarify the violation of this right, its judicial review, and the role of the individual in these processes. What are the aspects of judicial review? First, it is necessary to support the rule of law and provide an effective means of legal protection. It is also important to ensure the legitimacy of the decision-making process. Explanations of the EU Charter on Fundamental Rights emphasize the direct impact of the right to good administration. In addition, the EU Court has recognized it as a general principle of law. There have been a number of changes in the implementation of the right to good administration in modern times. These changes have led to the emergence of new approaches and trends in this right. Such trends have led to a number of new perspectives on the right to good administration.

Keywords: *the right to good administration, legal nature, legal content, fair trial, EU Court, EU Charter of Fundamental Rights, bad governance, bad administrative decisions, procedural norms, case law, future prospects.*

The fundamental human rights recognized in EU law are enshrined in a single document, the EU Charter of Fundamental Rights. There is an opinion in the legal literature that the right of a citizen to good administration is completely new and may even be a revolutionary right, because it was first proclaimed by a legal system and then constitutionalized [3, p.840].

The legitimacy of the EU is determined by the member states. This means that all measures at the European level are only valid if they have the consent (approval) of the citizens of the member states [10, p.45].

Follow to the rule of law is the most important principle of the EU. This includes fair and impartial administrative procedures. Procedural norms can be defined as a means of ensuring fundamental rights and protecting the individual. Compliance with procedural norms is mainly monitored by the courts referred to in Article 230 of the Treaty on European Union. In accordance with this article, the EU Court has always raised the issue of the lack of actio popularis. It is always a balance between ensuring legal certainty and good administration.

The rule of law determines the right to a fair trial, the right to defense, professional privileges and the right to good administration.

The Court of First Instance has the power to consider the issue of "punishing" the Commission for "procedural violations". However, the concept of administrative responsibility is less developed in European law. The Commission operates collectively and is collectively responsible for all decisions made at the political level. In such cases before the Court of First Instance, for example in claims for damages, EU authorities are held accountable.

First of all, it should be noted that the characteristics of the right to good administration are not mentioned in only one document. They can be detected only if the behavior of the administration does not meet the appropriate standards. This standard varies by time and circumstances. The individual rules, which are based on the principle of good administration, have different status and are not equally important in the hierarchy of rules of the Union. While some

of them are ordinary rules of conduct, others have a degree of legal obligation. For example, a rule that requires an immediate response by the authorities is only valid under certain conditions.

Some norms included in the right to good administration are considered to be binding, even if they were not recognized at the time of drafting the contracts. An example is the rule that individuals must have access to documents held by government agencies. It has evolved from an unenforceable right into a binding right enshrined in the Treaty on European Union.

When clarifying the legal nature of the right to good administration, it is considered expedient to clarify the violation of this right, its judicial review, and the role of the individual in these processes. What are the aspects of judicial review? First, it is necessary to support the rule of law and provide an effective means of legal protection. It is also important to ensure the legitimacy of the decision-making process. Explanations of the EU Charter on Fundamental Rights emphasize the direct impact of good administration. In addition, the EU Court has recognized it as a general principle of law. The Treaty establishing the European Union establishes the following grounds for European courts:

- Lack of authority,
- Violation of significant procedural requirements,
- Violation of constituent acts
- Violation of any legal norm related to its application or
- Abuse of power.

Follow to good administration principles will help prevent violations in any of these situations. This means that the violation of the right to good administration is subject to all grounds for reconsideration, and in the event of a violation of its legally recognized elements, it creates grounds for recourse to the courts [9, p.45].

The Council of Europe has described the trial as "the ultimate guarantee of individual rights, as well as the rights of administrative bodies".

We can look at the role of the individual in the judicial process from two perspectives. The first is to protect the interests of this individual. The second is to force the administrative authorities to carry out their activities properly. It is almost impossible to control individual decisions without the person's participation. This is an area where good administration principles can be seen as a mechanism for expanding judicial oversight.

It is also important to note that those for whom no decision has been made can sue when it affects their personal interests [5, p.245].

The Court of First Instance offered another interpretation of the individual's concern in the case of Jego Quere, but it was rejected by the court on appeal. In this resolution, the Commission claimed that the explanation of the individual grievance adopted by the Court of First Instance in the appealed decision was so broad that in fact the requirement of individual grievance was eliminated. The EU Court agreed with this argument and stated that:

Unlike the Court of First Instance, the EU Court favors a relatively limited approach to individual participation. It is believed that the function of the Court of First Instance is to "protect individuals or legal entities from any illegal actions or omissions of Union institutions [6, p.14]. The main purpose of the establishment of this Court is to improve the quality of judicial protection [4, p.145].

Interestingly, the number of appeals to the EU Court is small. The development of the principles of administrative law has left the resolution of such issues to the discretion of the Court of First Instance.

As we have already mentioned, the commitment to the right good administration is not new to the EU legal system. As an early precedent, the EU Court has begun to examine the administrative process in detail. The main criterion was the effect of the work to be done by the institutions of the Union.

In Meroni's case in 1961, we can find the criteria for effective action by the institutions of the Union (then the Union), in particular the following criteria: to act within a reasonable time, access to information, obtaining the necessary evidence, giving the party a chance to be heard [9, p.145].

In 1997, the Court of First Instance sought to enforce the principle of good administration in the context of the exercise of broad discretionary powers. It was stated that the guarantees of administrative rights under the law of the Union were "more substantial". The court identified three categories of guarantees:

1. The task of looking carefully and impartially at all relevant aspects of a particular case,
2. The right of a person to express his or her views;
3. The right to an adequately reasoned decision [1].

At the beginning of the 21st century, the EU Court did not define the right to good administration as a general principle of law. This is important because the EU Court at the time stated that the right to good administration "in itself does not give rights to individuals" [2].

Later, in 2006, the EU Court ruled that the only exception would be "the expression of specific rights, such as the duty to hear, hear access or justify decisions in an impartial, fair and reasonable manner". This is a very narrow interpretation. J.Wakefield notes that "the general right to good administration is not recognized; however, some specific rights are recognized in the legislation as separate rights. These rights are enforceable without reference to right to good administration [9, p.126].

In our opinion, this situation can be compared with the principle of "rule of law". When the courts found important elements of this principle, such as lex retro not agit or proper vacatio legis, there was no need to give the principle of the rule of law as the legal basis for a claim. The right to good administration regulates the exercise of constitutional, administrative and regulatory powers. In addition, the right to good administration requires that the body act with caution and in accordance with operational rules.

For a long time, the EU Court refused to recognize the general right to good administration. This was due to potential conflicts of interest between the Union and individuals. However, this conservative approach changed after the EU Charter on Fundamental Rights enshrined the right to good administration.

New research in the field of the right to good administration creates the conditions for different phenomena to occur [8]. Different events mean the use of behavioral sciences to increase the effectiveness of regulation. The United Kingdom and the United States are very active in this area, creating special units for the development of research in this area. A good example of this trend is the September 2015 decision by former US President Barack Obama to "use behaviorist scientific ideas to best serve the American people."

In this sense, good administration, administrative procedures and cognitive constraints are issues that will be realized in the future and are of particular interest today. Cognitive limitations combine cognitive psychology and law [7, p.549-615].

According to some experts, poor management and poor administrative decisions can be the result of mistakes in people's minds and in the choice between the subjects of power. The basic premise of cognitive psychological theory is that the human brain is a limited information processor that is unable to successfully manage all the stimuli that go beyond it. In order for government officials to make the right decisions, it is necessary to learn how to properly allocate the (deficit) cognitive resources. This is complicated by two main strategies that people (including civil servants) use to make the most of their cognitive abilities: mental (heuristics) and organizational principles (schemes).

When decisions are made in an organizational setting, institutional forms can impede the effectiveness of cognitive constraints. A government that seeks to avoid bad governance and bad decisions must be careful and structured. For example, the participation of the public and the judiciary may be a useful tool for an administrative body to perform its mandate in good faith in the public interest, but it is a weak predictor for the expert's short-sightedness and self-confi-

dence. Effective judicial review forces public authorities to look for alternative ways of doing what they consider important for their decision.

In several decisions, the EU Court has denied the right to be heard at the time of drafting the rules as a component of the right to good administration. In this regard, the EU Court has shown that the right to good administration that emerges from this situation does not cover the process of adopting dimensions of general application. The Resolution of 12 June 2015 states that "within the framework of administrative procedure, the right to be heard of a particular person cannot be considered in the context of the legislative process resulting in the adoption of general laws.

It is believed that a tough approach requires large material costs. Proponents of this approach argue that the new judicial requirements have made rule-making more laborious and expensive, but that costs have been made possible not only in terms of democratic advantages, but also in terms of increasing the effectiveness of outcomes. Faced with compliance with court requirements for transparency and participation, the administrator will almost automatically perform a normative analysis of costs and benefits in terms of efficiency.

The example of the United States shows that judicial control is important and necessary to ensure the right to good administration, but at the same time, paradoxically, it can be a factor in the emergence of bad governance. Thus, it is necessary to regulate the fairness and efficiency of the procedure, avoiding unnecessary delays and costs, but guaranteeing protection and good management. This should be an important issue for the legislature and the courts.

Thus, good administration issues can also be found in legal documents adopted prior to the formation of the European Union. Improving management is an ongoing responsibility of any state. Today's decisions make it possible to identify the correct vector for the further development of the system of state and municipal government. The consistent implementation of the idea of "good administration" is, of course, a priority for the development of states and demonstrates the authorities desire to establish clear and harmonious relations within the framework of the system of legislative acts.

For many years, the European Law School of Public Administration has been among the basic principles of administrative activity "the right to good administration" reflecting such governance that meets the requirements of an open, democratic and fair society.

The concept of "the right to good administration" consists of the following components: participation; the rule of law; transparency; sensitivity; orientation to consent; justice; effectiveness and efficiency; accountability; strategic vision.

The recognition and legislative reflection of the right to good administration in the Charter of the European Union on Fundamental Rights and the draft Constitution of the European Union was the highest achievement in the evolution of the citizen's right to participate in the management of state affairs. It should be noted that the implementation of the idea of "good administration" has certain constitutional traditions; in one form or another, it was embodied in the texts of the existing constitutions of European states.

The experience of the constitutional development of European countries shows that the implementation of this idea will enrich human rights with the quality of participation in government, expand the mutual obligations of the parties to create an open and democratic state.

The right to good administration set forth in the Charter of Fundamental Rights is a clear and open confirmation of the existence of the obligation of state bodies to be in the best position to make the necessary decisions. Thus, this task provides significant support for procedural issues, which currently occupy a higher position.

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